

O/0905/26

TRADE MARKS ACT 1994

IN THE MATTER OF UK TRADE MARK APPLICATION NUMBER 4109376

**BY DREAMEE FASHION LTD
TO REGISTER THE FOLLOWING TRADE MARK:**

Dreamee Fashion

IN CLASS 25

AND

IN THE OPPOSITION THERETO

UNDER NUMBER 452004

BY FLICK FASHIONS LIMITED

BACKGROUND & PLEADINGS

1. On 8 October 2024, Dreamee Fashion Ltd (“the applicant”) applied to register the trade mark shown on the cover page of this decision in the United Kingdom (“the contested mark”). The contested mark was published for opposition purposes in the Trade Marks Journal on 18 October 2024 in respect of the following goods:

Class 25: Clothing; Knitwear [clothing]; Jackets [clothing]; Ready-to-wear clothing; Woolen clothing; Furs [clothing]; Linen clothing; Headbands [clothing]; Headbands for clothing; Clothes; Jerseys [clothing]; Shorts [clothing]; Denims [clothing]; Silk clothing; Leather clothing; Clothing of leather; Parts of clothing, footwear and headgear; Knitted clothing; Corsets [clothing, foundation garments]; Embroidered clothing; Hoods [clothing]; Belts [clothing]; Belts for clothing; Casual clothing; Bandeaux [clothing]; Jackets (Stuff -) [clothing]; Clothing for leisure wear; Ready-made clothing; Bottoms [clothing]; Playsuits [clothing]; Leisure clothing; Bodies [clothing]; Tops [clothing]; Fabric belts [clothing].

2. On 17 January 2025, the contested mark was opposed by Flick Fashions Limited (“the opponent”). The opposition is brought under Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”).
3. The opponent relies upon the following three trade marks (together “the earlier marks”):

- (i) Trade mark number: UK00002216417 (the “DREAM mark”):

Filing date: 7 December 1999

Registration date: 27 April 2001

Relying on the following goods:

Class 25: Clothing; swimwear; footwear; headgear.

Representation: DREAM

- (ii) Trade mark number: UK00002060937 (the “DREAMS mark”):

Filing date: 13 March 1996

Registration date: 25 October 1996

Relying on the following goods:

Class 25: Articles of clothing; swimwear, footwear and headgear.

Representation: DREAMS

(iii) Trade mark number: UK00003904128 (the “DREAMS LONDON mark”):

Filing date: 24 April 2023

Registration date: 21 July 2023

Relying on the following goods:

Class 25: Clothing; footwear; headgear.

Representation: DREAMS LONDON

4. The opponent submits that its earlier marks are visually, aurally and conceptually highly similar to the contested mark and that the goods and services in issue are identical and/or similar. Consequently, the opponent submits that there exists a likelihood of confusion between the contested mark and the earlier marks, including a likelihood of association.
5. The applicant filed a counterstatement denying the claims made against it. Specifically, the applicant submits that it is “overwhelmingly obvious” that the words in the earlier marks are “substantially different to those in the contested mark, and that the earlier marks are “clearly distinct” aurally to the contested mark. The applicant also denies that any of the earlier marks are conceptually similar to the contested mark. The applicant therefore requests that the opposition be refused, that the contested mark be allowed to proceed to registration, and that an award of costs be made in its favour.

REPRESENTATION

6. The opponent is represented by Stratagem Intellectual Property Management Limited.
7. The applicant is not legally represented.

EVIDENCE AND SUBMISSIONS

8. Both parties filed witness evidence in this matter. Specifically, the opponent filed a witness statement signed by Tahir Sharif dated 30 July 2025 in his capacity as Executive Director for the opponent, which I have discussed in further detail in paragraphs 25 and 26 below. This witness statement was filed alongside 18 accompanying exhibits (namely, exhibits FF1 to FF15B). The applicant also filed a witness statement signed by Jaden Elizabeth Allen dated 1 November 2025 in her capacity as sole shareholder and director of the applicant, which I have discussed in further detail in paragraphs 13 to 18 below. This witness statement was filed alongside 9 accompanying exhibits (namely, exhibits 1 to 9).
9. No hearing was requested, and both parties filed written submissions in lieu of a hearing.¹ This decision is therefore taken following a careful consideration of all of the papers that have been filed by the parties, which will not be summarised but will be referred to as and where appropriate during this decision.

DECISION

10. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.
11. An earlier trade mark is defined in section 6 of the Act, the relevant parts of which state:

“(6)(1) In this Act an “earlier trade mark” means –

¹ It is noted that the opponent filed written submissions on 31 July 2025, 5 January 2026 and 19 February 2026. The applicant also filed written submissions on 2 November 2025 and 19 February 2026.

a registered trade mark or international trade mark (UK) which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks.

12. All of the marks identified in paragraph 3 qualify as earlier trade marks under the above provisions. As the first two marks identified in paragraph 3 (namely, the DREAM mark and the DREAMS mark had completed their registration process more than 5 years prior to the filing date of the application in issue, they are both subject to the use provisions in section 6A of the Act. Consequently, I will begin by assessing whether these earlier marks have been put to genuine use by the opponent during the relevant period. This is not, however, the case for the third mark identified in paragraph 3 (namely, the DREAMS LONDON mark). This mark is not, therefore, subject to the use provisions in section 6A of the Act, and the opponent can rely on all of the goods for which the DREAMS LONDON mark has been registered for the purpose of this opposition.

PRELIMINARY ISSUES

13. As discussed above, the applicant filed evidence in the form of a witness statement signed by Jaden Allen dated 1 November 2025, alongside 9 exhibits. It is noted that this witness statement contains a number of opinions/arguments of the applicant, particularly in the “Distinctiveness of the Marks” and the “No Likelihood of Confusion” sections of the witness statement. Witness evidence should only be limited to statements of fact. Having said that, as this issue was not brought to the applicant’s attention prior to my consideration of this matter, and I am conscious that the applicant is not legally represented, I consider a fair approach would be for me to treat any parts of the witness evidence that are not statements of fact as submissions, and to only treat the sections of the witness evidence that contains statements of fact as having any evidential weight.
14. It is also noted that some of this evidence (specifically exhibits 1, 2 and 3) appear to be evidence of use of the contested mark by the applicant. However, evidence of use of the contested mark is not necessary for the purpose of this opposition.

My determinations in respect of the contested mark will be limited to a consideration of whether it is similar to the earlier marks, whether the goods for which it has been applied for are identical or similar to those for which the earlier marks are protected and,² as a consequence, whether there is a likelihood of confusion between the marks.

15. In that regard, it is also noted that the applicant seeks to differentiate between the goods provided and the customer base of the relevant parties in its witness statement. Specifically, in paragraph 4 of the witness statement of Jaden Allen it stipulates that the applicant's goods are sold to "females aged between 18 to 40" and that it sells "evening dresses", with the intention of "eventually venturing out to other forms of dressing, jewellery or accessories". Further, in paragraph 18 of the witness statement of Jaden Allen it stipulates that the opponent "operates in a different commercial sphere, focusing on wholesale whereas the applicant focuses on direct boutique sales to customers". However, it should be noted that I must undertake my comparison on the basis of the 'notional' coverage of the goods listed in the applicant's specifications (not the goods currently provided), and I must compare those against the goods for which the opponent's earlier marks are protected.³
16. It is also noted that the witness statement of Jaden Allen appears to challenge the likelihood of confusion between the marks in issue on the basis that Jaden Allen was "not aware that the word Dream/Dreams/Dreams London was being used as a trademark in the same category". Evidence of a lack of confusion by consumers over an extended period of time may point towards there being no likelihood of confusion.⁴ Having said that, in this instance, I do not have sufficient evidence before me that would evidence that there has been no actual confusion between the marks, and, even if that were the case, whether that was because

² Albeit, I appreciate that two of the earlier marks are subject to proof of use requirements and the goods for which those earlier marks are protected will be dependent on whether the opponent is able to evidence use of those marks for those goods during the relevant period.

³ In respect of the DREAM and DREAMS marks, that will be the goods in the opponent's specifications which it is able to establish proof of use, and, in respect of the DREAMS LONDON mark, that will be for the full breadth of goods for which it is registered as this mark is not subject to proof of use requirements.

