O/0906/23

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00003748225
IN THE NAME OF INVIVO & CO LIMITED
TO REGISTER THE FOLLOWING TRADE MARK:

INVIVO X UNITY

IN CLASS 33

AND IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 435041
BY BFS GROUP LTD

Background and pleadings

1. On 27 January 2022, INVIVO & CO LIMITED ("the applicant") applied to register the trade mark shown on the cover page of this decision in the UK. The application was published for opposition purposes on 15 April 2022 and registration is sought for the following goods:

> **Class 33:** *Wine; wine, namely, white wine; wine, namely, red wine; wine, namely, rose wine; wine, namely, sparkling wine; wine spritzers.*

2. On 15 July 2022, BFS Group Ltd ("the opponent") opposed the application under Section 5(2)(b) of the Trade Marks Act 1994 ("the Act") based upon the trade mark shown below:

> UK00003539372
> UNITY
> Filing date: 29 June 2018; Registration date:02 April 2021

3. The opponent relies upon all of the goods and services for which the mark is registered, namely:

> **Class 33:** *Alcoholic beverages; wine.*
>
> **Class 35:** *Retail services in relation to alcoholic beverages, wines; wholesale services in relation to alcoholic beverages, wines; mail order retail services in relation to alcoholic beverages, wines; information, advisory and consultancy services all relating to the aforesaid.*
>
> **Class 39:** *Transportation and distribution of goods; packing and crating of goods; warehousing; information, advisory and consultancy services all relating to the aforesaid.*

4. The opponent claims that the marks are highly similar and that the goods and services are identical or highly similar, giving rise to a likelihood of confusion.

5. By virtue of its earlier filing date, the trade mark upon which the opponent relies qualifies as an earlier trade mark pursuant to Section 6 of the Act. As the earlier mark had not completed its registration process more than 5 years before the filing date of the applicant's mark, it is not subject to proof of use pursuant to Section 6A of the Act. The opponent can, therefore, rely on all of the goods and services it has identified without showing genuine use of the earlier mark.

6. The applicant filed a defence and counterstatement, denying the claims made.

7. Both parties filed evidence. A hearing took place before me on 31 August 2023, by video conference. The opponent was represented by Suzan Moss, who is a trade mark attorney employed by HGF Limited, the opponent's representatives in these proceedings. The applicant, who has been represented throughout the proceedings by Lee & Thompson LLP, did not attend the hearing and did not provide any submissions in lieu.

The evidence

8. The opponent filed evidence in the form of the witness statement of Suzan Ure dated 5 December 2022, which is accompanied by 4 exhibits (SU1 to SU4). Ms Ure subsequently changed her surname to Moss and is therefore the same person I have identified above (i.e. the trade mark attorney who acted on behalf of the opponent at the hearing).

9. The opponent filed evidence in the form of the witness statement of Amanda McDowall dated 3 February 2023, which is accompanied by 3 exhibits (AWM-1 to AWM-3). Ms McDowall is a legal director at Lee and Thomson LLP, the applicant's representatives in these proceedings.

10. I have taken the evidence into account in reaching my decision and will refer to it below where necessary.

EU Law

11. Although the UK has left the EU, Section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Trade Marks Act relied on in these proceedings are derived from an EU Directive. This is why this decision continues to make reference to the trade mark case law of EU courts.

DECISION

Section 5(2)(b)

12. Section 5(2)(b) of the Act is as follows:

> "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".

13. Section 5A of the Act is as follows:

> "5A 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."

14. The following principles are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG,* Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc,* Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case

C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV,* Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH,* Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM,* Case C-334/05P and *Bimbo SA v OHIM,* Case C-591/12P.

(a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;

(b) 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;

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

(d) 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;

(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;

(f) however, it is also 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;

(g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;

(h) 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;

(i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;

(j) 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;

(k) 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 and services

15. The General Court ("GC") confirmed in *Gérard Meric v OHIM*, Case T-133/05, paragraph 29 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.

