

**TRADE MARKS ACT 1994
IN THE MATTER OF TRADE MARK APPLICATION NO 3276446
CHANEL'S GABRIELLE
BY CHANEL LIMITED
IN CLASSES 9, 14 & 18
AND OPPOSITION THERETO NO. 412303
BY CATHERINE SIDONIO**

DECISION

1. This is an appeal brought by the Applicant/Appellant, Chanel Limited, against decision O-670-19 dated 4 November 2019. In that Decision the Hearing Officer, Teresa Perks, upheld the opposition under s.5(2)(b) Trade Marks Act 1994 for goods in classes 18 and cufflinks and tie pins in class 14, and refused it in relation to class 9 and the remaining goods in class 14. The Opponent/Respondent is Catherine Sidonio.
2. On this appeal the Applicant/Appellant maintains that the application should have been allowed to proceed for all the goods applied for. The Opponent/Respondent does not appeal against the partial allowance of the application, but maintains that the Hearing Officer was correct to refuse the application for certain goods as she did, and for additional reasons.
3. The parts of the application under appeal are for the mark CHANEL'S GABRIELLE for the following goods:

Class 14: cufflinks and tie pins
Class 18: handbags; vanity cases (not fitted), briefcases, articles of luggage, wallets, purses (not of precious metal or coated therewith), leather shoulder belts; bags; sporrans; credit card holders; card holders; key holders.
4. The earlier mark relied on is GABRIELLE, filed on 20 October 2016 and registered on 9 February 2018 for the following goods:

Class 25: Articles of clothing, robes, dresses, tunics, cardigans, leggings, scarves, belts, tutus, trousers, t-shirts and sweatshirts; headgear; footwear, boots, shoes, slippers, flip-flops and slides; jumpers, caps, hats, jumpsuits, shorts, tights, skirts, swimsuits, lingerie.
5. As before the Hearing Officer, the Applicant/Appellant was represented by Benet Brandreth QC instructed by Withers & Rogers LLP. The Opponent/Respondent was represented by Amanda Michaels instructed by Kilburn & Strode LLP. The hearing took place by video link on 20 April 2020.

STANDARD OF APPEAL

6. There was no dispute as to this and I refer to the principles set out in the decision of Daniel Alexander QC, sitting as the Appointed Person, in *TT Education Ltd v Pie Corbett Consultancy* [2017] RPC 17 at [52]. I also refer to Lord Hodge in *Actavis Group PTC v ICOS Corporation* [2019] UKSC 1671 at [78]-[81] and particularly [80].

7. To this can be added the guidance set out in the decision of Ian Purvis QC, sitting as the Appointed Person in *ROCHESTER Trade Mark (O-079-17)*, where he stated:

33. I fear that far too much ink has been already spilled by Appellate Courts on these issues with diminishing returns, and I therefore do not propose to say a great deal more. So far as the particular context of this appeal is concerned, I would simply add that the reluctance of the Appointed Person to interfere with a decision of a Hearing Officer on likelihood of confusion is quite high for at least the following reasons:
- (i) The decision involves the consideration of a large number of factors, whose relative weight is not laid down by law but is a matter of judgment for the tribunal on the particular facts of each case
 - (ii) The legal test 'likely to cause confusion amongst the average consumer' is inherently imprecise, not least because the average consumer is not a real person
 - (iii) The Hearing Officer is an experienced and well-trained tribunal, who deals with far more cases on a day-to-day basis than the Appellate tribunal
 - (iv) The legal test involves a prediction as to how the public might react to the presence of two trade marks in ordinary use in trade. Any wise person who has practised in this field will have come to recognize that it is often very difficult to make such a prediction with confidence. Jacob J (as he then was) made this point in the passing off case *Neutrogena v Golden* [1996] RPC 473 at 482:

'It was certainly my experience in practice that my own view as to the likelihood of deception was not always reliable. As I grew more experienced I said more and more "it depends on the evidence."'

