BL O/1013/23

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00003772212

BY RELANDE BARRETT-GORDON

TO REGISTER THE TRADE MARK:

INNOCENT
CRIMINAL

IN CLASS 25

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. 434950

BY CRIMINAL CLOTHING LIMITED

BACKGROUND AND PLEADINGS

1. On 31 March 2022, Relande Barrett-Gordon ("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. The applicant seeks registration for the following goods:

Class 25 Clothes; Clothing; Jackets [clothing]; Belts [clothing]; Athletic clothing; Windproof clothing; Silk clothing; Ladies' clothing; Wristbands [clothing]; Tops [clothing]; Hoods [clothing]; Leisure clothing; Infant clothing; Children's clothing; Childrens' clothing; Sports clothing; Gloves [clothing]; Waterproof clothing; Girls' clothing; Cyclists' clothing; Playsuits [clothing]; Slipovers [clothing]; Jerseys [clothing]; Weatherproof clothing; Casual clothing; Denims [clothing]; Combinations [clothing]; Furs [clothing]; Shorts [clothing]; Babies' clothing; Ties [clothing]; Outer clothing; Cashmere clothing; Women's clothing; Embroidered clothing.

2. The application was opposed by Criminal Clothing Limited ("the opponent") on 13 July 2022 based upon sections 5(2)(b) and 5(3) of the Trade Marks Act 1994 ("the Act"). However, the opponent withdrew the section 5(3) ground in writing on 24 November 2022. The opponent relies upon the following trade mark:

CRIMINAL

UK registration no. UK00003743425
Filing date 14 January 2022; Registration date 22 April 2022.
Relying upon all of the goods for which the earlier mark is registered, namely:

Class 18 Leather and imitations of leather and goods made of these materials and not included in other classes; skins and hides; luggage, cases, trunks, travelling bags, travelling cases, carry-on luggage, overnight luggage, bags for travel accessories, shoe bags for travel and garment bags;

briefcases, document cases and portfolios; school bags and school satchels; bags, holdalls, haversacks, backpacks, rucksacks, knapsacks, handbags, shoulder bags, clutch bags, tote bags, sports bags, athletic bags, beach bags, shopping bags, cycle bags, pannier bags, belt bags, toilet bags; hip pouches; belts; wallets, purses, pouches and key cases; camping bags; frames for handbags, umbrellas or parasols; fastenings and straps of leather; key fobs made of leather incorporating key rings; card holders; umbrellas; parasols; canes and walking sticks; whips, harnesses and saddlery; baggage; articles of luggage, bags, sports bags; leather goods namely, whips, harnesses, saddlery, horse tack and equestrian articles; riding saddles; Attaché cases; backpacks; bags (net -) for shopping; bags (nose -) [feed bags]; beach bags; briefcases; card cases [notecases]; clothing for pets; collars for animals; covers (umbrella -); covers for animals; dog collars; frames (handbag -); frames for umbrellas or parasols; game bags [hunting accessories]; handbag frames; handbags; handles (suitcase -); handles (walking stick -); haversacks; net bags for shopping; nose bags [feed bags]; pets (clothing for -); pocket wallets; purses; purses, not of precious metal; ribs (umbrella or parasol -); rucksacks; satchels (school -); school bags; school satchels; shopping bags; skates (straps for -); sling bags for carrying infants; soldiers' equipment (straps for -); umbrella covers; umbrella handles; umbrella rings; umbrella sticks; vanity cases, [not fitted]; walking cane handles; walking stick handles; walking stick seats; wallets (pocket -); wheeled shopping bags.

Class 25 Clothing; Footwear; Headgear.

3. The opponent claims that there is a likelihood of confusion because of the high degree of similarity between the marks and the identity of the goods.

4. The applicant filed a counterstatement denying the claims made.

5. The opponent is represented by Lane IP limited and the applicant is unrepresented. Neither party requested a hearing, however, the applicant filed evidence in chief and

the opponent filed written submissions in lieu of a hearing. I make this decision having taken full account of all the papers, referring to them as necessary.

EVIDENCE AND PRELIMINARY ISSUES

6. The applicant's evidence consists of the witness statement of Relande Barrett-Gordon dated 1 May 2023. Mr Barrett-Gordon is the Director of the applicant. Ms Barrett-Gordon's statement was accompanied by 1 exhibit (RBG1).

7. Mr Barrett-Gordon states that the applicant has used its trade mark since 2016, and that the domain innocentcriminal.co.uk in 2022.