16. The goods and services to be compared are as follows:

The applicant's goods	**The opponent's goods and services**
Class 33: *Wine; wine, namely, white wine; wine, namely, red wine; wine, namely, rose wine; wine, namely, sparkling wine; wine spritzers.*	**Class 33:** *Alcoholic beverages; wine.* **Class 35:** *Retail services in relation to alcoholic beverages, wines; wholesale services in relation to alcoholic beverages, wines; mail order retail services in relation to alcoholic beverages, wines; information, advisory and consultancy services all relating to the aforesaid.*

	Class 39: *Transportation and distribution of goods; packing and crating of goods; warehousing; information, advisory and consultancy services all relating to the aforesaid.*

17. In its counterstatement the applicant denies that the applied-for goods are identical or similar to the goods and services of the earlier mark and put the opponent to proof that the goods and services are identical or similar.

18. Whilst it is possible to file evidence as to the similarity of goods and services, it is not really necessary to do so when the goods and services are self-evidently identical, or the principle outlined in *Meric* is obviously applicable to the comparison, as is the case here.

19. Accordingly, I find that the opponent's terms *wine* is either self-evidently identical to, or sufficiently broad to encompass, the applicant's *Wine; wine, namely, white wine; wine, namely, red wine; wine, namely, rose wine; wine, namely, sparkling wine*. **Applying the guidance from *Meric*, these goods are identical.**

20. The applicant's *wine spritzers* are wine-based cocktails which fall within the opponent's broad term *Alcoholic beverages.* **Applying the guidance from *Meric*, these goods are identical.**

Average consumer

21. As the case law above indicates, it is necessary for me to determine who the average consumer is for the parties' goods. I must then determine the manner in which the goods are likely to be selected by the average consumer. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited,* [2014] EWHC 439 (Ch), Birss J. (as he then was) described the average consumer in these terms:

> "60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The words "average" denotes that the person is typical. The term "average" does not denote some form of numerical mean, mode or median."

22. The average consumer for the goods at issue will be a member of the general public, who is over the age of 18. The goods will be relatively low cost and reasonably frequent purchases. However, the average consumer is likely to take factors such as flavour, alcohol content and quality into account when purchasing the goods. Consequently, I agree with Ms Moss' submission that a medium (or normal) degree of attention will be paid.

23. The goods are likely to be purchased by self-selection from the shelves of a retail outlet or online equivalents. Consequently, visual considerations will dominate the selection process. However, I do not discount that aural components are relevant as advice may be sought from retail assistants and orders may be placed aurally in bar/restaurant environments.

Comparison of marks

24. 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 Case C-591/12P, *Bimbo SA v OHIM*, 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."

25. It would be wrong, therefore, to artificially dissect the trade marks, 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. The respective marks are shown below:

The applicant's mark	**The opponent's mark**
INVIVO X UNITY	UNITY

Overall impression

26. The opponent's mark is a word-only mark consisting of the word 'UNITY' presented in upper-case letters. The overall impression of the mark lies in the word itself.

27. The applicant's mark is a word-only mark consisting of the word 'INVIVO' followed by a letter 'X' and the word 'UNITY', all presented in upper-case letters. The word 'INVIVO' has no meaning in English and, being an invented word, is relatively more distinctive than the word 'UNITY' which is a dictionary word. As regards the weight to be attributed to the letter 'X', the opponent filed evidence aimed at establishing that the letter 'X' is used in brand collaborations. I will assess the opponent's evidence later, however, regardless of whether it proves the point or not, the letter 'X' will in my view be seen as connecting the words 'INVIVO' and 'UNITY' (similarly to the conjunction 'and' or the ampersand '&') and will have less weight in the overall impression. The overall impression of the mark is therefore contained in the complete

phrase. Although the words 'INVIVO' and 'UNITY' are more distinctive than the letter 'X', the letter 'X' nevertheless plays a role in the overall impression of the mark.

Visual, aural and conceptual similarity

28. The applicant states in its counterstatement that the respective marks are visually, aurally and conceptually dissimilar, however, it did not put forward any further submission or argument to support its claim.

