

O/269/21

TRADE MARKS ACT 1994

**IN THE MATTER OF
TRADE MARK APPLICATION NO. 3512395
BY MANPREET GILL
TO REGISTER:**

MNKY LOUNGE

**AS A TRADE MARK
IN CLASS 43**

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 600001545
BY MNKY HSE HOLDINGS LIMITED**

Background and Pleadings

1. On 15 July 2020 Manpreet Gill (“the applicant”) applied to register the trade mark MNKY LOUNGE in the UK. The application was accepted and published in the Trade Marks Journal on 16 October 2020 in respect of the following services:

Class 43 *Bar and restaurant services*

2. MNKY HSE HOLDINGS LIMITED (“the opponent”) filed a notice of opposition on 8 December 2020 under the fast track opposition procedure on the basis of Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opponent relied on the trade marks shown below:

UK00003141661 (“the first earlier mark”)

MNKY HSE

Filing date: 21 December 2015.

Date of entry in register: 18 March 2016.

Relying on the following services:

Class 43: *restaurant services; bar services.*

UK00003470876 (“the second earlier mark”)

MNKY KTCHN

Filing date: 28 February 2020.

Date of entry in register: 10 August 2020.

Relying on the following services:

Class 43: *restaurant services; bar services.*

UK00003470873 (“the third earlier marks”) – A series of two figurative marks as shown below:



Filing date: 28 February 2020.

Date of entry in register: 10 August 2020.

Relying on the following services:

Class 43: *restaurant services; bar services.*

3. The opponent submits that there is a likelihood of confusion because the applicant’s mark is similar to the opponent’s earlier marks and the respective services are identical. In particular, the opponent argues that:

- the applicant’s mark and the earlier marks all share the dominant element “MNKY” in common which gives rise to visual and aural similarity between the marks.
- “MNKY HSE” (in the first earlier mark) will be read as “monkey house” and “MNKY KTCHN” (in the second earlier mark) will be read as “monkey kitchen”, which are conceptually similar to the element “LOUNGE” in the applicant’s mark.
- “MNKY” has no meaning in relation to the services claimed under the earlier marks which makes it highly distinctive, increasing the likelihood of confusion.

- the applicant's services for registration are identical to bar services and restaurant services in the earlier marks.

4. The applicant filed a defence and counterstatement denying the claims made. The main points emerging from the counterstatement are as follows:

- The applicant argues that "there is an obvious difference" between the marks "MNKY HSE" and "MNKY LOUNGE" and there is no confusion between the marks.
- The applicant submits that it is using "MNKY as an abbreviation of "monkey" and that the opponent's mark "MNKY HSE" will be read as "monkey house". The applicant argues that the term monkey cannot be trademarked as it is an abbreviation of a very common word.
- The applicant submits that its services can be distinguished from those provided by the opponent by the factor that the opponent operates a high-end Latin fine dining restaurant in Mayfair, whereas the applicant operates a small student lounge in Reading.

5. The opponent is represented by Boulton Wade Tennant LLP and the applicant represents itself. Neither party filed evidence. No hearing was requested, and the opponent filed a submission in lieu of a hearing. In its submissions, the opponent argues as follows:

- that it is common ground that the "MNKY" element in each mark will be read and articulated by the average consumer as being the word "monkey" (a perception which is reinforced in the third earlier mark by the image of a monkey) and "HSE" as "house". Further, the opponent submits that "KTCHN" will be read and articulated as "kitchen". According to the opponent, it is sensible that these interpretations will be applied as a significant proportion of people will be familiar with the concept of removing vowels from a word as it has been the practice in SMS and text messaging for years; however, even accepting that there are some individuals that may articulate "MNKY" as

“Em, En, Kay, Wye”, the opponent submits that there will be still be aural similarity between the marks as this element is shared.

- that a degree of aural similarity exists between the elements “house” from the opponent’s earlier mark and “lounge” from the applicant’s mark. This is due to the fact they are both monosyllabic words that share the same “ou” sound.
- that conceptually there is an “obvious link” between the “MNKY” element and the “house” and “lounge” elements because both elements evoke the idea of a relaxed and playful (‘monkeying around’), comfortable “home” environment which contributes to the essence and distinctiveness of the brand.
- that restaurant and bar services in the applicant’s specification are identical to restaurant services and bar services in the opponent’s earlier marks and that the restaurant services in the opponent’s specification is not limited to “fine dining”.
- that the average consumer is an ordinary member of the public who will not exercise a higher than average degree of attention and that the services are purchased regularly and routinely.
- that the word “monkey” is inherently distinctive in relation to the services and the distinctive character of each mark lies predominately in the “MNKY” element.
- that recommendations for the services are often received aurally or read in reviews and recollected later. According to the opponent, the customers’ imperfect recollection, the distinctive role played by the “MNKY” element, the common concept and the ‘ou’ similarity mentioned above, are likely to lead to direct confusion and even if the average consumer recalls the distinction between “LOUNGE” and “HSE”, their recollection of “MNKY” is likely to lead to an assumption of a commercial connection.

