

**O-099-17**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION NO. 3169654  
AND THE REQUEST BY SNUB INTERNATIONAL LTD  
TO REGISTER THE TRADE MARK**

**“Snub”**

**IN CLASSES 3, 9, 14, 16, 25, 26, 35, 38 and 41**

**AND**

**AND IN THE MATTER OF OPPOSITION THERETO UNDER NO. 600000490  
BY STADA ARZNEIMITTEL AG**

## BACKGROUND AND PLEADINGS

1. On 15 June 2016, Snub International Ltd (“the Applicant”) applied to register as a trade mark the word “Snub” in classes **3, 9, 14, 16, 25, 26, 35, 38, 41**.
2. The application was published for opposition purposes in the Trade Marks Journal on 1 July 2016. It is opposed by STADA Arzneimittel AG (“the Opponent”). The Opponent is the proprietor of an EU trade mark (No. 14499057) for the word “SNUP”, applied for on 20 August 2015 and registered on 24 December 2015.
3. The opposition, brought under the fast-track opposition procedure, is based on section 5(2)(b) of the Trade Marks Act 1994 (“the Act”) and, following a restriction to the scope of its opposition, is directed only against the goods in Class 3. The Opponent claims that the application is for a mark that is similar to that of the Opponent and is for goods in Class 3 that are identical with or similar to those specified in the Opponent’s earlier registration.
4. The Opponent relies on the following goods in its registration:

Class 3: *Perfumery, essential oils, cosmetics, in particular sunscreen preparations, hair lotions; dentifrices.*

Class 5: *Pharmaceutical preparations, in particular medicaments; sunburn preparations for pharmaceutical purposes; sanitary preparations for medical purposes.*

### Procedural matters:

5. While Rules 20(1)-(3) of the Trade Marks Rules (“TMR”) (the provisions that provide for the filing of evidence) do not apply to fast-track oppositions, Rule 20(4) TMR does apply. It reads: “(4) *The registrar may, at any time, give leave to either party to file evidence upon such terms as the registrar thinks fit*”.

6. Parties in fast-track oppositions are therefore required to seek leave from the registrar if they wish to file evidence (other than the proof of use evidence, which, if required, is filed with the notice of opposition). No such leave to file evidence was sought in respect of these proceedings. Moreover, since the Opponent's earlier mark has been registered for less than five years before the date that the Applicant's mark was published for opposition, the earlier mark is not subject to the proof of use provisions under section 6A of the Act. Consequently, the Opponent may rely on all the goods protected by the earlier mark without having to prove use.
7. Rule 62(5) (as amended) states that arguments in fast-track proceedings shall be heard orally only if the registry requests it, or if either party to the proceedings requests it and the registrar considers that oral proceedings are necessary to deal with the case justly and at proportionate cost. Otherwise, written arguments will be taken. A hearing was neither requested nor considered necessary in this case.
8. In addition to its counterstatement denying the grounds of opposition, the Applicant has provided written submissions. The Opponent has also filed written submissions. In its Notice of Opposition the Opponent makes a few short points which, given their brevity, I have reproduced in full below:

*“The marks SNUP and SNUB are highly similar visually and aurally. The only difference is at the end of the marks, however the terminal letters –P and –B are often pronounced in a very similar manner, and one can often be misheard for the other. In addition, these letters are visually very similar too.*

*The goods in Class 3 of the challenged application are identical or nearly identical with the goods in Class 3 of the earlier registration.*

*The goods in Class 5 of the earlier registration are similar to goods in Class 3 of the challenged application, e.g. pharmaceutical preparations can include preparations for reducing or eliminating wrinkles, which leads them to have similar effects to certain cosmetic creams – see Case C-100/11 Allergan v Helena Rubinstein and L'Oréal (BOTOX v BOTOLIST and BOTOCYL).”*

9. The Applicant represents itself in these proceedings, while the Opponent is represented by HGF Limited. I take this decision based on the papers received and taking into account relevant jurisprudence.

## **DECISION**

10. The Opponent's claim is based solely on section 5(2)(b) of the Act, which states:

*"... 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."*

11. Section 6(1)(a) of the Act defines an "earlier trade mark" as:

*"a registered trade mark, international trade mark (UK) or Community trade mark or international trade mark (EC) 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. The Opponent's mark was filed on 20 August 2015 and is therefore an earlier trade mark in accordance with section 6 of the Act.

13. The following decisions of the EU courts provide the principles to be borne in mind when considering section 5(2)(b) of the Act:

*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.