29. Visually, the marks coincide in the presence of the word 'UNITY'. The point of visual difference is the addition of word 'INVIVO' and the letter 'X' in the applicant's mark, which have no counterpart in the opponent's mark. Aurally, the word 'UNITY' will be pronounced identically in both marks. The additional word 'INVIVO' in the applicant's mark is likely to be articulated as 'IN-VI-VO" whilst the element 'X' could be pronounced either as the letter 'X' or as the coordinating conjunction 'and'. Taking all of this into account, I consider the marks to be visually and aurally similar to a medium degree.

30. Conceptually, the word 'UNITY' will convey the same meaning in both marks, namely that of *"the state of being joined together or in agreement".*[1] Insofar as the letter 'X' in the applicant's mark will be perceived as performing a joining function, it introduces a non-distinctive concept. Likewise, the word 'INVIVO', being an invented word, does not convey any identifiable concept. The marks are conceptually similar to a medium to high degree.

Distinctive character of earlier mark

31. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV,* Case C-342/97, 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

[1] Cambridge online dictionary

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 C-108/97 and C-109/97 *WindsurfingChiemsee* 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)."

32. Registered trade marks possess various degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. Although the distinctiveness of a mark can be enhanced by virtue of the use that has been made of it, the opponent has not filed any evidence of use. Consequently, I have only the inherent position to consider.

33. The applicant has not made any specific comments on the overall distinctiveness of the earlier mark or the level of distinctive character it possesses. At the hearing Ms Moss argued that the earlier mark is highly distinctive because it has no connection to the registered goods and there are no other traders using the mark in relation to the same goods.

34. As I have already explained, invented words usually have the highest degree of distinctive character; words which are descriptive of the goods relied upon normally have the lowest. Dictionary words which are neither descriptive nor allusive of the

relevant goods are normally placed in a middle position, between invented words and descriptive marks, and are usually held to have a medium degree of distinctiveness. In this case the earlier mark comprises the word 'UNITY' which will be recognised by the UK public as a dictionary word meaning *"the state of being joined together or in agreement".* The mark is neither descriptive nor allusive in relation to the registered goods which I found to be identical to the contested goods, namely, wine and alcoholic beverages, therefore for these types of goods, I find that the earlier mark has a medium degree of inherent distinctive character.

Likelihood of confusion

35. 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. The first is the interdependency principle i.e. a lesser degree of similarity between the respective marks may be offset by a greater degree of similarity between the respective goods and vice versa. As I mentioned above, 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 marks and must instead rely upon the imperfect picture of them that they have retained in their mind.

36. Confusion can be direct or indirect. The difference between these two types of confusion was explained in *L.A. Sugar Trade Mark,* BL O/375/10, where Iain Purvis Q.C. (as he was then) as the Appointed Person explained that:

> "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 recognized 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.).

(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).”

37. These three categories are not exhaustive. Rather, they are intended to be illustrative of the general approach, as it was confirmed in *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors*[2] in which Court of Appeal stated:

“12. This is a helpful explanation of the concept of indirect confusion, which has frequently been cited subsequently, but as Mr Purvis made clear it was not intended to be an exhaustive definition. For example, one category of indirect confusion which is not mentioned is where the sign complained of incorporates

[2] [2021] EWCA Civ 1207

the trade mark (or a similar sign) in such a way as to lead consumers to believe that the goods or services have been co-branded and thus that there is an economic link between the proprietor of the sign and the proprietor of the trade mark (such as through merger, acquisition or licensing)".

38. Earlier in this decision I found that:

- The applicant's goods are identical to the opponent's goods;

- The average consumer would be a member of the general public over the age of 18 who will pay a medium degree of attention during the purchasing process. The purchasing process would be predominantly visual, although aural considerations cannot be excluded entirely;

- The marks are visually and aurally similar to a medium degree and conceptually similar to a medium to high degree;

- The opponent's 'UNITY' mark has a medium degree of inherent distinctive character.

39. At the hearing Ms Moss drew my attention to the evidence that it is commonplace for brands to use the letter 'X' in brand collaborations, and argued that consumers are accustomed to interpreting trade marks in this way and would understand the inclusion of the opponent's earlier mark 'UNITY' within the applicant's mark 'INVIVO X UNITY' as a brand collaboration.

