O/1143/23

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. 3747089

BY ANDREW SIMPSON

TO REGISTER THE TRADE MARK:

One Planet

IN CLASSES 21 AND 35

AND IN THE MATTER OF OPPOSITION THERETO

UNDER NO. 434229

BY LIFETIME BRANDS EUROPE LIMITED

BACKGROUND AND PLEADINGS

1. On 25 January 2022, Andrew Simpson ("the applicant") applied to register the trade mark shown on the cover page of this decision, in the UK ("the contested mark"). The contested mark was published for opposition purposes on 15 April 2022 and registration is sought for the following goods and services:

Class 21: Utensils and containers; vacuum flasks; bottles; drinks bottles; flasks; containers for food and drink; carafes; vacuum carafes; insulated containers; glassware, jugs; insulated carafes and cafetieres; tea infusers, tea urns, coffee urns; cups; mugs; tumblers; beakers; food jars; food storage containers; lunch boxes; bottle brushes; holders for tumblers; insulated backpacks; cool bags; insulated bags for food or beverages; insulated bottle bags; ice containers; ice cube trays; porcelain and earthenware not included in other classes.

Class 35: Retail and wholesale services, including online wholesale and retail store services, relating to household, culinary and domestic utensils and containers, including bottles, flasks, containers for food and drink, containers for household use, vacuum flasks, carafes, vacuum carafes, insulated containers, jugs, utensils for dispensing liquids, insulated carafes and cafetieres, tea infusers, tea urns, coffee urns, cups, mugs, tumblers, beakers being drinking vessels; retail and wholesale services, including online wholesale and retail store services, relating to food jars, food storage containers, lunch boxes, holders for tumblers, insulated backpacks, cool bags, insulated bags for food or beverages, insulated bottle bags, ice containers, ice cube trays; information, advisory and consultancy relating to all the aforesaid.

2. On 14 June 2022, the contested mark was opposed by Lifetime Brands Europe Limited ("the opponent") based upon section 5(2)(b) of the Trade Marks Act 1994

("the Act") and is directed against all the goods and services under the application. To support its claim the opponent relies upon the following registered trade marks:

PLANET BOTTLE

UK trade mark number: 3593656

Filing date: 10 February 2021

Registration date: 18 June 2021

("the first earlier mark")

Trade mark series

UK trade mark number: 3593710

Filing date: 10 February 2021

Registration date: 18 June 2021

("the second earlier mark")[1]

3. Both the marks relied upon by the opponent are registered for the same goods in class 21, all of which are relied upon for the purpose of opposition, namely:

Class 21:	Bottles; bottles for drinks; water bottles; water bottles made from recycled materials; cups; mugs; insulated containers for drinks; drinking vessels; parts and fittings for the aforesaid goods, including caps, lids and stoppers.

4. Given the respective filing dates, the opponent's marks are earlier marks in accordance with section 6 of the Act. As they have not been registered for more

[1] As the only difference between the two marks within the series is the use of colour in the one and the use of greyscale in the other, I will refer to them in the singular, unless it becomes necessary for me to distinguish between them and refer to them separately.

than five years at the filing date of the application, they are not subject to the proof of use requirements specified within section 6A of the Act. Consequently, the opponent may rely upon all of the goods identified without having to demonstrate genuine use.

5. In its notice of opposition, the opponent contends the dominant and distinctive element within both the opponent's marks and the applied for mark is the word "PLANET". It claims that the similarity of the competing marks and the identity/similarity between the goods and services will cause a likelihood of confusion.

6. The applicant filed a counterstatement denying the ground of opposition. It claims that the competing marks are dissimilar as are the goods and services, and on this basis, the applicant denies that there is a likelihood of confusion.

7. The opponent is professionally represented by Forresters IP LLP, whereas the applicant is professionally represented by Humphreys & Co. Only the applicant chose to file evidence during the evidence rounds. Neither party asked to be heard at an oral hearing, though both parties chose to file written submissions in lieu of a hearing. This decision is taken following a careful perusal of the papers before me.

8. 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 upon in these proceedings are derived from an EU Directive and, therefore, this decision continues to refer to the trade mark case law of the EU courts.

Evidence

9. The applicant has provided evidence which comprises of the witness statement of Tristan Morse, dated 6 February 2023, with Exhibit TM1, which I have considered and will refer to below as and where necessary. Mr Morse is the trade mark attorney representing the applicant. It is suggested that the evidence demonstrates

how the average consumer has been educated to accept the word “PLANET” for water bottles through the use of marks containing the word “PLANET” on the UK marketplace. Also included in the evidence is state of the register evidence.