⁴ Paragraphs 34 and 35 of the decision of Dr Brian Whitehead in *Azumi Limited v Nick Robinson*, Case No. O/078/22

there is genuinely no likelihood of confusion or whether another factor has resulted in there being no actual confusion to date.

17. Further, it is also noted that Jaden Allen references another trade mark (that being UK trade mark number 4062931) in her witness statement and asserts that this mark and the contested mark are “far more alike” than the contested mark and the earlier marks. However, the level of similarity between the contested mark and other marks (which are not the subject of these opposition proceedings) has no relevance to this matter and will not be discussed further in this decision.
18. Finally, the applicant also makes a number of references to the “reputation” (or alleged lack thereof) of the opponent in its written submissions. However, it should be noted that, whilst the opponent is required to evidence genuine use of its DREAM mark and DREAMS mark for the goods in its respective specifications for the purpose of this opposition, there is no requirement for the opponent to evidence its reputation within the clothing, headgear and footwear market.

Proof of Use

19. The relevant statutory provisions are as follows:

“6(1) This section applies where:

- (a) an application for registration of a trade mark has been published,
- (b) there is an earlier trade mark of a kind falling within section 6(1)(a), (aa) or (ba) in relation to which the conditions set out in section 5(1), (2) or (3) obtain, and
- (c) the registration procedure for the earlier trade mark was completed before the start of the relevant period.

(1A) In this section “the relevant period” means the period of 5 years ending with the date of the application for registration mentioned in subsection (1)(a) or (where applicable) the date of the priority claimed for that application.

(2) In opposition proceedings, the registrar shall not refuse to register the trade mark by reason of the earlier trade mark unless the use conditions are met.

(3) The use conditions are met if –

(a) within the relevant period the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or

(b) the earlier trade mark has not been so used, but there are proper reasons for non- use.

(4) For these purposes –

a) use of a trade mark includes use in a form (the “variant form”) differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor), and

(b) use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(5)-(5A) [Repealed]

(6) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services.”

20. Section 100 of the Act is also relevant, which reads:

“If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it.”

21. The relevant period for assessing genuine use is the five-year period ending with the filing date of the application in issue, i.e. 9 October 2019 to 8 October 2024.
22. In *easyGroup Ltd v Nuclei Ltd & Ors* [2023] EWCA Civ 1247, Arnold LJ summarised the law relating to genuine use as follows:

“105. The principles applicable to determining whether there has been genuine use of a trade mark have been considered by the CJEU in a considerable number of cases, the principal decisions being Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, Case C-259/02 *La Mer Technology Inc v Laboratories Goemar SA* [2004] ECR I-1159, Case C-416/04 *P Sunrider Corp v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237, Case C-442/07 *Verein Radetsky-Order v Bundervsvereinigung Kamaradschaft 'Feldmarschall Radetsky'* [2008] ECR I-9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Marken BV v Hagelkruis Beheer BV* [EU:C:2012:816], Case C-609/11 *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], Case C-141/13 *P Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089], Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434] and Joined Cases C-720/18 and C-721/18 *Ferrari SpA v DU* [EU:C:2020:854].

106. Ignoring issues which do not arise in the present case, such as use in relation to spare parts or second-hand goods and use in relation to a sub-category of goods or services, the principles may be summarised as follows:

(1) Genuine use means actual use of the trade mark by the proprietor or by a third party with authority to use the mark: *Ansul* at [35] and [37].

(2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Centrotherm* at [71]; *Leno* at [29]; *Ferrari* at [32].

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Centrotherm* at [71]; *Leno* at [29]; *Gözze* at [37], [40]; *Ferrari* at [32].

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: *Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37]; *Verein* at [14]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle* at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23].

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial *raison d'être* of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the

goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: *Ansul* at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34]; *Leno* at [29]-[30], [56]; *Ferrari* at [33].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no de minimis rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72]; *Leno* at [55].

(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: *Reber* at [32].”

23. Whether the use shown is sufficient for this purpose will depend on whether there has been real commercial exploitation of the mark, in the course of trade, sufficient to create or maintain a market for the goods at issue in the UK during the relevant five-year period. In making the assessment, I am required to consider all relevant factors, including:

- (i) The scale and frequency of the use shown.
- (ii) The nature of the use shown.
- (iii) The goods for which use has been shown.
- (iv) The nature of those goods and the market(s) for them.
- (v) The geographical extent of the use shown.

24. Whilst use does not always need to be quantitatively significant to be genuine, proven use of a mark which fails to establish that “the commercial exploitation of the mark is real” because the use would not be “viewed as warranted in the

economic sector concerned to maintain or create a share in the market for the goods or services protected by the mark” is, therefore, not genuine use.

25. As outlined above, the opponent sought to evidence its use of the earlier DREAM and DREAMS marks in its witness statement signed by Tahir Sharif on 30 July 2025, and in 18 corresponding exhibits (namely exhibits FF1 to FF15B). This witness statement confirms the following:

- (i) That between the years 2018 and 2024, the opponent made the following amount in sales of its clothing goods bearing the “DREAMS” mark in the UK:

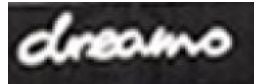
2018	- £1,144,005.62
2019	- £980,045.16
2020	- £916,335.34
2021	- £1,178,363.59
2022	- £1,889,003.70
2023	- £1,403,110.90
2024 (Jan-Oct only)	- £1,429,129.00

- (ii) That the opponent sold approximately 130,000 units of DREAMS clothing (which I understand to be clothing displaying the DREAMS marks) annually between 2019 and 2024;
- (iii) That the opponent’s main form of advertising is its attendance at trade exhibitions, and that it spent over £295,000 in marketing of its goods at those events between 2019 and 12 April 2024

26. The opponent also filed 18 accompanying exhibits to the witness statement of Tahir Sharif which can be summarised as follows:

- (i) Exhibit FF1 contains a table confirming the sales figures referenced in paragraph 25 (i) above;

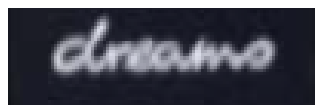
- (ii) Exhibit FF2 includes a number of images of clothing items, many of which have visible labels displaying the following mark. Whilst Tahir Sharif acknowledges in his witness statement that the “DREAMS mark is not visible in every photograph”, he also confirms that the clothing items in the images “certainly did have DREAMS labels”.



- (iii) Exhibit FF3 contains further images of items of clothing with neck labels, waist labels and hang tags displaying the following mark, which Tahir Sharif confirms were all sold during the relevant period:



- (iv) Exhibit FF4 contains a table displaying images and product codes for a variety of clothing goods (including trousers, t-shirts, blouses, jumpers, jackets and dresses), most of which I can see display the following mark, as well as confirmation of various invoice numbers and the year those invoices were produced.



- (v) Exhibit FF5 also contains a table displaying images and product codes for a variety of clothing goods (including, for example, trousers, t-shirts, blouses, jumpers and dresses). The labels for these items of clothing goods are not visible. However, Tahir Sharif has confirmed in the witness statement that these are “DREAM label garments as supplied by [the opponent]”

- (vi) Exhibit FF5b also contains a table displaying images of, again, what appears to be, clothing items, with labels displaying the following marks. This table also provides the product number for the relevant item, the invoice number and invoice date.



It appears that the grey labels with the word “DREAMS” in white are the marks largely displayed on the neck labels for the various clothing items, whereas the cream labels with the word “DREAMS” presented in a grey font are largely displayed on the tags attached to the clothing items. The images of the labels/tags provided are extremely blurry and, in relation to the tags (i.e., where the word “DREAMS” is presented in a grey font against a cream background) it does appear that there is something additional printed underneath the word “DREAMS”, perhaps being the word “LONDON”, as it is much more in line with how the “DREAMS LONDON” mark is presented in exhibit FF13 below. However, I cannot be sure of this because of the poor quality of the images provided.