The principles are that:

- (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 the goods

14. The table below sets out the relevant details:

<b>Class</b>	<b>Applicant's specification</b>	<b>Opponent's specification</b>
3	Perfumery; essential oils; cosmetics; make-up; eye make-up; eyeliners; blushers; lipsticks; hair lotions; soaps.	Perfumery, essential oils, cosmetics, in particular sunscreen preparations, hair lotions; dentifrices.
5		Pharmaceutical preparations, in particular medicaments; sunburn preparations for pharmaceutical purposes; sanitary preparations for medical purposes.

15. It is convenient to compare first the closest matching goods specified.

*Perfumery; essential oils; cosmetics; hair lotions*

16. Both parties' specifications include "*perfumery; essential oils; cosmetics; hair lotions.*" These goods are identical. I am not diverted from this conclusion by the Applicant's written submission that the "*nature, intended purpose and the customers for those goods may be completely different.*"
17. I note the inclusion in the Opponent's specification of the words "*in particular*". It is clear from the classification chapter of the Trade Mark Registry's Work Manual that although practice permits such terms to stand, such wording is "*not desirable in specifications since it encourages tautology*". The definition of tautology implies duplication, repetition, superfluity or redundancy. However, the fact that use of "in particular" could result in tautology, does not prevent one from understanding that the use of the phrase within a specification is merely to signal a focus on certain goods within a class. It does not have the conclusive effect of excluding other goods not itemised in detail if such other goods fall naturally within the preceding term (in this case "*cosmetics*"). In other words, the list of goods itemised following the use of the phrase "in particular" need not be read as exhaustive. The Opponent has signalled an interest in sunscreen preparations as one form of cosmetic, but "*cosmetics*" may readily be understood to include all cosmetics.
18. My task of comparing the goods must be made on the basis of notional and fair use of the goods in the parties' respective specifications. In *Roger Maier and Another v ASOS*, [2015] EWCA Civ 220, Kitchin L.J. stated that:

*"78. ....the court must.... consider a notional and fair use of that mark in relation to all of the goods or services in respect of which it is registered.  
.... it may not have been used at all, or it may only have been used in relation to some of the goods or services falling within the specification .... In such a case the proprietor is still entitled to protection against the use of a similar sign in relation to similar goods if the use is such as to give rise to a likelihood of confusion."*

19. In *O2 Holdings Limited, O2 (UK) Limited v Hutchison 3G UK Limited*, Case C-533/06, the Court of Justice of the European Union (“CJEU”) stated at paragraph 66 of its judgment that when assessing the likelihood of confusion under section 5(2) it is necessary to consider all the circumstances in which the mark applied for might be used if it were registered. And in *Oakley v OHIM* (Case T-116/06) it is made clear that consideration of likelihood of confusion is prospective and not to be restricted to the current marketing or trading patterns of the parties:

*“...Since the particular circumstances in which the goods covered by the marks are marketed may vary in time, and depending on the wishes of the proprietors of the trade marks, the prospective analysis of the likelihood of confusion between two marks ... cannot be dependent on the commercial intentions, whether carried out or not – and which are naturally subjective – of the trade mark proprietors ...”*

20. The Applicant has sought to register its mark in respect of “... *cosmetics; make-up; eye make-up; eyeliners; blushers; lipsticks ...*” As stated above, the Opponent has protection for its mark in Class 3 in relation to all cosmetics.

21. In *Gérard Meric v Office for Harmonisation in the Internal Market (OHIM)*, Case T-133/05, the General Court (GC) stated that:

*“29. .... goods can be considered as identical when ... the goods designated by the trade mark application are included in a more general category designated by the earlier mark”.*

22. The Oxford English Dictionary defines cosmetics as “*preparations intended to beautify the hair, skin, or complexion.*” The Applicant’s specification lists “... *make-up; eye make-up; eyeliners; blushers; lipsticks ...*” Each of these separately itemised goods falls within the more general category of “*cosmetics*” designated by the Opponent’s earlier mark. Therefore, I find those goods to be identical – and that this is so notwithstanding the use of the phrase “*in particular*” in the Opponent’s specification.