40. The opponent's evidence does, in effect, shows that the letter 'X' is used in brand collaborations. An online article titled *"Cross brand collaborations: 'x' marks the spot"* provides various examples of real-life genuine brand collaborations identified using the letter 'X' between the names of the two collaborating brands. It states:

"Cross-brand collaborations seem to be everywhere right now. Across fashion, beauty, travel, homewares and beyond, you can't seem to

move without seeing a big 'X' sandwiched between two brand logos to show they've been working on something together.

[…] We're seeing this a lot in the fashion world. High-fashion brands are constantly collaborating with high-street brands. Think Moschino X H&M, Fenty X Puma, or Junya Watanabe X The North Face. It helps to tap into different customer groups and introduce higher-end brands to the high-street shopper through capsule collections.

But it's also being done across sectors too. Virgin Atlantic X OnePiece and Grant's Whiskey X findmypast.co.uk may not seem to make sense on the surface, but look deeper and you'll see the mutual interests around passenger comfort and heritage respectively that would lead the customers of one brand to then consider the other.

IKEA are current kings of the new market collaborations. They regularly collaborate with other brands and individuals with the recent wave including super-hot streetwear label Off-White, Lego, Sonos and Adidas amongst others. All of which opens up the IKEA brand to new customers and markets.

Sometimes a collaboration isn't necessarily about accessing new customers but showing your existing customers that you get them and understand what they want. It increases brand value and makes your fans even more dedicated.

This is all about brands with a significant overlap in customer bases working together to create something they know their customers are going to love.

LEGO are particularly good at this with Star Wars, Batman, Simpsons and Harry Potter brand collaborations all reinforcing their respective brands even further within their target markets.

Sports brands are also getting in on the action by collaborating with sports stars and other ambassadors (who are brands in their own right nowadays).

Nike X Cristiano Ronaldo, Puma X Rihanna, and Adidas x Pharrell Williams are all examples of brands spotting trends amongst existing customer bases and using collaborations to reinforce their brand with their customers.

[…]

Some of the most hyped collaborations of recent times include Supreme X Louis Vuitton […], Nike X Apple, and Uber X Spotify. […]"

41. The above article was published by a London-based Public Relations Agency which means that it is likely to reflect the perception of the phenomenon of brand collaborations from the point of view of the UK average consumer. Further, whilst the article has a printing date of 12 May 2022, it is less than six months after the relevant date and seems to reflect a trend that had been going on for several years, certainly prior to the relevant date.

42. A second online article, dated September 2022, also refers to the letter 'X' being used in brand collaboration. It states:

"Right now, it seems X really does mark the spot. Cross-brand collaborations are on trend everywhere, from fashion and beauty, to travel, hospitality and tech. This is certainly no passing phase and the ties run deeper than two juxtaposed logos.

X is the spot where two brands bring both their audiences together, and the positive effects on both sales and inspiration moving forward make these collaborations a force to be reckoned with.

"Brand collaborations are growing in popularity because they're a royalty-free way for brands to reach new but relevant audiences," explains Claudine Harris, CEO of brand matchmaking company Miai (https://miai.co.uk/)".

43. Finally, two further online articles provide examples of brand collaborations identified using the following format: 'BRAND A' + 'X' + 'BRAND B' as shown below:

1. FatFace x Raleigh

2. JBL x 100 Thieves
3. Smeg x Dolce & Gabbana
4. Adidas x Allbirds
5. New Balance x Casablanca
6. Beyond Meat x McDonald's
7. Vans x International Women's Day
8. Whole Foods x Headspace
9. Chipotle x e.l.f Cosmetics
10. Apple x Target

