

O-459-20

TRADE MARKS ACT 1994

IN THE MATTER OF:

**TRADE MARK APPLICATION NOS. UK00003262171, UK00003262177 &
UK00003262178**

IN THE NAME OF OLADAPO FAGBENLE

Gods From The Corner/GODS From The Corner (series of two)

GODS
FROM THE CORNER
✕

And

GODS/gods (series of two)

IN CLASS 25

AND

IN THE MATTER OF CONSOLIDATED OPPOSITIONS THERETO

UNDER NOS. OP000411628, OP000411627 & OP000411629

BY MARTIN BAYLISS

Background and pleadings

1. **Oladapo Fagbenle** (the applicant) applied to register the three trade mark applications for the trade marks set out in the table below:

Application number	Trade mark	Goods/services
UK00003262171	Gods From The Corner/GODS From The Corner (series of two)	Class 25: Clothing.
UK00003262177		Class 25: Clothing.
UK00003262178	GODS/gods (series of two)	Class 25: Clothing.

2. **Martin Bayliss** (the opponent) opposes the three trade marks on Section 5(2)(b) of the Trade Marks Act 1994 (the Act). This is on the basis of its earlier UK trade mark registrations for the below marks:

Registration number	Trade Mark	Goods/Services
UK00003242821		Class 25: Clothing;Footwear;Headwear.
UK00003242822		Class 25: Clothing;Footwear;Headwear.

3. The applicant's marks are the subject of three separate oppositions filed by the opponent, namely OP000411628, OP000411627 & OP000411629. By way of letter dated 16 September 2019, the parties were informed that the Registrar

directs under Rule 62(1)(g) of the Trade Mark Rules 2008 that the three oppositions be consolidated under lead opposition no. OP000411627.

4. The opponent originally filed all three oppositions including grounds 5(4)(a) of the Act. However, as a claim under 5(4)(a) requires evidence to proceed, which the opponent did not file, the claims under 5(4)(a) have been struck out. Both parties were informed of this by way of correspondence dated 16 December 2019.
5. The consolidated opposition proceedings will therefore proceed under Section 5(2)(b) of the Act only. On this basis, the opponent argues that the respective goods are identical and that the marks are highly similar.
6. The applicant filed a counterstatement denying the claims made and requesting the opponent prove the same.
7. The applicant also submits it has earlier rights and goodwill in the marks GODS and GODS FROM THE CORNER that pre-date the opponent's use.
8. Neither party has filed any evidence for consideration. As the opponent's earlier marks were registered on 6 October 2017 (3242821) and 10 November 2017 (3242822), both registrations were under five years old at the time that the applicant's marks were published on 10 November 2017, proof of use is not relevant in these proceedings.
9. No hearing was requested, and no submissions were filed in lieu of a hearing. This decision is taken following a careful perusal of the papers.
10. The applicant is represented in these proceedings by Sheridans Solicitors.
11. The opponent was represented in these proceedings by Haseltine Lake Kempner LLP (formerly Kempner and Partners LLP) until the serving of the applicant's TM8 and counterstatement. Haseltine Lake Kempner LLP confirmed on 16 September 2019 upon the serving of these documents that they would no longer be

representing the opponent, and that all future corresponding should be sent to the opponent directly.

Preliminary considerations

12. The opponent has filed its oppositions based on two earlier registrations as shown within the table at paragraph 2. I find the registrations relied upon by the opponent to be identical to each other in every relevant way. Particularly, the marks, the goods, the owner and the filing dates all appear to be shared. I can see no scenario in which a finding of likelihood of confusion (or otherwise) based on the opponent's first earlier mark, would not translate to the same finding in respect of the second earlier mark, and vice-versa. For this reason, I see it fit to compare the applicant's marks to one of the opponent's marks, namely UK00003242821, and transfer these findings in respect of the opponent's second mark, namely UK00003242822, as this will not be detrimental to the opponent's position. I will therefore refer to the "opponent's mark" and the "opponent's goods" throughout this decision, with reference to UK00003242821, and apply these findings in respect of its earlier mark UK00003242822 at the end of this decision.

DECISION

13. Section 5(2)(b)

Section 5(2)(b) of the Act is 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, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark".

The Principles

14. The following principles 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.

The principles

(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

15. The goods for comparison are as follows:

Opponent's goods	Applicant's goods (for UK00003262171, UK00003262177 & UK00003262178)
Class 25: <i>Clothing;Footwear;Headwear</i>	Class 25: <i>Clothing</i>

16. It is clear in this instance that the applicant's goods *clothing* and the opponent's goods *clothing* are identical. In addition, the opponent's goods *Footwear* and *Headgear* are also covered by the term *clothing* and are identical to the applicant's goods. It is therefore unnecessary to conduct a full examination of the case law surrounding the similarity of goods and services, or an in-depth analysis of the goods in this instance. It is clear to me that the only possible outcome in this scenario is a finding that the applicant's goods are identical to the opponent's.