Any sensible Appellate tribunal will therefore apply a healthy degree of self-doubt to its own opinion on the result of the legal test in any particular case.

34. I shall therefore approach this appeal on the basis that in the absence of a distinct and material error of principle, I ought not to interfere with the decision of the Hearing Officer unless I consider that his view on the issue of likelihood of confusion was clearly wrong in the sense that it was outside the range of views which could have been reasonably taken on the established facts."

8. In order to allow the appeal I must therefore be satisfied that there was an error of law or that the decision is outside the bounds within which reasonable disagreement is possible.

THE FINDINGS OF THE HEARING OFFICER

9. There is no dispute with the Hearing Officer's summary of the law which recited the familiar cases and principles relevant to the assessment of s.5(2)(b).

10. The first task to which the Hearing Officer turned was to compare the goods. This is not the subject of any ground of appeal and it is only necessary for me to record the following. The Hearing Officer found that the applicant's goods in class 18 and cufflinks

and tie pins in class 14 were similar to a low degree to the opponent's clothing in class 25.

11. The next topic dealt with by the Hearing Officer was to identify the average consumer and purchasing process. Again, this is not in dispute. She identified this as follows:

34. The average consumer for the respective goods in class 14, 18 and 25 is composed of the general public who will pay a normal degree of attention when selecting the goods. The goods will be obtained by self-selection from a retail outlet or online or catalogue equivalent. 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 of the goods, bearing in mind that advice may be sought from a sales assistant.

12. The focus of the appeal was on the Hearing Officer's comparison of the marks. The Hearing Officer instructed herself by reference to paragraph 34 of Case C-591/12P, *Bimbo SA v OHIM* and explained

36. 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. ...

13. She then proceeded to analyse the marks and concluded at §38 in relation to the mark applied for that "*The presence of the apostrophe and the letter S creates a message that the second element, GABRIELLE, is something that is possessed by CHANEL with both elements making a roughly equal contribution to the overall impression of the mark*".

14. She went on to consider the admitted reputation of Chanel and concluded at §40:

- a large group of consumers of the applicant's fashion accessories in classes 14 and 18 will recognise Chanel as the name of the renowned fashion house;

...

- consumers who are familiar with Chanel will perceive CHANEL as the house mark. The presence of the apostrophe and genitive letter 'S' is likely to result in the personal name GABRIELLE being seen as a secondary indication of origin and being taken as, for example, a brand or product name of CHANEL. This, in my view, carries the corollary that GABRIELLE performs an independent distinctive role in the context of the applicant's mark.

15. As to visual and aural similarity, she held that the marks were similar to a medium degree. She then went on to assess conceptual similarity and came to the same conclusion. She attributed a medium level of distinctiveness to the opponent's mark.

16. Finally, she turned to the likelihood of confusion. She noted that the opponent's case was put forward as one of indirect confusion and she referred to the decision of Iain Purvis QC in *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10. She also made reference to Case C-120/04 *Medion* [2005] ECR I-8551, Arnold J.'s summary of the law relating to composite signs in *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another*

[2015] EWHC 1271 (Ch) and the decision of James Mellor QC in *The Cheeky Indian*, BL-O-219/16.