6. Rule 6 of the Trade Marks (Fast Track Opposition)(Amendment) Rules 2013, S.I. 2013 No. 2235, disapplies paragraphs 1-3 of Rule 20 of the Trade Marks Rules 2008 (“TMR”) but provides that Rule 20(4) shall continue to apply. Rule 20(4) states that:

“(4) The registrar may, at any time, give leave to either party to file evidence upon such terms as the registrar thinks fit”.

7. The effect of the above is that parties are required to seek leave in order to file evidence (other than the proof of use evidence which is filed with the notice of opposition) in fast track oppositions. No leave was sought in respect of these proceedings.

8. Rule 62(5) (as amended) states that arguments in fast track proceedings shall be heard orally only if (i) the Office requests it or (ii) either party to the proceedings requests it and the Registrar considers that oral proceedings are necessary to deal with the case justly and at proportionate cost. Otherwise, written arguments will be taken. A hearing was neither requested nor considered necessary. This decision is taken following a careful reading of all of the papers.

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

Decision

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

(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,

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

11. An earlier trade mark is defined in Section 6 of the Act, the relevant parts state:

“6(1) In this Act an “earlier trade mark” means –

(a) a registered trade mark, international trade mark (UK) or Community trade mark or international trade mark (EC) which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks.

(2) References in this Act to an earlier trade mark include a trade mark in respect of which an application for registration has been made and which, if registered, would be an earlier trade mark by virtue of subsection (1)(a) or (b) subject to its being so registered.”

12. The opponent’s marks qualify as earlier marks within the meaning of Section 6(1) of the Act because they have an earlier filing date than the contested application. The earlier marks completed registration less than five years before the application date of the contested mark and, as a result, are not subject to proof of use provisions.

Section 5(2) - Case law

13. 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 impression 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 greater 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 to mind the earlier mark, 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 will wrongly believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

Comparison of the services

14. The services to be compared are as follows:

| Applicant's services | Opponent's services |
|--|--|
| <p>Class 43: <i>Bar and restaurant services</i></p> | <p><u>First earlier mark</u></p> <p>Class 43: <i>Restaurant services; bar services.</i></p> |
| | <p><u>Second earlier mark</u></p> <p>Class 43: <i>Restaurant services; bar services.</i></p> |
| | <p><u>Third earlier marks</u></p> <p>Class 43: <i>Restaurant services; bar services.</i></p> |

15. Although I note the point made by the applicant that the opponent operates a high-end Latin fine dining restaurant in Mayfair, whereas, the applicant operates a small student lounge in Reading, it does not assist the applicant. This is because I must consider notional and fair use of the opponent's marks across all segments of the markets for the services for which they are registered. This means that the particular segment of the market (or geographical area) in which the opponent has so far chosen to trade does not deprive the opponent's marks of the normal level of protection afforded to every registered trade mark. Consequently, I must include consideration of the likelihood of confusion if both parties decide to target the same segment of the market. Therefore, the fact that the parties currently target different

market segments is irrelevant where the services at issue are fundamentally the same.

16. The opponent does not rely on all of its registered services but relies on *restaurant services* and *bar services* from the registrations of the earlier marks for its opposition. *Bar and restaurant services* in the applicant's specification and *Restaurant services* and *bar services* in the specification of the opponent's earlier marks are self-evidently identical.

Average consumer and the purchasing act

17. As the law above indicates, it is necessary for me to determine who the average customer is for the parties' services. I must then determine the manner in which the services 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.”

18. The average consumer of the services at issue will be a member of the general public, and in relation to bar services, specifically members of the adult general public. The selection of the services will be primarily visual, following the inspection of the premises' frontage on the high street, website or advertisements in magazines or on posters, in print or online. That said, as such services may also be the subject of, for example, word-of mouth recommendations or oral requests, aural considerations must not be forgotten. Therefore, any aural similarity between the marks must also be given, albeit relatively less, weight.

19. The opponent submits that the average consumer will not exercise a higher than average degree of attention and that the services are purchased regularly and routinely. The applicant has not commented on the average consumer or the level of attention that s/he will display.