- (vii) Exhibits FF6 to FF11 contains sample invoices showing the sale of various clothing items between 2019 to 2024. The full address of the recipients of these goods has been redacted from the invoices, as has the value of these invoices, but I can see that they are addressed to recipients throughout the United Kingdom (including in London, the West Midlands, East Midlands, Warwickshire, Yorkshire, Devon, Cornwall, Tyne & Wear, Dumfriesshire, Roxburghshire, East Lothian, Perthshire, Cambridgeshire, Mid Glamorgan, Hampshire, Kent, Essex,

Bedfordshire, Norfolk, Lancashire, Gloucestershire, Buckinghamshire, Bristol, Gwent, the Isle of Wight and Kildare).

- (viii) Exhibit FF12 contains images of various trade fairs attended by the opponent displaying the DREAMS mark. These images are undated. However, Tahir Sharif has confirmed that the opponent attended 29 trade exhibitions during the relevant period “to advertise DREAMS goods”.
- (ix) Exhibit FF13 contains a screenshot of the Spring Fair Exhibition website advertising their event at the NEC, Birmingham, which Tahir Sharif confirmed the opponent attended in February 2023 and 2024. The screenshot from the 2023 event displays the first two marks outlined below and confirms that the opponent has “built a reputation amongst independent boutiques throughout the UK and Europe for supplying excellent quality ladies fashion items”, and the screenshot from the 2024 event displays the third mark outlined below and confirms that since the 1980’s the opponent has “been designing and manufacturing womenswear”:

Dreams Clothing

dreams



- (x) Exhibit FF13B contains an article dated 15 July 2024 from “Progressive Gifts & Home” confirming that the opponent will be

an exhibitor at the Harrogate Home & Gift event. However, there is no reference to any of the earlier marks in this article.

- (xi) Exhibit FF14 contains a screenshot of the opponent's website taken on 21 May 2025 (i.e., after the relevant period). Whilst Tahir Sharif has confirmed that some of the garments shown on the website were sold during the relevant period, I am unable to identify which items they were based on the information provided.
- (xii) Exhibit FF15 contains three screenshots of the opponent's website from 4 December 2023, 18 April 2024 and 11 September 2024. These screenshots advertise scarves being sold by the opponent. At the top of the website page also appears to be hyperlinks for "dresses", "tops", "trousers", "skirts", "knitwear", "loungewear", "jackets", "accessories", "bottoms", and "jumpsuits". This, therefore, appears to indicate that the opponent was also selling these goods at the relevant time. All of these screenshots also display the following mark:



- (xiii) Exhibit FF15B contains a screenshot of a Facebook post displaying three images of a dress and referencing "Dreams Flick Fashions" and containing the hashtags "Dreams".

VARIANT USE

27. As outlined above, the opponent has utilised marks containing the word "DREAMS" in varying forms in the evidence provided. Specifically, the opponent appears to have utilised the following four marks containing the word "DREAMS" in the evidence filed:

dreams

(first variation)

Dreams Clothing (second variation)



(third variation)



(fourth variation)

28. I note that section 46(2) of the Act stipulates the following:

“...use of a trade mark includes use in a form (the “variant form”) differing in elements which **do not alter the distinctive character** of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor)...”

29. As a preliminary point, I note that all of the marks utilised by the opponent in their evidence include the word “DREAMS” rather than the word “DREAM” and, as discussed above, proof of use is required in respect of both the opponent’s earlier DREAM mark and its DREAMS mark. Having said that, in *Dreamersclub Ltd v KTS Group Ltd* (“*Dreamersclub*”),⁵ it was held that “the pluralisation of DREAM into DREAMS cannot be held to alter the distinctive character of the word

⁵ BL O/091/19.

DREAM”.⁶ Accordingly, use of the word DREAMS as a mark is an acceptable variant of a mark registered for the word “DREAMS”.

30. It should also be noted that the opponent’s earlier DREAM mark and DREAMS mark are both registered as word marks, which protects their use in any normal font, including upper and lower-case letters, or any customary combination of those characters. In *Dreamersclub*, Phillip Johnson (acting as Appointed Person) also considered the same earlier marks in issue in these proceedings (i.e., the DREAM mark and the DREAMS mark) and whether the first variation referenced in paragraph 27 of this decision was an acceptable variant of the earlier marks. Specifically, Phillip Johnson stated the following:

“13. [...] The presentation of the DREAMS mark in paragraph 7 above is no more than it being presented in a cursive typeface.

14. Accordingly, for the purposes of assessing use of the DREAMS word mark the fact it has been presented in what might be called a cursive typeface and not a plain word mark must be disregarded. Following the Hearing Officer’s finding in paragraph 13 of his Decision that the stylised DREAMS mark had been used he should have gone on to find that the “plain” word mark DREAMS has been sufficiently used for the purpose of section 6A.”

31. It is clear therefore that the first variation identified in paragraph 27 above is an acceptable variant of both the DREAM mark and the DREAMS mark.
32. Turning now to the other three variations referenced in paragraph 27 of this decision (namely, the second variation, third variation and fourth variation), I note that these are all marks which include the word “DREAMS” in, what I consider to be a standard/unremarkable colour (i.e., either in black or white) and typeface, but which are presented with some additional elements. In the second variation, this additional element is the word “Clothing”. In the third variation, the additional elements are the word “LONDON” and the fact that the mark is presented in front

⁶ Paragraph 18.

of a grey background. Further, in the fourth variation the additional element is the word “LONDON”.

33. As a preliminary point, registration of a trade mark in black and white covers use of the mark in colour.⁷ Accordingly, I do not consider the fact the third variation is presented in white to be relevant to this matter.

34. Further, in *Lactalis McLelland Limited v Arla Foods AMBA*, BL O/265/22, Phillip Johnson, sitting as the Appointed Person, considered the correct approach to the test under s. 46(2). He said:

“13. [...] While the law has developed since *Nirvana* [BL O/262/06], the recent case law still requires a comparison of the marks to identify elements of the mark added (or subtracted) which have led to the alteration of the mark (that is, the differences) (see for instance, T-598/18 *Grupo Textil Brownie v EU*IPO*, EU:T:2020:22, [63 and 64]).

14. The courts, and particularly the General Court, have developed certain principles which apply to assess whether a mark is an acceptable variant and the following appear relevant to this case.

15. First, when comparing the alterations between the mark as registered and used it is clear that the alteration or omission of a non-distinctive element does not alter the distinctive character of the mark as a whole: T-146/15 *Hypen v EUIPO*, EU:T:2016:469, [30]. Secondly, where a mark contains words and a figurative element the word element will usually be more distinctive: T-171/17 *M & K v EUIPO*, EU:T:2018:683, [41]. This suggests that changes in figurative elements are usually less likely to change the distinctive character than those related to the word elements.

16. Thirdly, where a trade mark comprises two (or more) distinctive elements (eg a house mark and a sub-brand) it is not sufficient to prove use of only one of those distinctive elements: T-297/20 *Fashioneast v AM.VI. Srl*, EU:T:2021:432, [40] (I note that this case is only persuasive, but I see

⁷ *Specsavers* [2014] EWCA Civ 1294 and *J.W. Spear & Sons Ltd v Zynga, Inc.* [2015] EWCA Civ 290.

no reason to disagree with it). Fourthly, the addition of descriptive or suggestive words (or it is suppose figurative elements) is unlikely to change the distinctive character of the mark: compare, T-258/13 *Artkis*, EU:T:2015:207, [27] (ARKTIS registered and use of ARKTIS LINE sufficient) and T-209/09 *Alder*, EU:T:2011:169, [58] (HALDER registered and use of HALDER I, HALDER II etc sufficient) with R 89/2000-1 CAPTAIN (23 April 2001) (CAPTAIN registered and use of CAPTAIN BIRDS EYE insufficient).

17. It is also worth highlighting the recent case of T-615/20 *Mood Media v EUIPO*, EU:T:2022:109 where the General Court was considering whether the use of various marks amounted to the use of the registered mark MOOD MEDIA. It took the view that the omission of the word “MEDIA” would affect the distinctive character of the mark (see [61 and 62]) because MOOD and MEDIA were in combination weakly distinctive, and the word MOOD alone was less distinctive still.”