17. She summarised her earlier findings in §59, concluding “*The element CHANEL in the contested mark will be recognised by most consumers as a reference to Chanel, the renowned fashion house, and the significance of CHANEL’S GABRIELLE as whole, will be that of GABRIELLE belonging to CHANEL with GABRIELLE performing an independent distinctive role within the mark.*”
18. She dealt with what she called the co-branding argument in §60, holding that the mark applied for would not signify in the mind of the average consumer a collaboration or tie-up. Instead the average consumer would assume that the element GABRIELLE in the applicant’s mark is a secondary indication of origin and perceive it as an in-house brand.
19. Nevertheless, she found that GABRIELLE retained a distinctive role independent of CHANEL’S (§61). She considered the following scenario in §63:
 63. ...A consumer might see, for example, a picture of the opponent’s goods sold under the mark GABRIELLE in advertising or on a billboard and assume that Chanel sometimes uses GABRIELLE with the house mark, and sometimes without it. In that event, consumers would be likely to think that the user of GABRIELLE and CHANEL’S GABRIELLE were one and the same undertaking, or economically related undertakings. Although that sort of confusion is, in a way, the wrong way round, in *Comic Enterprises*⁸ the Court of Appeal ruled that 'wrong way round confusion' can be relevant to establish whether there is a likelihood of confusion.
20. Her conclusions in §64 were expressed as follows:
 64. In my view, if GABRIELLE in CHANEL’S GABRIELLE is perceived as a sub-brand of CHANEL, there is a likelihood that consumers who see the mark GABRIELLE on similar goods, are likely to believe that it has some connection with CHANEL’S GABRIELLE. Even if the degree of similarity between the goods is low, given the sector in which the parties operate, i.e. the fashion industry, it is material and not sufficient to avoid confusion.
21. As a result, she found there was a likelihood of indirect confusion, emphasising that she would have reached the same conclusion even if GABRIELLE was distinctive only to a low to medium degree. She accordingly allowed the opposition insofar as it was brought in relation to goods which retained some similarity, but rejected it in relation to the goods which were different.

THE APPEAL

22. The Applicant appealed under six grounds. Sensibly, before me Mr Brandreth focussed on grounds 1 and 3, which he said fed into the ultimate error on likelihood of confusion under ground 5. As for ground 2 (failure to give reasons) he explained that it was not clear how significant the error made was. He conceded that he could not succeed on grounds 4 and 6 if he did not succeed on the other grounds, although he maintained that the Hearing Officer still erred in relation thereto. I will deal with the arguments accordingly.

First Ground of Appeal – Composite Mark

23. The first ground of appeal was that the Hearing Officer erred in concluding at the end of §40 that GABRIELLE performs an independent distinctive role in the context of the application. It was said that this was inconsistent with her earlier finding in §38 that both elements make a roughly equal contribution, and that having correctly held that the first part of the mark qualified the second part, it was wrong of the Hearing Officer to attribute any independence to the second part.
24. Mr Brandreth referred to the case-law relating to composite marks – in particular *Medion, Bimbo SA v OHIM* Case C-591/12P and Arnold J's summary of the relevant principles in *Aveda Corp v Dabur India Ltd* [2013] EWHC 589 (Ch) and *Whyte and Mackay Ltd*.
25. In particular, he highlighted Arnold J.'s summary in §45 of *Aveda*:
45. ... The essence of the Court of Justice's reasoning in *Medion v Thomson* is that an average consumer of leisure electronic products confronted with the composite sign THOMSON LIFE could perceive both the whole and its constituent parts to have significance and thus could be misled into believing that there was a similar kind of connection between the respective undertakings.
26. He also referred to §20 of *Whyte and Mackay* which, unlike *Aveda*, was written with the benefit of the CJEU's decision in *Bimbo*:
20. The second point is that this principle can only apply in circumstances where the average consumer would perceive the relevant part of the composite mark to have distinctive significance independently of the whole. It does not apply where the average consumer would perceive the composite mark as a unit having a different meaning to the meanings of the separate components. That includes the situation where the meaning of one of the components is qualified by another component, as with a surname and a first name (e.g. BECKER and BARBARA BECKER).
27. Mr Brandreth contrasted these observations with those of the Hearing Officer at §38 which he said amounted to a finding that GABRIELLE does not have an independent distinctive role in the context of the Applicant's mark and therefore fell outside the exception that *Medion* identifies. He also sought to draw parallels between CHANEL'S GABRIELLE and the qualification between the elements of BARBARA BECKER.
28. In short it was suggested that the Hearing Officer, having found correctly that GABRIELLE was possessed by CHANEL in §38, should not have then gone on to find in §40 that GABRIELLE nevertheless possessed an independent distinctive role in the context of the Applicant's mark
29. However, I do not detect any contradiction in the findings of the Hearing Officer or error in her approach. Nor do I get any assistance from attempting to compare facts between *Aveda* or *Whyte and Mackay* and the present case, as it was suggested I could.
30. This is because the findings in §§38 and 40 of the Hearing Officer's decision amounted to different points. In §38 the Hearing Officer was assessing the grammatical and visual impact of the Applicant's mark as a whole and correctly identified that the words would