20. The average consumer's level of attention will vary, depending on factors such as the type of food and drink provided, the cost of the service offered and the nature of the establishment. Purchases of the services can, of course, range significantly in price and frequency (from Michelin starred restaurants to fast food outlets). However, even where the cost is fairly low and purchases are likely to be relatively frequent, a number of factors will be taken into consideration such as the hygiene rating and the type of food offered. I, therefore, consider that a medium degree of attention will be paid during the purchasing process.

Comparison of the marks

21. The respective trade marks are shown below:

| | |
|--|-----------------------------|
| <p>MNKY HSE (the first earlier mark)</p> | <p>MNKY LOUNGE</p> |
| <p>MNKY KTCHN (the second earlier mark)</p> | |
| <p>  MNKY KTCHN  MNKY KTCHN (the third earlier marks) </p> | |
| <p>Earlier trade marks</p> | <p>Contested trade mark</p> |

22. 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 trade marks must be assessed by reference to all 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.”

23. 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.

Overall impression

24. The applicant's mark is a word-only mark that consists of the letters “MNKY” and the word “LOUNGE”. The overall impression of the mark lies in the combination of these elements.

25. The opponent's first and second earlier marks consist of the letters “MNKY” followed by the letters “HSE” (in the first earlier mark) and “KTCHN” (in the second earlier mark). The marks have no other elements that contribute to the overall impression which lies in the combination of these elements.

26. The opponent's third earlier mark is a series of two composite marks. The marks are made up of the letter sequence “MNKY KTCHN” which is stylised; this text appears in black and white (in the first mark of the series) and in red and white (in

the second mark of the series). The word element of both marks is presented under the black and white graphic of a monkey. Although I bear in mind the principle that “words speak louder than devices”, the eye is nonetheless drawn to the monkey device which is relatively larger compared to the word element and it is positioned directly above the words “MNKY KTCHN”. I also find that the monkey device will clarify the letter sequence “MNKY” and contributes to its perception as an abbreviation for the word “MONKEY”. I therefore consider that the letter sequence “MNKY KTCHN” and the device play an equal role within the overall impression of the marks.

Visual comparison

First and second earlier marks *versus* contested mark

27. The applicant argues that there is an “obvious difference” between the marks “MNKY HSE” and “MNKY LOUNGE” but does not clarify what is meant by that statement. On the other hand, the opponent submits that there is a visual similarity between the marks as they share the “dominant element ‘MNKY’”. Visually, the competing marks coincide in the element “MNKY” which is reproduced at the start of each of the marks. There are points of visual difference between the marks, as the marks end in “HSE”, “KTCHN” and “LOUNGE” respectively. As a general rule, the beginning of the mark tends to make more impact than the endings,¹ especially as words are read from left to right. Therefore, I consider the first and the second earlier mark to be visually similar to a medium degree to the contested mark.

Third earlier marks *versus* contested mark

28. As the third earlier marks share the same common element “MNKY”, the comparison above in relation to this element applies to the third earlier marks. Furthermore, I recognise that a stylised font has been used in the third earlier marks. However, this stylisation is minimal and does not create a point of difference because the registration of the mark does not prevent its use in different fonts or

¹ *El Corte Ingles, SA v OHIM*, Cases T-184/02

typefaces. Therefore, I do not consider this to be a significant point of visual difference. The third earlier marks also possess figurative elements that are clearly identifiable as being a monkey and I found to be co-dominant in the overall impressions of the marks; this can be distinguished from the applicant's mark. Overall, I consider the third earlier marks to be visually similar to a low degree.

Aural comparison

29. The opponent submits in its notice of opposition that "MNKY HSE" will be articulated as "monkey house". The opponent also submits that "MNKY KTCHN" will be read and articulated as "monkey kitchen" and that some individuals may pronounce "MNKY" as an acronym, i.e. "Em, En, Kay, Wye". If this is the case, the opponent submits that there will still be aural similarity between the marks as this element is shared. The applicant has also accepted in its defence and counterstatement that the opponent's earlier mark "MNKY HSE" will be pronounced as "monkey house" and that "MNKY" is an abbreviation of "monkey".

30. The marks coincide in the pronunciation of the element "MNKY" (whether it will be pronounced as the word "monkey" or – less likely in my view- as an acronym) but they differ in their endings, which will be articulated as the words "house", "kitchen" and "lounge" respectively. The opponent submits that some similarity exists between the applicant's mark and the opponent's first earlier mark due to the fact they are both monosyllabic words that share the same "ou" sound. In my view, the positioning of the "ou" within the words results in different pronunciation; "ou" will be pronounced as "OU" in "house" but "AOW" in "LOUNGE". Therefore, I do not find aural similarity between these elements of the marks. I do not consider that the figurative element in the third earlier marks will be articulated. Consequently, I consider that the applicant's mark and the opponent's earlier marks are all aurally similar to a medium degree.