35. In respect of the second variation, I consider the word “DREAMS” to be the distinctive element, as the word “clothing” is directly descriptive of the goods in the earlier DREAM and DREAMS marks’ specifications, and therefore non-distinctive. Accordingly, I do not consider that the presence of the word “Clothing” alongside the word “DREAMS” would alter the distinctive character of the DREAM mark or the DREAMS mark. I therefore find the second variant to be an acceptable variation of the DREAM mark and DREAMS mark.
36. Further, in respect of the third and fourth variation, I consider the word “London” would simply be viewed by consumers as the geographical location of the undertaking providing the goods, and therefore that it is non-distinctive. In my view, the distinctive character of the mark lies in the word “DREAMS”, the presence of the word “LONDON” does not alter that distinctive character and, accordingly, I find the third and fourth variations to also be acceptable variants of the earlier DREAM mark and the earlier DREAMS mark.

37. The opponent has also utilised the following mark. However, as discussed above, the quality of the images provided prevents me from determining whether this version of the mark simply utilises the word “DREAMS”, or whether something else (for example, the word “LONDON”) is printed underneath.



38. In any event, regardless of whether this is a mark simply containing the word “DREAMS” and “DREAMS LONDON”, I note that it is presented in an unremarkable grey typeface. I do not consider the fact that the word “DREAMS” is presented in grey alters the distinctive character of the mark. For the same reason outlined above, if the word “LONDON” is present on this variant, I also would not have found that this alters the distinctive character of the mark. Further, if there is some other device or word element printed below the word “DREAMS”, given that I am not able to identify what that is, I think this element is highly likely to be overlooked by the average consumer and that it cannot be found to alter the distinctive character of the mark. Accordingly, I find this to be an acceptable variant of the earlier DREAM mark and DREAMS mark.

SUFFICIENT USE

39. Having said that, taking all of the evidence above into account, I am satisfied that the opponent has provided sufficient evidence of genuine use of its earlier DREAM mark and DREAMS mark in the UK in relation to “clothing” and “articles of clothing”. This is because I consider the opponent’s attendance at trade shows, and the advertising expenditure and annual sales figures provided for the relevant period (which Tahir Sharif has confirmed were for items of clothing displaying the DREAMS mark), to be sufficient, particularly when considered alongside the sample of invoices provided (which are for sales throughout the UK), to establish that the opponent has carved out a share in the market for clothing goods displaying, what I have found to be, acceptable variants of the DREAM mark and DREAMS mark.

FAIR SPECIFICATION

40. I must now consider whether, or the extent to which, the evidence shows use of the earlier mark in relation to the goods relied upon by the opponent. In *Euro Gida Sanayi Ve Ticaret Limited v Gima (UK) Limited*,⁸ Mr Geoffrey Hobbs Q.C. (as he then was) as the Appointed Person summed up the law as being:

“In the present state of the law, fair protection is to be achieved by identifying and defining not the particular examples of goods or services for which there has been genuine use but the particular categories of goods or services they should realistically be taken to exemplify. For that purpose the terminology of the resulting specification should accord with the perceptions of the average consumer of the goods or services concerned.”

41. In *Merck KGaA v Merck Sharp & Dohme Corp & Ors* [2017] EWCA Civ 1834 the Court of Appeal set out the proper approach to partial revocation, as follows:

“245. First, it is necessary to identify the goods or services in relation to which the mark has been used during the relevant period.”

246. Secondly, the goods or services for which the mark is registered must be considered. If the mark is registered for a category of goods or services which is sufficiently broad that it is possible to identify within it a number of subcategories capable of being viewed independently, use of the mark in relation to one or more of the subcategories will not constitute use of the mark in relation to all of the other subcategories.”

247. Thirdly, it is not possible for a proprietor to use the mark in relation to all possible variations of a product or service. So care must be taken to ensure this exercise does not result in the proprietor being stripped of protection for goods or services which, though not the same as those for which use has been proved, are not in essence different from

⁸ BL O/345/10

them and cannot be distinguished from them other than in an arbitrary way.

248. Fourthly, these issues are to be considered having regard to the perception of the average consumer and the purpose and intended use of the products or services in issue. Ultimately it is the task of the tribunal to arrive at a fair specification of goods or services having regard to the use which has been made of the mark.

249. This approach does strike an appropriate balance. It gives effect to the clear intention of the EU legislature that marks must actually be used or, if not used, be subject to revocation. [...] It is also fair to proprietors for it does not require a proprietor to prove that he has used his mark in relation to all possible variations of the goods or services covered by its registration but only those which are sufficiently distinct to constitute coherent categories or subcategories. I am also satisfied that it gives appropriate protection to the legitimate interest of a proprietor in being able in the future to extend his range of goods or services within the scope of the terms describing the goods or services for which its mark is registered.”

42. This approach was approved by the Supreme Court in *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1)* [2024] UKSC 36, subject to the proviso that it must be seen in light of more recent guidance by the CJEU that that the essential criterion to apply for the purposes of identifying a coherent subcategory of goods or services capable of being viewed independently is their purpose and intended use (for example, *Ferrari SpA v DU* (Joined Cases C-720/18 and C-721/18) EU:C:2020:854; [2021] Bus LR 106, at paragraphs 36-53)

43. In *Property Renaissance Ltd (t/a Titanic Spa) v Stanley Dock Hotel Ltd (t/a Titanic Hotel Liverpool) & Ors*,⁹ Mr Justice Carr summed up the law relating to partial revocation as follows:

⁹ [2016] EWHC 3103 (Ch)

“iii) Where the trade mark proprietor has made genuine use of the mark in respect of some goods or services covered by the general wording of the specification, and not others, it is necessary for the court to arrive at a fair specification in the circumstance, which may require amendment; Thomas Pink Ltd v Victoria’s Secret UK Ltd [2014] EWHC 2631 (Ch) (“Thomas Pink”) at [52].

iv) In cases of partial revocation, pursuant to section 46(5) of the Trade Marks Act 1994, the question is how would the average consumer fairly describe the services in relation to which the trade mark has been used; Thomas Pink at [53].

v) It is not the task of the court to describe the use made by the trade mark proprietor in the narrowest possible terms unless that is what the average consumer would do. For example, in Pan World Brands v Tripp Ltd (Extreme Trade Mark) [2008] RPC 2 it was held that use in relation to holdalls justified a registration for luggage generally; Thomas Pink at [53].

vi) A trade mark proprietor should not be allowed to monopolise the use of a trade mark in relation to a general category of goods or services simply because he has used it in relation to a few. Conversely, a proprietor cannot reasonably be expected to use a mark in relation to all possible variations of the particular goods or services covered by the registration. Maier v Asos Plc [2015] EWCA Civ 220 (“Asos”) at [56] and [60].

vii) In some cases, it may be possible to identify subcategories of goods or services within a general term which are capable of being viewed independently. In such cases, use in relation to only one subcategory will not constitute use in relation to all other subcategories. On the other hand, protection must not be cut down to those precise goods or services in relation to which the mark has been used. This would be to strip the proprietor of protection for all goods or services which the average consumer would consider to belong to the same group or category as those

for which the mark has been used and which are not in substance different from them; Mundipharma AG v OHIM (Case T-256/04) ECR II-449; EU:T:2007:46.”

44. As a preliminary point, the opponent confirmed in its Notice of Opposition that it wishes to rely on all of the earlier DREAM and DREAMS marks’ goods for the purpose of this opposition.¹⁰ Further, in its written submissions filed on 31 July 2025, the opponent has also referenced all of the goods in the earlier DREAM mark and DREAMS mark’s specifications when undertaking its goods comparison. Accordingly, as a result of the way in which the opponent has prepared its Notice of Opposition and written submissions, I am required to consider whether the opponent has evidenced use of these two earlier marks for the full breadth of goods contained in their respective specification. However, the opponent has also confirmed that, for both the earlier DREAM and DREAMS marks, use is only being claimed for “clothing” goods,¹¹ and I can see nothing within the witness statement or exhibits submitted by the opponent to evidence that it has used either the DREAM mark or DREAMS mark for “footwear” or “headgear” goods. Consequently, I find that the opponent has not provided sufficient use of these earlier marks for “footwear” or “headgear”.
45. I do, however, consider that the opponent has shown use in relation to a wide variety of clothing goods (including camisoles, blouses, jumpers, jeans, dresses, t-shirts, cardigans, shirts, tunics, scarves, trousers, shorts, blazers, jackets and coats)¹². Given the broad range of clothing goods sold by the opponent displaying these marks, I am of the view that it can rely upon the general terms “Clothing” and “Articles of clothing” in the earlier DREAM and DREAMS marks’ specification. Whilst I have not seen any specific reference to “swimwear” within the evidence provided, “swimwear” would fall under the general term of

¹⁰ Please see Q.5 on pages 5 and 8 of the Form TM7 filed on 17 January 2025.