be read as connected, with CHANEL'S providing a possessive element to GABRIELLE – yet with both elements contributing equally to the overall impression of the mark. In §40 she had gone on to assess the accepted reputation of the CHANEL mark and how that would affect the conceptual understanding of the Applicant's mark as a whole. She was entitled to find in this regard, notwithstanding her earlier observation in §38, that GABRIELLE would be seen as a secondary indication of origin such as a brand or product name of CHANEL. It thus cannot be ignored completely and therefore performs its own distinctive role in the mark – as identifying the secondary brand.

31. This appears to me to be entirely consistent with the CJEU's guidance in *Medion*. There, the Court was not setting a bright-line "exception" to the overall impression test or imposing a high hurdle for whether a mark contained a component with an independent distinctive role. On the contrary it expressly contemplated the shades of grey applicable to any such analysis, as the following extract makes clear (emphasis added):

30. However, beyond the usual case where the average consumer perceives a mark as a whole, and notwithstanding that the overall impression may be dominated by one or more components of a composite mark, it is quite possible that in a particular case an earlier mark used by a third party in a composite sign including the name of the company of the third party **still has an independent distinctive role in the composite sign, without necessarily constituting the dominant element.**

31. In such a case the overall impression produced by the composite sign may lead the public to believe that the goods or services at issue derive, at the very least, from companies which are linked economically, in which case the likelihood of confusion must be held to be established.

32. **The finding that there is a likelihood of confusion should not be subject to the condition that the overall impression produced by the composite sign be dominated by the part of it which is represented by the earlier mark.**

33. If such a condition were imposed, the owner of the earlier mark would be deprived of the exclusive right conferred by Article 5(1) of the directive **even where the mark retained an independent distinctive role in the composite sign but that role was not dominant.**

34. This would be the case where, for example, the owner of a widely-known mark makes use of a composite sign juxtaposing this mark and an earlier mark which is not itself widely known. **It would also be the case if the composite sign was made up of the earlier mark and a widely-known commercial name. In fact, the overall impression would be, most often, dominated by the widely-known mark or commercial name included in the composite sign.**

35. Thus, contrary to the intention of the Community legislator expressed in the 10th recital in the preamble to the directive, the guarantee of the earlier mark as an indication of origin would not be assured, even though it still had an independent distinctive role in the composite sign.

36. It must therefore be accepted that, in order to establish the likelihood of confusion, it suffices that, because the earlier mark **still has an independent distinctive role**, the origin of the goods or services covered by the composite sign is attributed by the public also to the owner of that mark.

32. In other words, it is not necessary that the earlier mark has the dominant role in the composite mark – it must merely have some sort of independent distinctive role. That is made clear by the example referred to in the second half of §34 of the CJEU decision,

which has parallels with the present case. So the *Medion* principle therefore covers a wide variety of situations. The Hearing Officer's conclusions in the present case that GABRIELLE is possessed by CHANEL and makes a roughly equal contribution to the overall impression of the mark is not inconsistent with GABRIELLE still performing an independent distinctive role, even if not a dominant one.