Preliminary issue

10. I observe that in its counterstatement the applicant states:

> *“The Applicant notes that there are over 250 UK registrations that contain the word ‘planet’ to a greater or lesser degree in Class 21. These include: PLANET +, MY PLANET, OUR PLANET, PLANET BOX, HOME PLANET, PLANET ZERO, among many others.*
>
> *Whilst the existence of other marks on the register is of limited relevance to the opposition proceedings, it indicates that the average consumer has been educated to accept multiple ‘PLANET’ formative marks for the goods in suit.”*[2]

11. The applicant has provided evidence of the marks referred to within its counterstatement (as well as other marks) with the word “Planet” in them.[3] However, there is no evidence of actual use of the marks shown as listed on the register. However, there is evidence of screenshots from websites showing goods for sale under the following signs with the word “PLANET” in them: “Planet X”, “Planet Warrior”, “Planet Organic” and “Gymnastic Planet”.[4] I note that these include webpages that both post-date and pre-date the application date. However, none of these are listed within the evidence as registered in relation to the goods in issue. Furthermore, the evidence is not sufficient to determine the scope of this use. For example, I have no information regarding how many consumers in the UK visited those websites, or the number of products that were purchased as a result. Therefore, it is impossible to conclude that the widespread use of the word “Planet” would lead to a weakening of the distinctive character of the earlier mark. Particularly, as I note that the evidence shows the presence of just four marks on the marketplace. As such, I do not accept that the average consumer has become

[2] Applicant’s counterstatement, paragraphs 31 and 32.
[3] Exhibit TM1, pages 1-32
[4] Exhibit TM1 pages 33- 61

accustomed to differentiating between marks containing the word “PLANET” nor have they been educated to accept the word “PLANET” as frequently used in trade marks connected with the goods and services relied upon.[5]

My approach

12. Having considered the similarity between the applicant’s mark and the opponent’s earlier marks, I consider the opponent’s best case lies with its reliance upon the first earlier mark. This is because it is a word only mark that under fair and notional use can be presented in the same way as the applied for mark, whereas the second earlier mark is a figurative mark that consists of additional elements that point further away from a likelihood of confusion. If I find a likelihood of confusion with this mark, the issue in respect to the second earlier mark is not relevant but, conversely, if there is no likelihood of confusion, it follows that there will be no likelihood of confusion for the second earlier mark. Consequently, I will focus on the first earlier mark, however, if necessary, I will return to discuss this point at the conclusion of my decision.

DECISION

Legislation

13. Sections 5(2)(b) and 5A of the Act read as follows:

> “5(2) A trade mark shall not be registered if because-
>
> […]
>
> (b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

[5] *Zero Industry Srl v OHIM*, Case T-400/06

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark".

"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."

Case law

14. I am guided by the following principles which are gleaned from the decisions of the Court of Justice of the European Union ("CJEU") 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 competing goods and services to be compared are as follows:

Opponent's goods	Applicant's goods and services
Class 21 Bottles; bottles for drinks; water bottles; water bottles made from recycled materials; cups; mugs; insulated containers for drinks; drinking vessels; parts and fittings for the aforesaid goods, including caps, lids and stoppers.	Class 21 Utensils and containers; vacuum flasks; bottles; drinks bottles; flasks; containers for food and drink; carafes; vacuum carafes; insulated containers; glassware, jugs; insulated carafes and cafetieres; tea infusers, tea urns, coffee urns; cups; mugs; tumblers; beakers; food jars; food storage containers; lunch boxes; bottle brushes; holders for tumblers; insulated backpacks; cool bags; insulated bags for food or beverages; insulated bottle bags; ice containers; ice cube trays; porcelain and earthenware not included in other classes. Class 35 Retail and wholesale services, including online wholesale and retail store services, relating to household, culinary and domestic utensils and containers, including bottles, flasks, containers for food and drink, containers for household use, vacuum flasks, carafes, vacuum carafes, insulated containers, jugs, utensils for dispensing liquids, insulated carafes and cafetieres, tea infusers, tea urns, coffee urns, cups, mugs, tumblers, beakers being drinking vessels; retail and wholesale services, including online wholesale and retail store services, relating to food jars, food storage

	containers, lunch boxes, holders for tumblers, insulated backpacks, cool bags, insulated bags for food or beverages, insulated bottle bags, ice containers, ice cube trays; information, advisory and consultancy relating to all the aforesaid.

16. The applicant's applied for goods in class 21, *"bottles; drinks bottles; cups; mugs"* and the opponent's class 21 goods *"bottles; bottles for drinks; cups; mugs"* are all self-evidently identical terms. Consequently, I will conduct my assessment of the earlier marks and the contested mark on the basis that at least some of the goods are identical as that represents the opponent's best case.