Comparison of marks

17. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a 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 marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The Court of Justice of the European Union 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.”

18. 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.

19. The respective trade marks are shown below:

	<p>Gods From The Corner/GODS From The Corner (series of two)</p>
<p>Earlier mark</p>	<p>Contested mark 1</p>

	
<p>Earlier mark</p>	<p>Contested mark 2</p>

	<p>GODS/gods (series of two)</p>
<p>Earlier mark</p>	<p>Contested mark 3</p>

20. I find the dominant and distinctive element of the opponent's mark to be the word GODS. It is the largest element of the mark, as well as the most unusual for the goods. I find the word LONDON for clothing at best holds a very low level of distinctive character in this format, if any at all. This, along with its size, means the consumer will pay this element very little attention within the opponent's mark, although it will not be disregarded entirely. The stylisation of the mark is minimal, and it is my view this will not be given much weight within the marks overall impression, but again, I find it cannot be disregarded entirely.

21. Being that it is the only element of the applicant's contested mark 3, the dominant and distinctive element of this mark is also GODS.

22. Being at the start of the mark¹, and conjuring a clear and unusual concept in the consumers mind, I believe that GODS will also stand out most to the consumers in the applicant's contested mark 1, making it the most dominant element of the same. As FROM THE CORNER simply conveys information about the aforementioned 'GODS', I believe this it is GODS that will appear as most distinctive within the same. However, I believe that the wording FROM THE CORNER also contributes towards the overall impression of the mark and will not be ignored by the consumer.

23. In the applicant's contested mark 2, I also find the word GODS to be the most dominant and distinctive element, but I find the wording FROM THE CORNER to also be a distinctive element adding to the overall impression. I find the minimal stylisation and simple 'x' device to add relatively little to the mark, although I do not believe they will be completely disregarded.

Visual comparison

¹ In *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02, the General Court noted that the beginnings of word tend to have more visual and aural impact than the ends.

24. Visually, the dominant GODS element in the opponent's mark is reproduced in its entirety at the beginning of the applicant's contested mark 1. However, the applicant's mark also includes the other words FROM THE CORNER, making it considerably visually longer than the earlier mark. As mentioned above, the stylisation of the opponent's mark is minimal, and does not add a huge amount to its overall impression, but visually it still helps to differentiate the same. As the applicant's later mark is a word mark, it is not limited to a particular visual stylisation. I find the applicant's contested mark 1 to be visually similar to the opponent's mark to a medium degree.

25. The applicant's contested mark 2 contains the same wording as contested mark 1, but has the addition of the stylisation and the 'x' device. In this instance, the stylisation chosen by the applicant is such that it increases its visual similarity with the opponent's mark. Both marks include the dominant element GODS in what appears to be the same font, with the smaller writing stacked beneath this dominant element. I do not find the use of white text on a black square to add much to differentiate the marks visually, and the smaller text is not particularly visually striking in either mark. Further, the 'x' is not particularly visually dominant in the applicant's mark. Overall, I find the applicant's contested mark 2 to be visually similar to the opponent's mark to between a medium to high degree.

26. The applicant's contested mark 3 is reproduced as the dominant and distinctive element of the opponent's mark in its entirety. Although the series mark includes GODS filed in both uppercase and lowercase lettering, it is well established that the use of uppercase or lowercase letters does not make a material difference to a word mark. I find the black square, the minimal stylisation, and the small text stating 'LONDON' do little to differentiate the opponent's mark from the applicant's word mark. I find the applicant's contested mark 3 to be visually similar to the opponent's mark to a high degree.

Aural similarity

27. It is my view that the applicant's contested marks 1 & 2 are aurally identical to each other. They will be pronounced by the consumer as GODS FROM THE

CORNER. I believe it is highly unlikely that the 'x' device within the applicant's contested mark 2 will be verbalised by the consumer. It is my view that this device will not be viewed and verbalised as the letter X on the basis that it is not shown in the same typeface as the rest of the mark. Instead it is shown in paint brush type strokes that make it appear as a decorative cross. The first word of the applicant's contested marks 1 & 2, namely GODS, is aurally identical to the first element of the opponent's, but they differ aurally in the remaining verbal elements, namely LONDON and FROM THE CORNER. I find it is likely, due to its size and low distinctiveness, that LONDON will often not be verbalised by the consumer within the opponent's mark. Considering the identity in the first part of the marks, and the dissimilar second parts, I consider contested marks 2 and 3 to be aurally similar to the opponent's mark to a medium degree. I find this to be the case whether or not LONDON is verbalised in the opponent's mark.