33. None of this reasoning is undermined by *Bimbo* or §20 of *Whyte and Mackay*. Indeed, *Bimbo* at §§33-35 confirms that the principle in *Medion* is simply part of the overall impression test, and not an exception to that rule. Moreover, every case turns on its particular circumstances. The only relevant qualification to *Medion* made by §20 of *Whyte and Mackay* is to point out that where no part of the mark would be seen to have distinctive significance independently of the whole, then *Medion* is of no relevance. On the facts of *Becker v Harman International Industries* EU:C:2010:368, neither element of BARBARA BECKER had distinctive significance. But those are not the findings of fact of the Hearing Officer in the present case and I decline to interfere with her conclusions in this regard. She was entitled to hold that notwithstanding the possessive meaning conveyed by CHANEL'S, GABRIELLE would still be seen by the average consumer as having an independent distinctive role. I therefore dismiss the first ground of appeal.

Third Ground of Appeal – Conceptual Similarity

34. The third ground of appeal was that the Hearing Officer's reasoning on conceptual similarity was wrong in law. Mr Brandreth referred me to the case-law on the assignment of conceptual meaning to names and submitted that the Hearing Officer had clearly fallen into error. In particular he submitted that it was wrong for the Hearing Officer to conclude in §45 that GABRIELLE has the same conceptual significance in both marks and also wrong to conclude that the possessive element does not remove the conceptual similarity in the Applicant's mark.
35. As to the first point, Mr Brandreth submitted that the mere presence of a common name does not transmit a common conceptual message. Indeed, he submitted that a name in itself carries no conceptual message unless perceived as that of a famous person, and relied on two General Court cases in support of this – Cases T 502/07 *McKenzie* and T 557/10. *H.Eich*.
36. In the former case the General Court was comparing the *McKenzie* and *McKinley* device marks and confirmed the view of the Board of Appeal that the marks were conceptually different at §§40-42:
40. On a conceptual level, it must be pointed out that the relevant public recognises the prefix 'Mc', signifying 'son of', as a prefix to many Scottish or Irish family names. That public will therefore regard the word elements of the marks at issue as Celtic family names of no conceptual significance, unless the name is the particularly well-known name of a famous person (Case T-185/02 *Ruiz-Picasso and Others v OHIM – DaimlerChrysler (PICARO)* [2004] ECR II-1739, paragraph 57, upheld by the Court of Justice in Case C-361/04 P *Ruiz-Picasso and Others v OHIM* [2006] ECR I-643). However, the applicant has not shown that such a situation exists in the present case.

41. Thus, if the relevant public associates the word elements of the marks at issue with Scottish or Irish family names, it will link them with particular families, given that those family names are different. Consequently, the trade marks in question are not conceptually similar.
42. Furthermore, and as pointed out by the Board of Appeal, it is possible that certain persons may link the element 'McKinley' with the name of the highest mountain in North America. The association of that element with the name of a mountain is all the more conspicuous with regard to the earlier Community figurative mark McKINLEY, since it contains the drawing of a symbolic mountain. By contrast, the fact that the element 'McKenzie' is identical to the name of a mountain situated in Australia is little known to the relevant public. Thus, even supposing that a section of the relevant public may associate the element 'McKinley' with the name of a mountain, the elements at issue would be conceptually distinct, since one of the two does not have a clear and specific semantic content for the relevant public. The Board of Appeal thus acted correctly in law in taking the view that those marks were conceptually different.
37. I do not understand this to be a finding in law that surnames can never confer conceptual meaning, unless they are famous. Nor do I understand this from either of the Picasso/Picaro decisions. On the contrary, in that case the reputation of Pablo Picasso was so great that the CFI held at §58 that the conceptual differences separating the signs at issue were such as to counteract the visual and phonetic similarities. The CJEU then characterised this as a finding of fact when it upheld the reasoning at §23 of its decision:
23. Thereafter, the Court of First Instance ruled, in paragraph 56 et seq. of the judgment under appeal, on the overall impression given by those signs and concluded, **following a factual assessment which it is not for the Court to review in an appeal where there is no claim as to distortion of the facts**, that there was a counteraction of the visual and phonetic similarities on account of the particularly obvious and pronounced nature of the conceptual difference observed in the present case. In doing so, the Court of First Instance, in its overall assessment of the likelihood of confusion and as is apparent from paragraph 59 of that judgment, took account in particular of the fact that the degree of attention of the relevant public is particularly high as regards goods like motor vehicles.
38. I do not therefore accept that the sentence relied on by Mr Brandreth in §40 of *McKenzie* is a statement of law; rather it was a conclusion on the facts of that case ("*That public will therefore regard the word elements of the marks at issue as Celtic family names of no conceptual significance, unless the name is the particularly well-known name of a famous person*"). For the same reasons I regard the reference in the translations of the *H.Eich* case which Mr Brandreth provided also to be confined to the facts of that case.
39. Moreover there are a number of differences in the facts between the *McKenzie* and *H.Eich* case and the present, the most crucial of which is that the names being compared in those cases were each different, and that even in the *McKenzie* case the most similar parts of the marks would be dismissed as a celtic prefix. As Emma Himsforth QC concluded in Decision O-276-18 *Sandro* at §30 "*It is ... necessary to make an assessment of conceptual similarity between names on the basis of each individual case*".