8. **Exhibit 1.1** contains undated photos of the applicant's official business plan and logo designs which were sent via recorded delivery and never opened. The date contained on the post stamp label is "17/05/16".

9. **Exhibit 1.2** is an undated image of the first drafts of the applicant's logo prior to registering the trade mark, and **exhibit 1.3** is an undated image of the applicants design application (which is identical to its UK00003772212 mark).

10. Mr Barrett-Gordon has not provided any further explanation as to why the above information has been provided, and how it is useful or relevant in these proceedings. It, therefore, does not assist the applicant. Furthermore, there is no application to invalidate the earlier mark on the grounds of the applicant's alleged earlier use, and so the earlier mark must be deemed as a validly registered trade mark. Moreover, the applicant has not claimed that the evidence was filed to support an argument that the parties marks have been co-existing in the market place. In any event, the opponent has not filed any evidence of use, and the applicant's evidence alone would not be sufficient to establish honest concurrent use.

11. I also note that in its counterstatement (Form TM8), the applicant states that the opponent does not have any ownership over the UK domain www.criminal.co.uk, and that they believe that the parties target different audiences/demographic of consumers for their goods. However, the trade mark upon which the opponent relies qualifies as

an earlier trade mark because it was applied for at an earlier date than the applicant's mark pursuant to section 6 of the Act. The earlier mark had not completed its registration process more than five years before the relevant date (the filing date of the mark in issue). Accordingly, the use provisions at s.6A of the Act do not apply. The opponent is therefore entitled to rely upon its full specification, and it is not required to demonstrate that it has marketed or sold its goods in the UK (including whether it has a UK website or not). Consequently, the Registry is not concerned with what domains the parties do or do not possess. My comparison must be of the marks and their specifications as registered.

12. I also note that the submission that the parties target different markets also does not assist the applicant. I have to carry out a notional assessment based upon all the ways in which the goods covered by the respective specifications could be used and sold. The way in which they are used and sold in practice is not relevant to my assessment.

RELEVANCE OF EU LAW

13. 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 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)

14. Section 5(2)(b) reads as follows:

> "5(2) A trade mark shall not be registered if because –
>
> (a)…

(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."

Section 5(2)(b) case law

15. 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

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

> "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 Lernsysterne 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."

17. All of the applicant's applied-for goods, contained in paragraph 1 of this decision, fall within the broader category of "clothing" in the opponent's specification. The goods are identical on the principle outlined in *Meric*.

The average consumer and the nature of the purchasing act

18. 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. 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 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."

19. The average consumer for the goods will be members of the general public. The cost of purchase is likely to vary, and the goods will be purchased relatively frequently. However, various factors are still likely to be taken into consideration during the purchasing process, such as materials used, cut, aesthetic appearance and durability.

Consequently, I consider that a medium degree of attention will be paid by the average consumer when selecting the goods.

20. The goods are likely to be obtained by self-selection from the shelves of a clothing retail outlet, online or catalogue equivalent. This means that the mark will be seen and so the visual element of the mark will be the most significant: see *New Look Limited v OHIM*, Joined cases T-117/03 to T-119/03 and T-171/03, paragraph 50. Visual considerations are, therefore, likely to dominate the selection process. However, I do not discount that there will also be an aural component to the purchase, as advice may be sought from a sales assistant or representative.

Comparison of the trade marks

21. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade 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 trade marks must be assessed by reference to the overall impressions created by the trade 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."

22. 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.

23. The respective trade marks are shown below:

Opponent's trade mark	Applicant's trade mark
CRIMINAL	INNOCENT CRIMINAL

24. The opponent's mark consists of the word CRIMINAL. There are no other elements to contribute to the overall impression which lies in the word itself.

25. The applicant's mark consists of the words INNOCENT CRIMINAL written in a stylised capitalised typeface. For reasons I will come to discuss in the conceptual comparison, I consider that the words INNOCENT and CRIMINAL together play a greater role in the overall impression of the mark, with the stylisation (the typeface and line) playing a lesser role. The words INNOCENT and CRIMINAL do not dominate over each other; they play an equally dominant role.