¹¹ Please see Q7a on pages 5 and 8 of the Form TM7 filed on 17 January 2025.

¹² Please see exhibits FF4 and FF5 which contain images of these items either displaying what I have determined to be an acceptable variant of the DREAM/DREAMS mark, or images of these items of clothing which Mr Tahir has confirmed displayed those marks and were sold during the relevant period.

“clothing”. On this basis, and because I am conscious not to be too restrictive, I am also of the view that it can retain this term for the purpose of this opposition.

46. As outlined above, I can see nothing that would evidence that the opponent sells “footwear” or “headgear” goods. However, I consider these to be distinct categories of goods from clothing and articles of clothing. Accordingly, I do not consider that the opponent should be entitled to rely on these goods in its specifications. Consequently, the opponent is not entitled to retain all of the terms listed in the specifications for the earlier DREAM mark and DREAMS mark. With that in mind, I consider a fair specification to be:

For the DREAM mark:

Class 25: Clothing; swimwear.

For the DREAMS mark:

Class 25: Articles of clothing; swimwear.

Section 5(2)(b)

47. The opponent’s opposition is based upon section 5(2)(b) of the Act which stipulates the following:

“5(2) A trade mark shall not be registered if because-

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark”.

48. Section 5A of the Act stipulates that where “grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only.”

49. The following standard summary of the principles applicable to the assessment of the likelihood of confusion was approved by the Supreme Court in *Iconix Luxembourg Holdings SARL v Dream Paris Europe Inc & Anor*, [2025] UKSC 25:

- (i) the likelihood of confusion must be appreciated globally, taking account of all relevant factors;
- (ii) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;
- (iii) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;
- (iv) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;
- (v) nevertheless, the overall impression conveyed to the public by a composite trade mark may, in certain circumstances, be dominated by one or more of its components;
- (vi) and beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a

composite mark, without necessarily constituting a dominant element of that mark;

- (vii) a lesser degree of similarity between the goods or services may be offset by a greater degree of similarity between the marks, and vice versa;
- (viii) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;
- (ix) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;
- (x) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense; and
- (xi) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically linked undertakings, there is a likelihood of confusion.

Comparison of Goods

50. In light of my findings above, the competing goods are as follows

Earlier Marks	Contested Mark
The DREAM mark: Class 25: Clothing; swimwear.	Class 25: Clothing; Knitwear [clothing];Jackets [clothing]; Ready-to-wear clothing; Woolen clothing; Furs [clothing]; Linen clothing; Headbands
The DREAMS mark:	

Class 25: Articles of clothing; swimwear.	[clothing]; Headbands for clothing; Clothes; Jerseys [clothing]; Shorts [clothing]; Denims [clothing]; Silk clothing; Leather clothing; Clothing of leather; Parts of clothing, footwear and headgear; Knitted clothing; Corsets [clothing, foundation garments]; Embroidered clothing; Hoods [clothing]; Belts [clothing]; Belts for clothing; Casual clothing; Bandeaux [clothing]; Jackets (Stuff -) [clothing]; Clothing for leisure wear; Ready-made clothing; Bottoms [clothing]; Playsuits [clothing]; Leisure clothing; Bodies [clothing]; Tops [clothing]; Fabric belts [clothing].
The DREAMS LONDON mark: Class 25: Clothing; footwear; headgear.	

51. As a preliminary point, it should be noted that section 60A of the Act provides that goods and services are not to be regarded as being similar to each other on the ground that they appear in the same class under the Nice Classification¹³, or dissimilar on the ground that they appear in different classes under the Nice Classification.”
52. In *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*,¹⁴ the Court of Justice of the European Union (“CJEU”) stated (at paragraph 23) that, when making the comparison, “all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary”.

¹³ “Nice Classification” means the system of classification under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957.

¹⁴ Case C-39/97

53. In *Kurt Hesse v OHIM*,¹⁵ the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*,¹⁶ the General Court stated that “complementary” means:

“...there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking.”

54. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case¹⁷, for assessing similarity were:

- a. The uses of the respective goods and services;
- b. The users of the respective goods and services;
- c. The physical nature of the goods and services;
- d. The respective trade channels through which the goods and services reach the market;
- e. In the case of self-serve consumer items, where in practice they are respectively found or likely to be, found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;
- f. The extent to which the respective goods and services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods in the same or different sectors.

¹⁵ Case C-50/15 P

¹⁶ Case T-325/06

¹⁷ [1996] R.P.C. 281

55. In *Gérard Meric v Office for Harmonisation in the Internal Market*,¹⁸ the General Court (“GC”) confirmed that even if goods are not worded identically, they can still be considered identical if one term falls within the scope of another (or vice versa):

“29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 *Institut für Lernsysteme v OHIM- Educational Services* (ELS) [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark.”

56. As per the case of *Separode*,¹⁹ I also bear in mind that it is permissible to group the goods and services together, for the purpose of comparison, where they are sufficiently comparable to be assessable in essentially the same way for the same reasons.

57. The opponent submits that the goods in issue are “identical” or “similar.” Specifically, the opponent submits that the goods in issue are all aimed at the same average consumer, have the same purpose, the same potential route to market, and would be utilised by the consumer to achieve the same goal.

58. Whilst the applicant admits that all of the goods in issue fall within class 25, it fails to expressly confirm whether it admits or denies that there is identity or similarity between the goods in issue. Accordingly, in the interest of completeness, I will proceed to undertake an assessment of the similarity between the goods in issue in the ordinary manner.

¹⁸ Case T- 133/05

¹⁹ BL O/399/10, Mr Geoffrey Hobbs QC, sitting as the Appointed Person

Class 25:

Clothing; Clothes

59. The applicant's above referenced goods are self-evidently identical to the terms "Clothing" and "Articles of Clothing" which appear in all of the earlier marks' specifications.

Knitwear [clothing]; Jackets [clothing]; Ready-to-wear clothing; Woolen clothing; Furs [clothing]; Linen clothing; Jerseys [clothing]; Shorts [clothing]; Denims [clothing]; Silk clothing; Leather clothing; Clothing of leather; Knitted clothing; Corsets [clothing, foundation garments]; Embroidered clothing; Casual clothing; Bandeaux [clothing]; Jackets (Stuff -) [clothing]; Clothing for leisure wear; Ready-made clothing; Bottoms [clothing]; Playsuits [clothing]; Leisure clothing; Bodies [clothing]; Tops [clothing].

60. I consider all of the applicant's above referenced goods to be items/articles of clothing. Accordingly, I find all of the applicant's above referenced goods to be identical, in line with the principle established in *Meric*, to the terms "Clothing" and "Articles of Clothing", which appears in all of the earlier marks' specifications.

Headbands [clothing]; Headbands for clothing; [...] footwear and headgear; Hoods [clothing]; Belts [clothing]; Belts for clothing; Fabric belts [clothing].

61. I consider all of the applicant's above referenced goods to be types of clothing accessories, and I compare these goods with the terms "clothing" and "articles of clothing", which are contained in all of the earlier marks' specifications. These compared goods are likely to be sold through the same trade channels (i.e., clothing retailers), and to the same users (i.e., members of the general public). There is also an overlap in purpose and method of use, as they will all be worn on the body. The nature may also overlap, as there may be some common materials used for each. Overall, I consider these goods to be similar to at least a medium degree.

Parts of clothing [...]