40. Accordingly, I conclude that the attribution of conceptual meaning to a name is a matter of fact and degree and will depend, amongst other things, on the particular names in issue and the identity or similarity between them. In the present case the two names GABRIELLE are identical, and I consider that the Hearing Officer was therefore entitled to conclude that they could be conceptually similar.
41. I turn now to the Hearing Officer's actual finding of similarity and Mr Brandreth's criticism that she did not place enough weight on the possessive meaning of CHANEL'S in the Applicant's mark. This attack relies on her statement in §38 that GABRIELLE is possessed by CHANEL as meaning that in the absence of CHANEL'S there can be no conceptual similarity. But it ignores the other statements by the Hearing Officer in §38 "*both elements making a roughly equal contribution to the overall impression of the mark*" and §40 "*Gabrielle performs an independent distinctive role in the context of the applicant's mark*" to which I have referred above. I have already concluded that the Hearing Officer was entitled to make these findings and they were not inconsistent with the passage in §38 that Mr Brandreth relies on.
42. For these reasons I do not see any basis to interfere with the Hearing Officer's finding on conceptual similarity in §45. As Ms Michaels submitted, this is a finding of fact and in the absence of any error of law all Mr Brandreth is asking me to do is to substitute my view for that of the Hearing Officer. I decline to do so.
43. For these reasons I dismiss the third ground of appeal.

Fifth Ground of Appeal – Likelihood of Confusion

44. The fifth ground of appeal took the first and third grounds and applied them to the overall assessment of the likelihood of confusion. Further, it was said that the Hearing Officer erred in concluding that there would be indirect confusion in the present case.
45. Based on my conclusions above in relation to the first and third grounds, there is no reason based on these to assess the likelihood of confusion afresh. However, it is still necessary to analyse whether the Hearing Officer erred in her characterisation of indirect confusion.
46. Mr Brandreth correctly pointed out that the Hearing Officer rejected the suggestion that the Applicant's mark would be seen as an example of co-branding (Decision §60). Instead she concluded that the average consumer would see GABRIELLE as a secondary indication of origin and perceive it as an in-house or sub-brand (§60).
47. Nevertheless, she went on to find that there was a likelihood of indirect confusion. She rejected the notion that CHANEL was so strikingly distinctive that its absence in the earlier mark meant there could be no confusion (§62). She then considered the law on sub-brands, referring to Case C-12/12 *Colloseum*, and so-called "wrong way round confusion", referring to *Comic Enterprises v Twentieth Century Fox* [2016] EWCA 41 at §§75-84. In that case Kitchin LJ explained at §80:

80. ...whether a particular instance of confusion is "right way round" or "wrong way round" may be a consequence of nothing more meaningful than the order in which the consumer happened to come across the mark and the sign. Further, in both cases the consumer

thinks that the goods or services in issue come from the same undertaking or economically linked undertakings, and they may be equally damaging to the distinctiveness and functions of the mark.