The average consumer and the nature of the purchasing act

17. As indicated in the caselaw cited above, it is necessary to decide who the average consumer is for the parties' goods and services and how they purchase them. "Average consumer" in the context of trade mark law means the "typical consumer."[6] The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question.[7]

18. Due to the nature of the goods and services at issue, I find that the average consumer would be the general public. The goods and services are likely to range in price, but overall, they are likely to be fairly inexpensive. The frequency in which the goods are purchased under the services will depend on the sustainability and durability of the materials used. For example, whether they are single use bottles

[6] *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).
[7] *Lloyd Schuhfabrik Meyer*, Case C-342/97.

and containers or reusable. This is likely to be an important factor in the purchasing of the goods at issue, as well as cost and size. As for the selection of services, the general public are likely to consider the range of goods on offer, as well as the quality and speed of service. Overall, the average consumer will exercise a medium degree of attention during the selection process. The goods and services are typically available from physical retail outlets and their online equivalents. The purchasing process will predominately be visual in nature, although I do not discount there may be an aural element where sales representatives or word-of-mouth recommendations are involved.

Comparison of the marks

19. It is clear from *Sabel* (cited above) 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 them, bearing in mind their distinctive and dominant components. The CJEU stated in *Bimbo SA v OHIM*, Case C-591/12P, that:

> "34. […] 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."

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

21. The respective trade marks are shown below:

First earlier mark	Contested mark
PLANET BOTTLE	One Planet

Overall impressions

22. The earlier mark is in word-only format and consists of the words “PLANET BOTTLE”. The overall impression of the mark resides in the words in roughly equal measure, as they join to form a unit, with the word “BOTTLE” having slightly less impact due to its descriptiveness.

23. The contested mark is also presented in word-only format and comprises the words “One Planet”. These words combine to create a single phrase, as such, the overall impression lies in the words equally.

Visual comparison

24. The competing marks are visually similar as they both contain the identical word “PLANET/Planet”. I do not consider the distinction in letter case between the earlier mark and the contested mark to be a point of significant difference between them. This is because the registration of word-only marks provides protection for the words themselves, irrespective of whether they are presented in upper or lower case. The marks differ as the earlier mark contains the added word “BOTTLE” at the end of the mark (which will be seen as descriptive of some of the goods relied upon), whilst the contested mark contains the additional word “One”, at the beginning of its mark. As a result, the competing marks have different beginnings. Taking into account the overall impressions, I find that the competing marks are visually similar to a medium degree.

Aural comparison

25. The competing marks contain a different number of syllables. The earlier mark contains four syllables whilst the contested mark contains three syllables. Both marks will be pronounced in the ordinary way. Whilst the syllables overlap in the word "PLANET" they are in different positions within the competing marks and the remaining syllable(s) within the respective marks differ. Therefore, it follows that the marks start and end with contrasting syllables. Consequently, I find the marks to be aurally similar to a medium degree.

Conceptual comparison

26. For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer.[8] The opponent states:

> *"The conceptual similarity is high as a result of the shared distinctive term "PLANET" – which consumers will understand as a reference to the respective products' eco-friendly credentials. The other words in the marks ("one" and "bottle") are descriptive and/or have a low degree of distinctiveness – thus reducing their impact on the overall conceptual impression generated by the marks."*[9]

27. I do not accept this to be the case as in my opinion, the word "Planet", by itself, does not immediately conjure an eco-friendly message. Even if some members of the general public did reach this conclusion, I consider those consumers to be in the minority. Indeed, if I were to agree with this perspective (that the word "Planet" by itself in the context of the goods relied upon would be perceived as a reference to the eco-friendly nature of the goods), then it would have the effect of reducing the distinctiveness of the earlier mark. Therefore, although there may be a higher conceptual similarity, it would be for a weakly distinctive element. Instead, in my

[8] *Ruiz Picasso v OHIM* [2006] E.T.M.R 29.
[9] Opponent's submissions, page 4 of 6.

view, the competing marks each combine with the additional word in the respective marks to form a unit that creates a different meaning to one another. In the earlier mark as discussed above the combination of the words “PLANET BOTTLE” evokes the concept of a planet full of bottles or a planet that is made out of bottles. In contrast, the contested mark, “One Planet”, when taken as a whole, may be suggestive of an eco-friendly message. It could convey the idea of solidarity for the planet we live on, i.e. that we only have one planet, and may allude to conservation of the planet through use of the goods and services provided. Alternatively, it can be seen as referring to a single planet. Irrespective of how the competing marks are perceived, it is clear that they hold different distinct conceptual messages. Bearing in mind my assessment of the overall impressions, despite the fact that they each contain the identical word “PLANET” its use in each is qualified by another word to create a separate and distinct meaning, therefore they are conceptually dissimilar. Even if I accept that there is a shared allusion to the eco-friendly nature of the goods, the marks would still be conceptually dissimilar as the respective unity concepts are not the same. If the consumer derives the message that the products are good for the planet despite the fact that the actual message is different, it is unlikely to have an impact on the overall decision. However, I will deal with this point below if necessary.