62. Given its classification, I note that the applicant's above referenced goods cannot include raw textiles/fabric (as these goods are proper to class 24) or haberdashery accessories and fastenings for clothing, such as zippers or buckles (as these would be proper to class 26). Accordingly, and without evidence being provided to suggest otherwise, it is my understanding that the above referenced term would include, for example, shirt cuffs, pockets, ready-made lining, which could then all be utilised in the making of final clothing goods. It is also my understanding that this would include detachable shirt collars and shirt cuffs, and it is in this context that I, once again, compare the applicant's above reference term with the opponent's terms "clothing" and "articles of clothing", which are contained in all of the earlier marks' specifications.
63. As a preliminary point, it should be noted that the mere fact that a particular good is used as a part, element or component of another good does not suffice in itself to show that the finished goods containing those components are similar since, in particular, their nature, intended purpose and the customers for those goods may be completely different.²⁰
64. In this instance, I consider there to be an overlap in user and nature, given that all of these goods may be purchased by members of the general public and the compared goods may utilise the same materials). I also consider there to be an overlap in purpose and method of use (as all of these items are to be worn).
65. Further, without evidence being provided to suggest otherwise, it is my understanding that some parts of clothing (i.e., detachable collars and cuffs) would be purchased from general clothing retailers, and therefore that there is an overlap in trade channels. I do not, however, consider these compared goods to be complementary or competitive as, whilst these goods are often worn

²⁰ *Les Éditions Albert René v OHIM*, Case T-336/03

alongside other items of clothing, I do not consider them to be indispensable from one another, and I also do not consider that consumers would buy parts of clothing in the place of the finished product.

66. Overall, I consider these compared goods to be similar to a high degree.

Average consumer and the purchasing act

67. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties' goods. I must then determine the manner in which the goods are likely to be selected by the average consumer. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods in question (see *Lloyd Schuhfabrik Meyer*²¹).

68. In *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc & Anor*, [2025] UKSC 25, the Supreme Court approved the comments of Arnold LJ in *Lidl Great Britain Ltd & Anor v Tesco Stores Ltd & Anor (Rev1)* [2024] EWCA Civ 262, where he pointed out that:

- a. Consumers who are ill-informed or careless, or consumers with specialised knowledge or who are excessively careful are excluded from consideration;
- b. The average consumer provides a standard which enables the courts to strike a balance between the competing interests involved, such as trade mark owners, their competitors and consumers;
- c. The average consumer is neither a single hypothetical person nor a mathematical average; assessment from the perspective of the average consumer does not involve a statistical test. There is no single meaning rule and if, having regard to the perceptions and expectations of the average

²¹ Case C-342/97

consumer, the court considers that a significant proportion of the relevant public is likely to be confused, a finding of infringement may properly be made;

- d. Assessment from the perspective of the average consumer is intended to facilitate adjudication of trade mark disputes by providing an objective criterion, by promoting consistency of assessment and by enabling courts and tribunals to determine such issues so far as possible without the need for evidence;
 - e. The average consumer's level of attention varies according to the category of goods or services in question; and
 - f. the average consumer rarely has the opportunity to make direct comparisons between trade marks (or between trade marks and signs) and must instead rely upon the imperfect picture of the trade mark they have kept in their mind.
69. The goods in issue are clothing goods in class 25. The average consumer of the goods at issue is a member of the general public. Most of the goods in issue will be sold in retail outlets through self-selection or from their online equivalents. The purchasing process for all of the goods will therefore be dominated primarily by visual considerations, but I do not discount that aural considerations will also play a part as advice may be sought from sales assistants or through verbal recommendations.
70. Whilst I accept that the average consumer's level of attention will vary depending on the cost and nature of the item at issue, the average consumer is likely to be conscious of factors such as the size, colour, material and price of the item concerned, all of which suggest that a medium level of attention would be paid by the average consumer during the purchasing process.

Comparison of marks

71. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in *Bimbo SA v OHIM*,²² that:

“.....it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

72. It would be wrong, therefore, to dissect the trade marks artificially, although it is necessary to take into account the distinctive and dominant components of the marks and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

73. The respective trade marks are shown below:

Earlier marks	Contested mark
DREAM (the DREAM mark)	Dreamee Fashion
DREAMS (the DREAMS mark)	

²² Case C-591/12P

DREAMS LONDON (the DREAMS LONDON mark)	
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74. The opponent submits that the marks are aurally similar, “visually similar to a high degree”, and that the “shared meaning of the ‘DREAM’ elements result in a high level of conceptual similarity between the marks when considered as a whole”.
75. Whilst the applicant admits that there is a low degree of aural similarity between the marks in issue, it submits that “the average consumer will notice that [the contested mark] ends with the word “FASHION” **and** the fact that the word DREAMEE is creative rather than a real word”. Consequently, the applicant submits that the visual impact of these elements is “notable” and emphasises “the difference between the respective marks”. Further, the applicant submits that the marks “differ conceptually to a meaningful degree”.

Overall Impression

76. All of the marks in issue are word only marks. The earlier DREAM mark and DREAMS mark both consist of a single word, and it is in these words that the overall impression of the marks resides.
77. The earlier DREAMS LONDON mark comprises two elements. “LONDON” is the second and less distinctive of the elements as, in my view, it will simply be viewed by consumers as the geographical location of the undertaking providing the goods. Consequently, it is the “DREAMS” element which I consider to be the dominant and distinctive element of the earlier DREAMS LONDON mark.
78. The contested mark also comprises two elements, the words “Dreamee” and “Fashion”. “Fashion” is the second and less distinctive of the elements as it will be seen as descriptive of the goods in its specification (namely, various types of

clothing and headgear goods). It is, therefore, the “Dreamee” element which is the dominant and distinctive element of the contested mark.

Comparison with the contested mark:

THE DREAM MARK:

79. Visually, the compared marks overlap in their first five letters (“Dream”). However, the contested mark also has an additional “ee” at the end of the word “Dream”, and the additional word “Fashion”. Neither of these elements are present in the DREAM mark. I note my findings in relation to the dominant elements of the compared marks. I also note that the overlap in the compared marks is located at the beginning of the marks, and that the General Court has noted that the beginnings of marks tend to have more visual impact.²³ Consequently, I find the marks to be visually similar to a medium degree.
80. Aurally, as outlined above, the marks overlap in their first five letters, but they differ in the presence of the double “e” and the word “Fashion” at the end of the contested mark. I consider that the average consumer would perceive the first word in the contested mark as a misspelling of the word “Dreamy” and pronounce this accordingly. The first syllable in both of the compared marks will, therefore, be pronounced identically. However, the contested mark will be 4 syllables in length, and the DREAM mark will just be made up of one syllable. Once again, I note my finding in respect of the dominant elements of the compared marks. I am also conscious that the overlap in the compared marks is located at the beginning of these marks, and that the beginnings of marks tend to have more aural impact. Consequently, I find the marks to be aurally similar to a medium degree.
81. I now turn to a conceptual comparison of these marks. For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer. This is highlighted in numerous judgments of the GC and the CJEU, including

²³ *El Corte Inglés, SA v OHIM* - Cases T-183/02 and T-184/02

Ruiz Picasso v OHIM.²⁴ The assessment must, therefore, be made from the point of view of the average consumer.

82. I am also conscious of the findings of the GC in *Usinor SA v OHIM*,²⁵ that “as regards the conceptual comparison, it must be noted that while the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details (*Lloyd Schuhfabrik Meyer*, paragraph 25), he will nevertheless, perceiving a verbal sign, break it down into verbal elements which, for him, suggest a concrete meaning or which resemble words known to him”.
83. In respect of the above referenced earlier mark, the word “DREAM” will be attributed its ordinary meaning by the average consumer, namely, the thoughts or images experienced during sleep, or a reference to an individual’s ambition, goal or aspiration.
84. In respect of the contested mark, as outlined above, I consider that the word “Dreamee” will be perceived by the average consumer as a misspelling of the word “dreamy”, meaning that something is dream like (i.e, that something is akin to the thoughts or images experienced during sleep, or which you would aspire to). The word “Fashion” would also be given its ordinary meaning, that being a popular style of clothing. When combined, I consider that the conceptual meaning the average consumer would attribute to the words “Dreamee Clothing” would be clothing that is dream like or aspirational.
85. In my view, there is considerable conceptual overlap between the words “Dream” and “Dreamee”. However, the “Fashion” element in the contested mark acts as a point of conceptual difference as it has no counterpart in the above referenced earlier mark, albeit it not a particularly distinctive one. Overall, I therefore find the marks to be conceptually similar to between a medium and high degree.