26. Visually, the opponent's word mark, CRIMINAL, is replicated at the end of the applicant's mark. Both marks are also presented in capital letters. This acts as a point of visual similarity. However, the applicant's mark is presented in a stylised font and begins with the 8 letter word INNOCENT, which has a line crossed through it. These act as points of visual difference. I note that the word INNOCENT is presented on top of the word CRIMINAL in the applicant's mark. It is therefore the first word that the average consumer will see and read, and therefore I consider that the principle that the average consumer tends to pay more attention to the beginning of the marks[1] applies. Consequently, the marks are visually similar to a medium degree.

27. Aurally, the opponent's mark is likely to be pronounced as CRIM-IN-AL. The applicant's mark is likely to be pronounced as IN-OH-SENT CRIM-IN-AL.

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

Consequently, the beginning of the marks differ aurally. However, as they overlap in the pronunciation of CRIMINAL, they are aurally similar to a medium degree.

28. Conceptually, the opponent contends that the INNOCENT element of the applicant's mark will not be perceived as the distinctive or dominant element of the mark, especially because "the inclusion of a single line through this word [INNOCENT] would lead to the relevant consumer believing that this element is to be disregarded". I disagree that this element would be disregarded by the average consumer.

29. As noted above, the INNOCENT element, albeit crossed out, still clearly contributes visually and aurally to the applicant's mark, and I also consider that it contributes to the conceptual message. It is clearly present at the beginning of the mark, and is presented in the same size as the word CRIMINAL directly below it. As noted above, the consumer tends to pay more attention to the beginning of the mark. I also note that the line element through the word is very thin, and does not distort the word in any way. It is still visible and can be clearly read by the consumer. More importantly, I also note that all three letter N's do not have the thin line striking through them, meaning that the word is not fully crossed out. Consequently, I consider that the thin line will be seen as a purely stylistic element within the mark which is used alongside the stylised capitalised typeface.

30. The applicant submits that its mark is a term "used to describe a person who has been wrongly stereotyped as a criminal, despite being innocent". I do not consider that this exact meaning would be recognised immediately by the average consumer. However, I consider that the concept, the idea of a criminal who is innocent, is likely to be assigned to the applicants mark by the average consumer.

31. As a whole, "INNOCENT CRIMINAL" as a phrase is unusual, as it is contradictory in nature, because to be innocent means you are not guilty of a crime and a criminal is someone who commits crimes. Therefore the word INNOCENT clearly juxtaposes the word CRIMINAL. However, I also consider that the words INNOCENT and CRIMINAL qualifies each other, and creates a new unitary meaning different than those of its individual components.

32. Therefore, taking all of the above into account, as the marks share, to some extent, the concept of CRIMINAL in both marks, they are conceptually similar to between a low and medium degree.

Distinctive character of the earlier trade mark

33. 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 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 1-2779, 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 promotion of 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)."

34. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use that has been made of it.

35. As the opponent has not filed any evidence to show that the distinctiveness of its mark has been enhanced through use, I only have the inherent position to consider.

36. As highlighted above, the opponent's CRIMINAL mark is an ordinary dictionary word with a recognisable meaning (someone who commits crimes). It is neither allusive nor descriptive of the goods. Therefore, I consider that it is inherently distinctive to a medium degree.

Likelihood of confusion

37. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while 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 down to the responsible undertakings being the same or related. 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. This includes 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. 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.

38. The following factors must be considered to determine if a likelihood of confusion can be established:

- I have found the marks to be visually and aurally similar to a medium degree.
- I have found the marks to be conceptually similar to between a low and medium degree.
- I have found the opponent's mark to be inherently distinctive to a medium degree.

- I have identified the average consumer for the goods to be the general public, who will select the goods primarily by visual means, although I do not discount an aural component.
- I have concluded that a medium degree of attention will be paid during the purchasing process for the goods.
- I have found the parties' goods to be identical.

39. Taking all of the factors listed in paragraph 38 into account, and even bearing in mind the principle of imperfect recollection, I am satisfied that the marks are unlikely to be mistakenly recalled or misremembered as each other. Firstly, as highlighted above the words INNOCENT and CRIMINAL in the applicant's mark play an equally dominant role in the overall impression of the mark. The words also qualify each other, and create a new unitary meaning, different than those of its individual components. Secondly, the beginning of the marks tend to make more of an impact than the ends. Therefore, I do not consider that the average consumer would overlook the 8 letter word INNOCENT at the beginning the applicant's mark, which is presented in the same size, and directly above, the word CRIMINAL. The opponent has argued that the word INNOCENT has a "single line through" it, which would lead the consumer into "believing that this element is to be disregarded". However, as highlighted above, the line element in the applicant's mark is thin in nature and does not strike through all 3 letter N's. Consequently, the word is not fully crossed out and the word INNOCENT is clearly visible and easy to read. The thin line will, therefore, be seen as a purely stylistic element which is used alongside the stylised typeface in the applicant's mark. Consequently, taking all of the above into account, I do not consider there to be a likelihood of direct confusion.