28. Contested mark 3 contains only one verbal element, namely GODS. Considering the opponent's earlier mark may be verbalised as GODS LONDON or alternatively simply as GODS, I find the aural similarities between the opponent's mark and contested mark 3 to range from medium to identical.

Conceptual similarity

29. I find the opponent's mark to have the conceptual meaning of GODS, the well-known English word. This word may mean slightly different things to people depending on their religion, but to the majority of consumers I believe this will conjure the concept of a group of creators, rulers, or all-powerful people or beings. In the context of the goods, namely clothing, I find that where conceptualised, the element LONDON will simply give the consumer the impression that the clothing is created in London, or alternatively that the company originated or is based in the city, and therefore adds little to the conceptual meaning of the mark.

30. In respect of the applicant's contested mark 3, I find that this the mark will also bring to mind the concept of a group of creators, rulers, or all-powerful people or beings. I note the applicant's mark does not make reference to the concept of

London, however, I find that the marks are conceptually similar to at least a high degree.

31. I believe the applicant's contested marks 1 and 2 may be conceptualised by some as quite literally as meaning gods that originate from 'the corner'. However, I believe it is more likely this will evoke a concept of gods (as defined above) from your local neighbourhood, giving the impression of a certain relatability or relaxed demeanour. Due to the concept of gods conjured in both the opponent's marks and the applicant's marks 1 & 2, I find the marks to be conceptually similar to between a medium and high degree.

32. In summary, my findings are as follows:

- (i) I find the applicant's contested mark 1 to be visually similar to a medium degree, aurally similar to a medium degree and conceptually similar to between a medium and high degree to the opponent's mark;
- (ii) I find applicant's contested mark 2 to be visually similar to between a medium to high degree, aurally similar to a medium degree, and conceptually similar to between a medium and high degree to the opponent's mark;
- (iii) I find contested mark 3 to be visually and conceptually similar to a high degree, and verbally similar to either a medium degree, or verbally identical to the opponent's mark, depending on whether LONDON is verbalised within the latter.

Average consumer and the purchasing act

33. 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: *Lloyd Schuhfabrik Meyer, Case C-342/97*.

34. 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.”

35. I find that the relevant consumer of the goods *clothing* will include members of the general public. Clothing will be purchased fairly commonly by the general public, most often without the need for a heightened degree of care and attention. However, I do consider that prior to making a purchase of clothing, the general public is likely to consider various aspects of the same, such as the style, the quality, the aesthetics and the practicality of the articles. Considering these factors, I find the general public will pay an average degree of attention in respect of these goods.

36. I find that the goods will normally be purchased by the general public following visual inspection, either in stores or online. However, I cannot discount there may be an aural element to purchasing these goods, as there may be verbal assistance requested from, or given by retail staff. There is also the possibility that word of mouth recommendations will be made.

37. I consider that there will also be a portion of average consumers of clothing that will consist of the professional public. These consumers will consist mainly of the professional public purchasing goods on behalf of others, including their clients or employers. These professionals are likely to pay a higher degree of attention than the general public, as it will be important that the correct purchases are made in

these roles. I find the attention paid by these consumers will be above average in respect of the goods. I consider again that the professional public will primarily purchase clothing following a visual inspection of the goods, but that for the same reasons given previously, the aural considerations cannot be discounted entirely.

Distinctive character of the earlier trade mark

38. 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).”

39. The opponent’s mark is made up of a well-known English word GODS, and the name of arguably the most famous location in the UK, LONDON. It also includes minimal stylisation. I find the word GODS to have no descriptive or allusive

meaning in respect of the opponent's goods *clothing*, and that it is therefore inherently distinctive to a medium degree. The additional elements contribute little to the inherent distinctiveness of the mark, and it is the inherent distinctiveness of this common element that is key. I find the opponent's mark to hold at least a medium degree of inherent distinctive character in respect of the goods

40. No evidence has been filed by the opponent, and so I cannot find that the distinctiveness of the opponent's mark has been enhanced above its inherent level of distinctiveness through use.

GLOBAL ASSESSMENT – Conclusions on Likelihood of Confusion.

41. In this instance, due to the consolidation of three separate opposition proceedings, I must consider and apply my findings to the applicant's three individual applications. The fact that these proceedings have been consolidated for procedural efficiency does not mean that I must reach the same conclusion in respect of each of the applications filed. I will consider each opposition against each individual application on its own merits.