²⁴ [2006] ECR I-643; [2006] E.T.M.R

²⁵Case T-189/05

THE DREAMS MARK:

86. Visually, the compared marks overlap in their first five letters (“Dream”). However, the contested mark also has an additional “ee” at the end of the word “Dream”, and the additional word “Fashion”, and neither of these elements are present in the DREAMS mark. The earlier DREAMS mark also has an additional “S” after “DREAM”, which is not present in the contested mark. Weighing up these differences with the fact that the overlap in the DREAMS mark and the contested mark is located at the beginning of these marks, and that the beginnings of marks tend to have more visual impact, I find the marks to be visually similar to a low to medium degree.
87. Aurally, for the reason outlined above, I consider that the first five letters in each of the compared marks will be pronounced identically. However, the addition of the “S” in the DREAMS mark results in a phonetical difference, as does the additional double “e” and word “Fashion” in the contested mark. Noting these differences, whilst also appreciating that the similarities between the marks are located at the beginning of the marks, where marks tend to have more aural impact, I find the marks to be aurally similar to a low to medium degree.
88. Conceptually, the meaning the average consumer will attribute to the contested mark will be as outlined in paragraph 84 above.
89. In respect of the DREAMS mark, the word “dreams” is a standard English dictionary word and is simply a pluralised version of the word “dream”. Accordingly, the conceptual meaning the average consumer will attribute to the word “dreams” is simply the repeated thoughts or images experienced during sleep, or a reference to an individual’s ambitions, goals or aspirations.
90. I, once again, consider there to be considerable conceptual overlap between the words “Dreams” and “Dreamee” in the compared marks. However, the “Fashion” element in the contested mark acts as a point of conceptual difference (albeit, a non-distinct one) and, overall, I find the marks to be conceptually similar to between a medium and degree.

THE DREAMS LONDON MARK

91. Visually, both marks consist of two words and overlap in their first five letters (“Dream”). However, the contested mark also has an additional “ee” at the end of the word “Dream” and the additional word “Fashion”, and neither of these elements are present in the DREAMS LONDON mark. The earlier DREAMS LONDON mark also has an additional “S” after “DREAM” and the word “LONDON” at the end, and neither of these elements are present in the contested mark. Whilst I, once again, appreciate that the beginnings of marks tend to have more visual impact than the end of marks, and this is where the overlap in the marks lies, I also appreciate that there are a larger number of visual differences than similarities between the marks, albeit those differences are located at the end of the respective compared marks. Weighing up all of the above, I find the marks to be visually similar to a low degree.
92. Aurally, I, once again, consider that the first five letters in each of the compared marks will be pronounced identically. However, the addition of the “S” and word “LONDON” in the DREAMS LONDON mark results in a phonetical difference, as does the additional double “e” and word “Fashion” in the contested mark. I note that there is a greater number of phonetic differences than similarities between the marks. However, I am also conscious of where the respective similarities and differences are located within the compared marks and the finding of the General Court in *El Corte Inglés, SA v OHIM* referenced above. Accordingly, weighing up all of the above, I find the marks to be aurally similar to a low degree.
93. Conceptually, the meaning the average consumer will attribute to the contested mark will be as outlined in paragraph 84 above.
94. In respect of the earlier DREAMS LONDON mark, this mark is made up of two standard English dictionary words. The meaning the average consumer will attribute to the word “DREAMS” will be as outlined in paragraph 89 above. The word “LONDON” simply refers to the capital city of England and, in my view, will simply be perceived by the average consumer as the geographical location of the entity providing the goods.

95. Whilst there is overlap in the conceptual meaning between the words “DREAMS” and “Dreamy”, the second word in both of the marks acts as a point of conceptual difference, albeit they are both non-distinctive. Accordingly, I consider these marks to be conceptually similar to a medium degree.

Distinctive character of the earlier trade mark

96. In *Lloyd Schuhfabrik Meyer* the CJEU stated that:

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49)

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

97. Distinctiveness is a scale along which marks of various types sit. A mark which is allusive of the goods/services will have less distinctive character than one that is not; dictionary words will also be less distinctive than words which are entirely fanciful. However, all will turn on the particular facts. For example, there are

“invented” words which are really just composites of two allusive words and only distinctive as a result, and dictionary words which are more or less common than others.

98. The DREAM mark is solely made up of the word “DREAM” which, as discussed above, is an English dictionary word referencing the thoughts or images experienced during sleep, or an individual’s ambition, goal or aspiration. I do not consider this to be descriptive or allusive of the DREAM mark’s goods, unless perhaps when it is used on nightwear, for example. Overall, I consider it to be inherently distinctive to no more than a medium degree.
99. The DREAMS mark is also made up of just the word “DREAMS” which is also an English dictionary word and is simply the pluralised version of the word “dream”. Once again, I do not consider this to be descriptive or allusive of the DREAMS mark’s goods, save perhaps in respect of nightwear. Overall, I also find this to be inherently distinctive to no more than a medium degree.
100. In respect of the DREAMS LONDON mark, the distinctive character of the word “DREAMS” will be as outlined in the paragraph above. The “LONDON” element does not add anything further to the level of distinctiveness as, as previously determined, it will simply be seen as an indicator of the geographical origin of the undertaking providing the goods. Taking everything into consideration, I find the DREAMS LONDON mark to hold no more than a medium degree of inherent distinctive character.
101. The distinctive character of a mark can be enhanced by virtue of the use that has been made of it. However, it should be noted that the relevant date for assessing whether the distinctive character of a mark has been enhanced through use is the filing date of the contested mark, namely 8 October 2024.
102. In this instance, as discussed above, the opponent has provided evidence of its use of the earlier DREAM mark and DREAMS marks, or what I have determined to be acceptable variants of those marks. As a preliminary point, I did not consider whether the opponent had established genuine use of the earlier

DREAMS LONDON mark in relation to the opponent's goods in paragraphs 19 to 46 of this decision as that was not necessary for the reasons outlined in detail above. However, I note that the opponent did provide evidence of use of the following marks on its website between 4 December 2023 and 11 September 2024,²⁶ where it was advertising a variety of clothing goods for sale, and on invoices relating to the sale of a variety of clothing goods between 3 January 2019 and 8 October 2024.²⁷



103. As previously discussed, the DREAMS LONDON mark is registered as a word mark, which protects use of the words “DREAMS” and “LONDON” in any normal font, including upper and lower-case letters, or any customary combination of those characters. The typeface and colouring utilised in the two marks referenced above is unremarkable and, in my view, does not alter the distinctive character of the words “DREAMS LONDON”. Accordingly, I consider the above referenced marks to be acceptable variants of the DREAMS LONDON mark.

104. Noting the above, I will now proceed to consider whether the evidence is sufficient to establish that the distinctive character of the earlier marks has been enhanced through use in respect of the goods in issue.