Conceptual comparison

31. As discussed above, in the aural comparison, the applicant accepts the opponent's submission that "MNKY HSE" will be perceived as "monkey house" and

I will proceed on that basis conceptually. The use of “MNKY” in all of the marks, perceived as “monkey”, will give rise to a reasonable degree of conceptual similarity between the marks.

32. I also agree with the opponent that there is a conceptual link between the letter sequence “HSE” (in the first earlier mark) which will be understood as an abbreviation for the word “house” and the word “lounge” in the contested mark, as a lounge is a room that resides within a house.

33. A similar conceptual link can be seen between the applicant’s mark and the second and third earlier marks. In the aural comparison, I stated that I considered that the element “KTCHN” will be perceived as “kitchen”. Therefore, there is also here a level of conceptual similarity as the kitchen is also a room that resides within the house. The third earlier marks contain a figurative element, I consider this element to have equal conceptual impact as the “MNKY” element as they express the same concept, that of a monkey; creating a synthesis of the two conceptually related elements. Therefore, I consider the applicant’s mark and all of the earlier marks to be conceptually similar to a high degree.

Distinctive character of the earlier marks

34. 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 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 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)."

35. 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 a high inherent distinctive character, such as invented words which have no allusive qualities.

36. The opponent has not pleaded that its mark has acquired enhanced distinctive character through use and has not filed evidence to support such a claim. I have, therefore, only the inherent position to consider. The earlier marks consist of the letter sequence "MNKY HSE", "MNKY KTCHN" and "MNKY KTCHN" with a figurative element respectively. As discussed in the aural comparison above, "MNKY KTCHN" will be perceived and spoken as "monkey kitchen" and "MNKY HSE" as "monkey house". Although the earlier marks will be seen as abbreviations of ordinary dictionary words, the fact that the words are abbreviated in a distinctive manner contribute to the distinctiveness of the marks. Whilst I bear in mind that the letter sequence "KTCHN" and "HSE" being understood as the words "kitchen" and "house" are not particularly distinctive in the context of the services at issue, which are restaurant and bar services, I consider that the association with the concept of a monkey is rather unusual and the marks as wholes have a medium to high degree of distinctiveness.

Likelihood of confusion

37. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle, i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services or vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the opponent's trade mark, the average consumer for the goods and services and the nature of the purchasing process. In doing so, I must be mindful 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. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other. 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).”

39. I have found the marks to be visually and aurally similar to a medium degree, with the exception of the third earlier marks which I found to be visually similar to a low degree. I have found all the marks to be conceptually similar to a high degree. I have identified the average consumer to be members of the general public and adult general public (with regard to bar services); they will select the services primarily through 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. I have found the services to be identical. I have found the earlier marks to have a medium to high degree of distinctive character.

40. Notwithstanding the principle of imperfect recollection, and taking all the above factors into account, I consider that the differences between the marks (particularly the endings of each mark) will be sufficient to enable the average consumer to differentiate between them. I do not consider that the marks will be directly confused.

41. In considering whether there is a likelihood of indirect confusion, I bear in mind the three categories of indirect confusion identified by Mr Purvis QC above are just illustrative – he stated that indirect confusion ‘tends’ to fall in one of them. In my view, even if one recalls the difference in the endings of the marks, I consider that

the presence in the contested mark of the identical “MNKY” element and the combination of that element with a conceptually related word for identical services will lead the average consumer to think that the marks come from the same or related undertaking. The difference in endings, will then, consequently, be put down to some form of brand variation. Therefore, I find that there is a likelihood of indirect confusion between the marks.

OUTCOME

42. The opposition is successful in its entirety and the application is refused.

Costs

43. As the opponent has been successful, it is entitled to a contribution towards its costs. Awards of costs in fast track oppositions are governed by Tribunal Practice Notice (“TPN”) 2 of 2015. In the circumstances, I award the opponent the sum of £450 as a contribution towards its costs. This sum is calculated as follows:

| | |
|-----------------------------|-------------|
| Filing notice of opposition | £200 |
| Filing written submissions | £150 |
| Official fee: | £100 |
| Total | £450 |

44. I therefore order Manpreet Gill to pay MNKY HSE HOLDINGS LIMITED the sum of £450. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this **16th of April 2021**

A Klass

For the Registrar,

the Comptroller - General