## Soaps

23. The only remaining item listed in Class 3 by the Applicant is “soaps.” The Opponent does not specify the same item, but lists other goods that bear consideration for similarity, for example, essential oils, perfumery, and cosmetics.
24. In Canon, Case C-39/97, the CJEU at paragraph 23 of its judgment states that:
- “In assessing the similarity of the goods .... all the relevant factors relating to those goods .. 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”.*
25. And in *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06, the GC 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.”*
26. The Opponent has protection for “essential oils”. Essential oils are an important component of many soaps, and may be seen as complementing those goods by contributing an enhancing quality of scent. Likewise “perfumery” and soaps may be seen broadly as complementary, sharing aspects of their intended purpose and closely shared retail channels.
27. In the *Treat* case, [1996] R.P.C. 281 Jacob J. (as he then was) identified that relevant factors for assessing similarity include the respective users of the respective goods, the physical nature of the goods, the respective trade channels through which the goods reach the market and, in the case of self-serve consumer items, where in practice they are likely to be found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves. The above factors

taken together indicate a reasonable degree of similarity between soaps and the Opponent's protection for essential oils and perfumery.

28. As for "cosmetics," the GC stated in *La Mer Technology, Inc v OHIM* (Case T-418/03) that:

*"(78) ... it is clear that soaps may also be classified as cosmetics when, in particular, they are deemed to have cosmetic properties such as beautifying the skin or when they are perfumed.*

*(111) So far as concerns 'soaps, perfumery, essential oils, hair lotions, dentifrices, toiletries' in the Community trade mark application, it should be stated that they share hygiene and cosmetic properties. The cosmetic products of the earlier mark may also be used for hygiene purposes. .... soaps ... are used not only for cleaning the skin but also for making the skin more beautiful and claim therefore to have cosmetic properties.*

*... the Board of Appeal correctly noted that beautification is not obtained only by the use of traditional means, such as make-up or other cosmetics, but also through the use of products which, although they may be hygienic, serve beauty purposes as well: for example, soap that is composed in a manner whereby there is only a minimum of skin dehydration, thus leading to a more beautiful skin or dentifrices that, in addition to cleaning teeth, also make them whiter.*

*112 Moreover, those products may be sold in the same sales outlets and be directed at an identical category of consumers. In addition, quite often the manufacturers of those products are the same."*

29. Taking account of the above, I therefore find at least a reasonable degree of similarity between soaps and cosmetics.

## The average consumer and the purchasing process

30. It is necessary to determine who is the average consumer for the goods in question and to consider how the goods are likely to be selected and purchased.

31. In *Hearst Holdings*<sup>1</sup>, Birss J. described the average consumer:

*“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 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 word “average” denotes that the person is typical... [it] does not denote some form of numerical mean, mode or median.”*

32. I consider only the average consumer of the goods sought for protection in Class 3. Those are goods that may be characterised as being for aromatisation, for the beautification or care of the skin, hair or body or for personal hygiene. The average consumer for such goods is, in my view, a member of the general public.

33. In *CareAbout GmbH v OHIM*, case T-356/144, the GC stated:

*“21. As regards the goods in Class 3, it must be held that they are everyday consumer goods aimed at the general public ...*

*23. In that regard, it must be held that while it is true that the average consumer, as a general rule, pays less attention to everyday consumer goods, that level of attention would not however be less than average when faced with the goods that this case concerns, namely hair care and skin care goods, because certain aesthetic considerations or consumers’ personal preferences, their sensitivities or their hair or skin type may play a role in the purchase of*

---

<sup>1</sup> *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)

*those goods. Therefore, the Board of Appeal was correct to hold that the level of attention of the relevant public would be average.”*

34. Accordingly, for the purposes of this decision, the level of attention of the general public when purchasing the parties' goods will be, at least, average and will be sufficient to ensure that the correct product is selected taking into account factors such as ingredients, scent, properties and appropriateness for the consumer's skin and hair type. The goods are consumable products that require replacement, so are likely to be purchased on a reasonably regular basis. The frequency of replacement will vary between particular goods and between consumers. Generally speaking, the majority of the goods are not especially expensive, but some goods (such as perfume) may command a higher price and/or require less frequent replenishment. In that connection, the average consumer is still a member of the general public, but the purchasing act will entail a slightly more attentive process than the norm.
35. In terms of the actual purchasing act, the goods are normally self-selected from a shelf or perhaps from a retail web-site. Requesting the goods by word of mouth may take place from time to time, but this will not, in my view, be the predominant form of purchase and may only take place if the goods have not been found through self-selection. Therefore, while I do not discount aural considerations, visual perception of the marks in question will generally take place prior to purchase and accordingly the visual aspect plays a greater role in the global assessment of the likelihood of confusion.
36. Where goods are self-selected or where the consumer sees the mark when purchasing the goods the GC stated in *Quelle AG v OHIM*, Case T-88/05 that:

*“69. ... the degree of phonetic similarity between two marks is of less importance in the case of goods which are marketed in such a way that, when making a purchase, the relevant public usually perceives visually the mark designating those goods.”*

Comparison of the marks

37. I must assess the extent of the visual, aural and conceptual similarities between the respective marks bearing in mind their distinctive and dominant components (*Sabel BV v. Puma AG*, para 23). The respective trade marks are shown below:

SNUP	Snub
Opponent's earlier trade mark	Applicant's contested trade mark

Visual similarity

38. Both marks are presented as a single word consisting of four letters, three of which are the same letters, appearing in the same order. The main visual difference is that the Applicant's mark ends with the letter "b", whereas the Opponent's mark ends with the letter "p".
39. The marks as they appear on the Register also differ in their case usage, with the Applicant's mark being presented in title case, with just its initial letter capitalised, the remaining three letters being in lower case. The Opponent's registered mark presents uniformly in uppercase. However, as stated by Mr Iain Purvis QC, sitting as the Appointed Person, in *Groupement Des Cartes Bancaires v China Construction Bank Corporation*, case BL O/281/14:

*"It is well established that a 'word mark' protects the word itself, not simply the word presented in the particular font or capitalisation which appears in the Register of Trade Marks. See for example Present-Service Ullrich GmbH & Co. KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), Case T-66/11 at [57]. A word may therefore be presented in a different way (for example a different font, capitals as opposed to small*

*letters, or hand-writing as opposed to print) from that which appears in the Register whilst remaining 'identical' to the registered mark."*

40. Therefore, notional use of the Opponent's registered word mark covers various permutations of case presentation such that the appearance of the final letters could differ as between a lower case "p" and a lower case "b", or between upper case "B" and "P". In their lower case rendering the terminal letters may be seen as mirror images of one another (on a horizontal axis), while an upper case P lacks the second counter, or closed loop, that is present in an upper case B. (Counter is a typographical term that here refers to the area of a letter that is entirely enclosed by a letter form.)
41. The shared presence and order of the first three letters creates an incontestable degree of visual similarity, and the differing terminal letters have a measure of visual similarity as I have described above. Nonetheless, the impact of the differing final letters is not lost in the overall impression of the respective marks and this is particularly so given that these are not long words. The marks share a reasonable degree of visual similarity.

#### Aural similarity

40. The marks, when spoken, both consist of a single syllable, but they differ in the final sound. The Opponent submits that "*-P and -B are often pronounced in a very similar manner, and one can often be misheard for the other.*" Both letters involve a plosive speech sound, albeit that a P is voiceless, whereas a B is voiced. The short length of the words means that this difference in word ending is unlikely to be completely lost, but nonetheless I find that the marks share at least a reasonable degree of aural similarity.

### Conceptual similarity

42. When considering the impact of 'concept' on the likelihood of confusion, one has first to decide what concept (if any) each sign conveys to the average consumer. The Applicant's mark is for the word "snub", which is an English word with a number of meanings<sup>2</sup> as a noun, verb and adjective. For example, it carries the common meaning of a remark or action intended to repress or rebuke a person, or, when used adjectivally describes a nose that is short and turned up.
43. I am aware of the danger in accepting too readily the degree of knowledge of the average consumer<sup>3</sup>, but the word "snub" is an everyday word that is likely to be known by the average consumer of the goods in question.
44. The Opponent's mark consists of the word "snup". This is not a word found in an English dictionary, nor have the parties suggested that the word has a meaning, let alone one of which the average consumer will be aware.
45. All things considered, the average consumer will regard the word SNUP as an invented word. Therefore, in terms of conceptual comparison, the Applicant's mark is readily meaningful as an ordinary word in the English language, whereas the Opponent's mark has no apparent meaning. In view of this, there is no conceptual similarity.

### Distinctive character of earlier trade mark

46. The more distinctive the character of the earlier mark, either by inherent nature or by use, the greater is the likelihood of confusion (*Sabel BV v Puma AG*). In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 the CJEU stated that:

---

<sup>2</sup> See for example Oxford English Dictionary

<sup>3</sup> See, for example, the decision of Anna Carboni (sitting as the Appointed Person) in *Chorkee* (BL O-048-08).

*“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 C-108/97 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 ...”*

47. As previously noted, SNUP is not a word found in a standard English dictionary, so to the extent that it may in the UK be seen as an invented word, it has a high level of inherent distinctiveness because it neither describes nor alludes to the relevant goods.