²⁶ Exhibit FF15

²⁷ Exhibit FF6

105. It is clear from the evidence provided that the opponent has been selling clothing related goods bearing the DREAMS mark to retailers in the UK and EU since 1982. Specifically, the opponent has provided images of a variety of clothing goods displaying its earlier DREAM mark and DREAMS marks (or what I have determined to be acceptable variants of these marks) on neck labels or clothes tags being sold throughout the relevant period (i.e., right up until 8 October 2024). The opponent has also provided copies of invoices displaying the earlier DREAMS LONDON mark dated between 2019 and October 2024 showing its sale of clothing goods to customers. Whilst information relating to the recipients of these goods has been largely redacted from these invoices, I can see that the opponent sold clothing goods to various addresses throughout the United Kingdom.
106. The opponent has also evidenced that it made annual sales of clothing goods between 2018 and October 2024 ranging from £916,335.34 to £1,889,003.70, and that it sold approximately 130,000 units annually of clothing goods displaying its earlier marks between 2019 and 2024, with 90,1440 units sold between May and October 2024. Whilst this evidence is noted, I have no evidence before me showing the market share the opponent occupies within the UK clothing market and, in the context of what is a significant market, I consider the sales figures for the relevant period to be fairly modest.
107. Further, the evidence provided confirms that the opponent does not typically advertise or produce catalogues and instead attends trade exhibitions to advertise its goods. Specifically, the opponent's evidence confirms that it attended 29 trade exhibitions during the period 2018 and 2024 in the West Midlands, Yorkshire, Exeter, Norwich, Cumbria, London and Scotland, 13 of which were in 2024. Having said that, I have no evidence before me relating to the approximate number of attendees at the exhibitions, nor the approximate number of visitors to the opponent's trade stands. I am, therefore, not able to determine the level of consumer exposure to the opponent's earlier marks during these exhibitions.

108. Consequently, whilst I have found there to be genuine use of the earlier marks in the UK during the relevant period, I do not consider the evidence provided to be sufficient to reach a finding that the distinctive character of the earlier marks has been enhanced through use. I will, therefore, proceed on the basis of my finding of the level of inherent distinctive character of the earlier marks.

Likelihood Of Confusion

109. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, whilst indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods/services down to the responsible undertakings being the same or related.

110. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind (see *Sabel*²⁸). The first is the interdependency principle i.e., a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and vice versa (see *Canon*²⁹). It is necessary for me to keep in mind the distinctive character of the earlier mark, the average consumer for the goods, and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he has retained in his mind.

111. In making my determination, I note my following findings:

- (i) that the applicant's goods are identical or similar to a medium or high degree to the opponent's goods;

²⁸ C-251/95, para 22

²⁹ C-39/97, para 17

- (ii) that the earlier DREAM mark is visually and aurally similar to the contested mark to a medium degree, and conceptually similar to between a medium and high degree;
- (iii) that the DREAMS mark is visually and aurally similar to a low to medium degree, and conceptually similar to a medium to high degree to the contested mark;
- (iv) that the DREAMS LONDON mark is visually and aurally similar to a low degree, and conceptually similar to a medium degree to the contested mark;
- (iv) that all of the earlier marks have no more than a medium level of inherent distinctive character.
- (v) that the average consumer of the goods in issue will be members of the general public, who will demonstrate a medium degree of attention during the purchasing process; and
- (vi) that the purchasing process for the goods will be primarily visual in nature, though I do not discount that there will be an aural component to the selection process.

112. Weighing up all of the above and notwithstanding the principle of imperfect recollection, I consider that there are sufficient visual and aural differences between the earlier marks and the contested mark to avoid them being mistakenly recalled as each other, particularly given that I have determined that a medium level of attention will be paid by the average consumer during the purchasing process. Notwithstanding the conceptual similarities, I remind myself that the purchasing process is predominantly visual and therefore, I do not consider consumers would overlook the additional word “fashion” in the contested mark, I make this decision with due consideration of my findings in respect of the identity/level of similarity between the goods in issue and the interdependency principle.

113. For completeness, I will also consider whether there is a likelihood of indirect confusion. Accordingly, I will consider whether the average consumer, having recognised that the marks are different, considers the common element of all of

the marks (“DREAM”) and determines, through a mental process, that the marks are related and originate from the same, or an economically linked undertaking.

114. Indirect confusion was described in the following terms by Iain Purvis QC (as he then was), sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*:³⁰

“16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognised that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: ‘The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark’.

17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:

- (a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right (‘26 RED TESCO’ would no doubt be such a case).
- (b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as ‘LITE’, ‘EXPRESS’, ‘WORLDWIDE’, ‘MINI’ etc.).

³⁰ BL O/375/10

- (c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension ('FAT FACE' to 'BRAT FACE' for example)."

115. These three categories are not exhaustive; rather, they were intended to be illustrative of the general approach, as has been confirmed by the Court of Appeal. I recognise that a finding of indirect confusion should not be made merely because the competing marks share a common element. In this connection, it is not sufficient that a mark merely calls to mind another mark; this is mere association not indirect confusion.³¹ The Court of Appeal has also emphasised that, where there is no direct confusion, there must be a "proper basis" for finding indirect confusion.³²

116. Given my finding that the earlier DREAM mark has the highest combined level of visual, aural and conceptual similarity to the contested mark, I will begin by considering whether there is a likelihood of indirect confusion between these marks.

117. As outlined above, the DREAM mark and the contested mark overlap in their first five letters (DREAM). Whilst the average consumer would recognise that the marks are not identical, I consider that the shared "DREAM" element, the close conceptual relationship between "DREAM" and "DREAMEE", and the non-distinctive nature of the word "FASHION" would lead a significant proportion of consumers to regard "DREAMEE FASHION" as an updated or modernised version of the DREAM brand. Consumers are familiar with undertakings making relatively minor alterations to branding over time whilst retaining the core element by which they are recognised. As a result, I consider that the average consumer would be likely to believe that the marks originate from the same undertaking or economically linked undertakings. As a consequence, I do therefore consider that there is a likelihood of indirect confusion between these marks.

³¹ *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17

³² *Liverpool Gin Distillery and others v Sazerac Brands, LLC and others* [2021] EWCA Civ 1207

118. In the light of the above, the opposition succeeds in its entirety. However, whilst not necessary, it should be noted that I would also have found there to be a likelihood of indirect confusion between the DREAMS mark and the contested mark. This is because I also consider the conceptual overlap between the words “DREAMS” and “DREAMEE” to be considerable. Once again, in my view, this close conceptual relationship between “DREAM” and “DREAMEE”, and the non-distinctive nature of the word FASHION would lead a significant proportion of consumers to regard “DREAMEE FASHION” as an updated or modernised version of the DREAM brand. For the same reasons outlined above, I also consider there to be a likelihood of indirect confusion between these marks.
119. For the avoidance of doubt, I also consider that to be the case in respect of the DREAMS LONDON mark. This is because I consider the “LONDON” and “FASHION” elements of the contested mark and the DREAMS LONDON mark to be non-distinctive. In my view, swapping out these non-distinctive elements, whilst retaining the more distinctive “DREAM”/“DREAMEE” elements, particularly as a result of their considerable conceptual overlap, could also be viewed as logical and consistent with a brand refresh/update. Accordingly, for the same reasons outlined above, I also consider there to be a likelihood of indirect confusion between these marks.

CONCLUSION

120. The opposition succeeds in its entirety, and the contested mark is, subject to any successful appeal of my decision, hereby refused registration for the following goods:

Class 25: Clothing; Knitwear [clothing]; Jackets [clothing]; Ready-to-wear clothing; Woolen clothing; Furs [clothing]; Linen clothing; Headbands [clothing]; Headbands for clothing; Clothes; Jerseys [clothing]; Shorts [clothing]; Denims [clothing]; Silk clothing; Leather clothing; Clothing of leather; Parts of clothing, footwear and headgear; Knitted clothing; Corsets [clothing, foundation garments]; Embroidered clothing; Hoods [clothing]; Belts [clothing]; Belts for clothing; Casual clothing; Bandeaux [clothing]; Jackets (Stuff -) [clothing];

Clothing for leisure wear; Ready-made clothing; Bottoms [clothing]; Playsuits [clothing]; Leisure clothing; Bodies [clothing]; Tops [clothing]; Fabric belts [clothing].

COSTS

121. As the opponent has been successful, it is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Note 1/2023. In the circumstances, I award the opponent the sum of £1,500 as a contribution towards the cost of the proceedings. The sum is calculated as follows:

Official Fee:	£100
Preparing a counterstatement & considering the other side's statement:	£250
Preparing Evidence:	£800
Preparing submissions-in-lieu of a hearing:	£350
<u>Total:</u>	<u>£1500</u>

122. I therefore order Dreamee Fashion Ltd to pay Flick Fashions Limited the sum of **£1,500**. This sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 30th day of September 2026

B Hartland
For the Registrar