11 Epic Brand Collaborations:

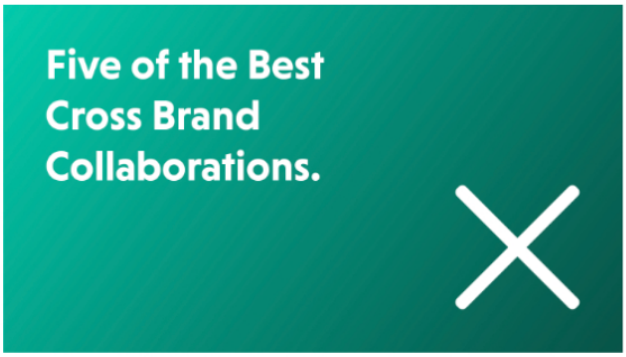
- Uber x Spotify
- Marvel x Pandora
- Lego x Stranger Things
- IKEA x Asus
- Lee x H&M
- GoPro x Red Bull
- BMW x Louis Vuitton
- Nike x Hello Kitty
- Semrush x Surfer
- Starbucks x Samsung
- Oreo x Supreme

44. Admittedly, the online articles which list the above brand collaborations are not from websites ending with a UK specific domain name; nevertheless, they refer to brands which are well-known in the UK.

45. More significantly, the applicant did not challenge the opponent's evidence but decided, very oddly, to file evidence which is the same as that filed by the opponent[3] or corroborates the opponent's evidence, including a copy of an online article obtained from a UK website (at https://strive-digital.co.uk/five-of-the-best-crossbrand-collaborations/), titled *"Five of the Best Cross Brand Collaborations"* that demonstrate use of the letter 'X' in brand collaborations as shown below:

Blog

Five of the Best Cross Brand Collaborations



Written by **Matthew Ferguson**

Published 29th Oct 2019 • Updated 2nd Mar 2020

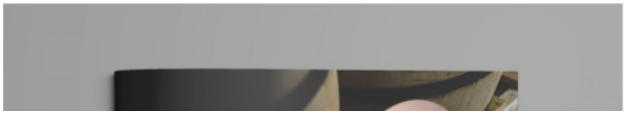
Strive Digital

In life and in marketing, collaboration is key. Whether it's high-low, ethical or design based, the right brand collaboration can be a foolproof formula for success. With collaborative marketing making a comeback, Strive Digital aims to separate the inspired from the ineffectual. Read on to see what makes a partnership great, and to find out how cross brand collaboration can help elevate your business.

Cross Brand Collaboration

Cross brand collaborations exist across fashion, food and drink, homeware, travel and more. It's an easy and effective way of collaborating instead of competing with other brands in your industry. So, as long as neither brand shares the same market, collaboration can go a long way to bolstering brand awareness, engagement and sales. Side by side advertisement shows unity, and a unique understanding of your customers and their needs. Marketing is moving more into digital spaces , and these kinds of associations are now paramount for opening your brand up to new audiences and new sets of customers.

British Airways X InchDairnie Distillery



[3] AWM3 produces the same article as under the opponent's evidence at SU4

46. Based on the evidence filed, I am satisfied that the letter 'X' is widely used in brand collaborations and that it would have been so at the relevant date in the UK. I also find that the words 'INVIVO' and 'UNITY' in the contested mark retain their own identity and do not obviously form a unit, but rather they retain individual character within the mark. I am therefore persuaded by the opponent's argument that the UK average consumer, being accustomed to seeing the letter 'X' used in brand collaborations, will perceive the applicant's mark as conveying the message of a brand collaboration between the brand 'INVIVO' and the brand 'UNITY' in the context of identical goods. **There is a likelihood of indirect confusion.**

OUTCOME

47. The opposition succeeds in its entirety. Subject to any appeal against this decision, the application shall be refused.

COSTS

48. The opponent has been successful, so it is entitled to a contribution towards its costs. Award of costs in proceedings are based upon the scale as set out in Tribunal Practice Note (TPN) 2 of 2016. Applying this guidance, I award costs to the opponent on the following basis:

£100: Official fees
£300: Preparing a statement and considering the applicant's statement
£500: Filing evidence
£700: Attending a hearing
£1,600: Total

49. I therefore order INVIVO & CO LIMITED to pay BFS Group Ltd the sum of **£1,600.** This sum is to be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of the proceedings if any appeal against this decision is unsuccessful.

Dated this 22nd day of September 2023

Teresa Perks

For the Registrar