#### Conclusion as to likelihood of confusion

48. I now turn to reach a conclusion as to the likelihood of confusion between the two marks if they were used in relation to the goods specified. In making this global assessment of likelihood of confusion I take stock of my findings set out in the foregoing sections of this decision as to: the relevant average consumer; the nature of the purchasing process; the similarity between the specified goods; and the similarity between the conflicting marks, taking account of the degree of inherent distinctiveness of the earlier mark. I also bear in mind the interdependency principle – which is to say that 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). (*Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*).

49. I have found that the relevant average consumer for the goods in question is a member of the general public, who would pay at least a normal level of attention when selecting the goods in Class 3.
50. I have considered the notional nature of the purchasing process, in which visual considerations predominate as purchases are likely to be mainly on the basis of self-selection by the consumer, according to the latter's needs and preferences.
51. As to the comparison of goods I have found that, with the exception of soaps, the goods are identical. I have found soaps to be similar to goods within the Opponent's specification (notably cosmetics) to at least a reasonable degree.
52. In comparing the marks I have found that they are visually and aurally similar to a reasonable degree. I am mindful that the average consumer of the goods in question rarely has the chance to compare marks side by side and must instead rely on an imperfect mental picture of them (as per *Lloyd Schuhfabrik* case). However, I have also found that there is a complete lack of conceptual similarity between the marks, which in my view weighs significantly in this case.
53. In assessing similarity between marks, it should be taken into account that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. Case law has made clear that it is not appropriate to split up a sign artificially where it is not likely that the public will perceive the sign as composed of different elements. The CJEU stated in *Sabel* that the global appreciation of the visual, aural or conceptual similarity of the marks in question must be based on the overall impression given by the marks.
54. The overall impression is that one mark is invented and the other is a known English word, as discussed above. Notwithstanding the visual and aural similarities acknowledged in this decision, I find it likely that the average consumer would be struck by the readily meaningful word "snub" rather than focus on letters it shares with "snup."
55. Mr Iain Purvis QC, sitting as the Appointed Person in the *Rochester* case (BL O-049-17), stated:

*“38. The case law of the European Union has recognised the self-evident proposition that where marks evoke particular, different concepts, this tends to counteract any visual or aural similarities between them and reduce the likelihood of confusion. This may be the case even where only one of the marks conveys a particular concept, and the other is concept-free. See quote from CJEU in Ruiz-Picasso v OHIM [C-361/04]*

*Such conceptual differences can in certain circumstances counteract the visual and phonetic similarities between the signs concerned. For there to be such a counteraction, at least one of the signs at issue must have, from the point of view of the relevant public, a clear and specific meaning so that the public is capable of grasping it immediately [Case T-292/01 Phillips-Van Heusen v OHIM –*

*...*

*39. The interesting point here is that the absence of a particular concept is said to ‘counteract’ confusion, by making the marks easier to distinguish. So lack of conceptual similarity is not merely a ‘neutral’ factor. That is the case even where one of the two marks has no particular meaning at all to the average consumer.”*

56. Weighing in the balance all of the above factors, despite my finding of visual and aural similarity between the marks, the strength of the conceptual difference between the marks leads me to find that there is in this case no likelihood of confusion. **Consequently, the opposition fails.**

#### Costs

57. The Applicant is entitled to a contribution towards its costs in defending this opposition, which I assess based on the guidance in Tribunal Practice Notice 4/2007. The Applicant has not engaged independent professional representation and as such is a litigant in person. The Applicant has submitted costs pro-forma. In the circumstances I award the Opponent the sum of £180 (one hundred and eighty pounds) as a contribution towards the cost of the proceedings. The sum is calculated at £18 per hour as follows:

Preparing a Notice of Defence (5 hours)

Considering the other side's statement (2 hours)

Considering written submissions of the Opponent: (1 hour)

Preparation of written submissions: (2 hours)

(This latter two sums are based on slightly fewer hours than indicated on the Applicant's costs proforma as the written submissions from the Opponent were brief and the written submissions from the Applicant in large part replicate the contents of the Notice of Defence.)

58. I therefore order STADA Arzneimittel AG to pay Snub International Ltd the sum of £180 (one hundred and eighty pounds) to be paid within fourteen days of the expiry of the appeal period, or within fourteen days of the final determination of this case if any appeal against this decision is unsuccessful.

**Dated this 2<sup>nd</sup> day of March 2017**



**Matthew Williams**

**For the Registrar,  
the Comptroller-General**