48. The Hearing Officer applied these authorities to the present case by considering what might happen were a consumer, seeing the Applicant's mark, was then to see the Opponent's goods on a billboard. She concluded that the consumer could assume that Chanel sometimes uses GABRIELLE with the house mark (CHANEL), and sometimes without, thus leading them to think that the Applicant and the Opponent were the same or economically linked undertakings. Thus, she concluded, the perception of GABRIELLE as a sub-brand of CHANEL means that seeing GABRIELLE on similar goods is likely to lead to consumers believing that it has some connection with CHANEL'S GABRIELLE.
49. I understand this to be nothing more than the application of Kitchin LJ's explanation of "which way round" confusion to the example where the average consumer sees the Opponent's mark second. This was a legitimate application of the principle and does not engage with the problems identified by James Mellor QC in *The Cheeky Indian* O-219/16. The Hearing Officer identified the mental process of the average consumer, and although this case is not identical to any of the categories of case referred to by Iain Purvis QC in *L.A. Sugar*, those categories are not closed and it is consistent with them.
50. So once again, I can see no reason to interfere with the conclusions of the Hearing Officer. I have identified no error of law, and her conclusions on likelihood of confusion are within the generous ambit permitted by the orthodox approach to these appeals set out in *Rochester*.

Other Grounds

51. The second ground of appeal was a criticism that the Hearing Officer failed to give reasons in relation to her conclusion that there was a medium degree of visual and aural similarity between the marks.
52. I reject this criticism. This part of the decision is brief, but the Hearing Officer did explain why she reached her conclusion – the presence in both marks of the word GABRIELLE. Further, she was also entitled to reach this conclusion. As Lord Justice Robert Walker explained in *Reef* [2003] RPC 5 at 29:
 29. The appellate court should not treat a judgment or written decision as containing an error of principle simply because of its belief that the judgment or decision could have been better expressed. The duty to give reasons must not be turned into an intolerable burden...
53. The fourth ground of appeal was a criticism that the Hearing Officer should not have attributed to GABRIELLE a medium degree of distinctiveness. Mr Brandreth accepted that this could not result in a reversal of the Hearing Officer's decision if he could not succeed on the other grounds. He was right to do so. As I recorded above, the Hearing Officer held in §65 that there was a likelihood of confusion even if GABRIELLE was distinctive only to a low to medium degree. She was entitled to come to this conclusion and I reject this ground of appeal.

54. The same goes for the sixth ground of appeal. This amounted to a criticism that the Hearing Officer should not have found that cufflinks and tie pins were similar to the opponent's clothing because they were also items of jewellery which she had held were not similar. It was said that the Applicant did not have an opportunity to make submissions in this regard. This criticism is rejected; the Applicant did make submissions in relation to the similarity of the goods. Further, the Hearing Officer was entitled to decide as she did on this point.
55. In summary, I find no error of principle on the part of the Hearing Officer. Nor, standing back, do I think she was wrong in the sense that her conclusion was outside the range of views which could have been reasonably taken on the established facts. For all these reasons I dismiss the appeal.

Respondent's Notice

56. The Respondent/Opponent put forward a number of arguments as to why the Hearing Officer was right for further or additional reasons. In the light of my decision above, I do not need to deal with these. However, it is difficult to see how the Respondent could have succeeded on these additional points had the Appellant been right about any of errors 1, 3 of 5 identified above.

CONCLUSION

57. For the reasons given above I dismiss the appeal.

COSTS

58. The appeal has failed and in the usual way costs should follow the event.
59. The Applicant/Appellant submitted lengthy grounds of appeal, each of which had to be dealt with by the Opponent/Respondent. The Opponent/Respondent then prepared for and attended a half-day video hearing. I assess the costs of this appeal payable by the Appellant/Applicant to be £1450, which should be paid within 21 days of the date of this decision.

Thomas Mitcheson QC
The Appointed Person
24 April 2020