Distinctive character of the earlier mark

28. The distinctive character of a trade mark can be measured only, first, by reference to the goods or services in respect of which registration is sought and, second, by reference to the way it is perceived by the relevant public. 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 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; 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)."

29. 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 or services to those with high inherent distinctive character, such as invented words which have no allusive qualities. Dictionary words which do not allude to the goods or services will be somewhere in between. The degree of distinctiveness is an important factor as it directly relates to whether there is a likelihood of confusion, the more distinctive the earlier mark, the greater the likelihood of confusion.

30. Further, 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 (nor was it required to do so). Consequently, I have only the inherent position to consider.

31. The earlier mark is in word-only format and consists of the words "PLANET BOTTLE". The word "PLANET" has an identifiable dictionary definition, meaning an extremely large mass of rock and gas that orbits the sun or star; for example, such as planet Earth. The word "BOTTLE" will be understood as a container for liquids, with a narrow neck, usually made of glass or plastic, which will be seen as descriptive of some of the goods under the earlier mark. In combination these

words will be seen by consumers as referring to a planet that is full of bottles or a planet made from bottles. Overall, I consider that the earlier mark, as a whole, possesses a medium degree of inherent distinctive character for the goods.

Likelihood of confusion

32. 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 undertaking 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. The first is the interdependency principle i.e. a lesser degree of similarity between the marks may be offset by a greater degree of similarity between the 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 act. In doing so, I must be alive to the fact that the average consumer rarely has an 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.

33. I have found at least some of the goods are identical. The average consumer will be a member of the general public who will pay a medium level of attention during the purchasing process. The purchasing process is predominantly visual, although I do not discount an aural component. The marks are visually similar to a degree somewhere between medium and high, visually similar to a medium degree and conceptually dissimilar. The earlier mark is inherently distinctive to a medium degree.

34. The identity of the goods is clearly a factor in favour of the opponent. However, taking all of the above factors into account, I consider it unlikely that the marks will be mistakenly recalled or misremembered as each other where consumers will be paying a medium level of attention. This is because despite the overlap in the word

"PLANET" the additional elements within the respective marks create a visual and aural difference, especially at the beginnings of the competing marks, a position generally considered to have more of an impact on UK consumers.[10] The conceptual differences will also aid consumers to distinguish between the marks. As such, I do not consider there to be a likelihood of direct confusion. As this finding applies where the goods are identical, it will also apply even if the goods and services are only similar.

35. That leaves indirect confusion to be considered. In *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, Mr Iain Purvis QC, (as he then was) sitting 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

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

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)."

36. These three categories are not exhaustive; rather, they were intended to be illustrative of the general approach, as has been confirmed by the Court of Appeal. I recognise that a finding of indirect confusion should not be made merely because the competing marks share a common element. In this connection, it is not sufficient that a mark merely calls to mind another mark: this is mere association not indirect confusion.

37. Furthermore, in *Liverpool Gin*, 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.

38. Having recognised the differences between the marks, I consider it unlikely that the average consumer will conclude that they originate from the same or economically linked undertakings. In my view, the word "Planet" is not so strikingly distinctive that consumers will believe that only the opponent will be using it in a trade mark. Instead, it will be seen as merely coincidental, particularly as when viewed as a whole, the competing marks convey different meanings which do not necessarily align with a logical brand extension or sub-brand. Consequently, I do not consider there to be a likelihood of indirect confusion.

Final Remarks

39. Irrespective of whether "PLANET BOTTLE" is seen as allusive or not of the recyclable or reusable nature of the goods, this would not change my overall finding that there is no likelihood of confusion between the competing marks. As indicated above, the effect of this would be to reduce the distinctive character of the earlier mark. Therefore, any conceptual overlap as a result of the allusive nature of the goods arising from the word "PLANET" would be in relation to a weakly distinctive element. It is my view that the allusion to such a concept in respect of the goods at issue is likely to be viewed as coincidental by the average consumer and, as such, is not something that points towards a likelihood of confusion.[11]

40. For clarity, even if I were to conduct a full assessment in respect of the other mark relied upon, the outcome would be the same as that which I have reached above.

CONCLUSION

41. The opposition under section 5(2)(b) of the Act has failed in its entirety, therefore, the application may proceed to registration.

COSTS

42. As the applicant has been successful it is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice 2/2016. In the circumstances, I award the applicant the sum of £650, calculated as follows:

Considering the Notice of Opposition and filing a Counterstatement	£300
Written submissions in lieu	£350

[11] *Nokia Oyj v OHIM,* Case T-460/07

Total[12]	**£650**

43. I therefore order Lifetime Brands Europe Limited to pay Andrew Simpson the sum of £650. This sum is to be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 30th day of November 2023

Sarah Wallace
For the Registrar

[12] No award has been given for the filing of evidence as it was not relevant to the outcome of this decision.