40. It now falls to me to consider the likelihood of indirect confusion. Indirect confusion was described in the following terms by Iain Purvis Q.C. sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10:

> "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)".

41. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ referred to the comments of James Mellor QC (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at [16] that "a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion". Arnold LJ agreed,

pointing out that there must be a “proper basis” for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

42. As highlighted above, Mr Purvis Q.C. in *L.A Sugar Limited* sets out that there are three main categories of indirect confusion, and that indirect confusion ‘tends’ to fall in one of them. I note that the opponent hasn’t stated specifically what category this case would fall within. However, for the sake of completeness, I will go through each category.

43. Firstly, where the common element is so strikingly distinctive that the average consumer would assume that no-one else, but the brand owner, would be using it. In this instance, I do not consider that the ordinary dictionary word, CRIMINAL, which has a recognisable meaning to the average consumer, is so strikingly distinctive that the average consumer would think that no-one else but the opponent would use it. As established above, it has a medium degree of inherent distinctiveness, which has not been enhanced. The first category is therefore not satisfied.

44. This leads to the second category from *L.A Sugar*, where the later mark simply adds a non-distinctive element to the earlier mark. The examples provided by Mr Purvis Q.C. for this category are separate words which are frequently used to indicate that they are sub-categories/brands. However, the word INNOCENT is not a non-distinctive element. As highlighted above, the word INNOCENT plays an equally dominant role, with the word CRIMINAL, in the overall impression of the applicant’s mark. It is a dictionary word which is neither descriptive nor allusive of the parties’ goods. The word INNOCENT is also not a word which is frequently used to indicate sub-brands such as ‘LITE’ or ‘EXPRESS’. Consequently, the second category cannot be satisfied.

45. Lastly, where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension. I do not consider that the addition of the word INNOCENT at the beginning of the applicant’s mark is a logical brand extension of the opponent’s mark, or vice versa. As highlighted above, the words INNOCENT and CRIMINAL play an equally dominant role in the overall impression of the applicant’s mark. The use of the two words together is also

particularly striking because they contradict and juxtapose each other. “INNOCENT CRIMINAL” together creates a new unitary meaning (a criminal who is innocent), different than those of its individual components. I therefore consider that the applicant’s mark is a step too-far removed from being a logical brand extension, or a logical sub-brand of the opponent’s mark. The inherent meaning and concept of the shared element (CRIMINAL) has changed to meaning the opposite of what it should mean (a criminal being person who commits crimes vs a criminal who is innocent/not guilty of a crime). I therefore do not consider that the third category is satisfied.

46. I bear in mind that the examples above set out by Mr Purvis Q.C. are not exhaustive. However, I do not consider that there are any other logical examples of how the applicant’s mark could be indirectly confused with the opponent’s. I consider that having noticed that the trade marks are different, I see no reason why the average consumer would assume that they come from the same or economically linked undertakings. As highlighted above, the marks are not natural variants or brand extensions of each other. Even if the opponent’s mark is brought to mind when viewing the applicant’s mark, this is mere association, not confusion: see *Duebros Limited v Heirler Cenovis GmbH,* BL O/547/17, paragraph 81. Consequently, I consider there is no likelihood of indirect confusion.

CONCLUSION

47. The opposition is unsuccessful, and the application may proceed to registration.

COSTS

48. Award of costs are governed by Tribunal Practice Notice (“TPN”) 2/2016. The applicant has been successful and would normally be entitled to a contribution towards its costs.

49. However, as the applicant is unrepresented, at the conclusion of the evidence rounds the tribunal wrote to the applicant and invited them to indicate whether they intended to make a request for an award of costs. The applicant was informed that, if

so, they should complete a Pro Forma, providing details of their actual costs and accurate estimates of the amount of time spent on various activities associated with the proceedings. They were informed that “if the pro-forma is not completed and returned, costs, other than official fees arising from the action (excluding extensions of time) may not be awarded”.

50. The applicant did not file a completed Pro Forma and paid no official fees. That being the case, I make no award of costs in this matter.

Dated this 30th day of October 2023

L FAYTER

For the Registrar