42. Prior to reaching a decision all three of the oppositions filed, I must consider all relevant factors, including those as set out within the principles A-K within paragraph 14 of this decision. I must view the likelihood of confusion through the eyes of the average consumer, 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. I must consider the level of attention paid by the consumer, and consider the impact of the visual, aural and conceptual similarities of the marks by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. I must consider that a likelihood of confusion may be increased where the earlier mark holds a high degree of distinctive character, either inherently, or due to the use made of the same, and that a lesser degree of similarity between the goods may be offset by a greater degree of similarity between the marks. I must also

consider that both the degree of attention paid by the consumer and how the goods or services are obtained will have a bearing on how likely the consumer is to be confused.

43. I consider at this point that there are two types of confusion that I may find. The first type of confusion is direct confusion. Direct occurs where the consumer mistakenly confuses one trade mark for another. The second is indirect confusion. This occurs where the consumer notices the differences between the marks, but due to the similarities between the common elements, they believe that both products derive from the same or economically linked undertakings².
44. My findings in respect of the opponent's mark are the same in all three of the oppositions filed. I found the dominant and distinctive element of the opponent's mark to be the word GODS. Although I found the stylisation and the word LONDON will not be completely disregarded in the overall impression, I found this made only a small contribution to the same.
45. I found the opponent's goods to be identical to the applicant's goods in all three oppositions, and I found the relevant consumer of the goods to be both members of the general public, and professionals, paying between an average and above average degree of attention in respect of the goods. I found the opponent's mark to be inherently distinctive to a medium degree.
46. In respect of the applicant's contested mark 3, I found the dominant and distinctive element to be GODS. I found the mark to be visually and conceptually similar to the opponent's mark to a high degree, and verbally similar to either a medium degree, or verbally identical to the opponent's mark, depending on whether LONDON is verbalised within the opponent's mark. Considering these factors, as well as those set out in the paragraphs above, I find that the differences between the marks will likely go unnoticed by the average consumer, and that there is a likelihood of direct confusion between the opponent's mark,

² *L.A. Sugar Limited v Back Beat Inc*, BL O/375/10,

and the applicant's contested mark 3, namely UK application no. UK00003262178.

47. In respect of the applicant's contested mark 2, I found that the dominant and distinctive element of the mark is GODS, but that FROM THE CORNER will add to the overall impression of the mark. I found that, although minimal in both the applicant's and the opponent's marks, the stylisation of the applicant's mark contributed towards a finding of between a medium to high visual similarity with the opponent's mark. I found that aurally the marks are similar to a medium degree, and conceptually similar to between a medium and high degree. Considering these factors, and with consideration to the identical goods, I find there is a likelihood of direct confusion in respect of the applicant's mark no. UK00003262177 and the opponents mark.

48. I found the most dominant and distinctive element of contested mark 1 to be GODS, but that the mark in its entirety will add to its overall impression on the consumer. I found contested mark 1 to be visually and aurally similar to the opponent's mark to a medium degree, and conceptually similar from between a medium to high degree.

49. I note that above, I have found there to be a likelihood of direct confusion between the applicant's stylised mark GODS FROM THE CORNER and the opponent's earlier mark. I might often conclude that it follows naturally that the word mark, generally giving rise to a broader protection, will share at least share the same likelihood of direct confusion with the opponent's mark as its 'stylised equivalent'. However, here I find this not to be the case. Whilst I note that a word mark will afford protection to a mark in all manner of stylisations, I cannot help but find that, if I were to be assessing this mark without the assistance of its stylised equivalent, I would be less inclined to find a likelihood of direct confusion between this and the opponent's mark. In the case of contested mark 2, it is the fact that the stylisation is so close to that of the opponent's mark that produces this finding. To reach this conclusion in respect of the word mark also, using the knowledge I have of the stylised mark, would in my mind will unfairly prejudice the applicant on the basis of the consolidated proceedings. I therefore do not find

a likelihood of direct confusion between contested mark 1 and the opponent's earlier mark.

50. However, it is my view that when viewing the applicant's contested mark 1, the relevant consumer will be likely to be confused into believing that GODS FROM THE CORNER is a sub-brand or brand extension of the opponent's mark. It has been shown from the case law that varying marks according to the product they designate is not uncommon in the clothing sector³. Due to the conceptual meaning of this mark, I find it is likely that the relevant consumer may portray this as the opponent's streetwear brand, whilst the opponent's mark represents its more formal clothing line. I therefore find a likelihood of indirect confusion with the opponent's mark and the applicant's mark no. UK00003262171.

51. Furthermore, should I be wrong on my findings of direct confusion in respect of the applicant's contested marks 2 and 3, I believe that the similarities are such that even if the differences between the marks were to be noticed, the consumer would think the goods under these marks originated from the opponent, in the sense that they believe contested mark 2 would represent a sub-brand of the opponent's (as explained above, this is likely to be viewed as offering informal clothing or streetwear), and that due to the additional element of LONDON, the opponent's mark GODS LONDON represents a sub-brand of the applicant's contested mark 3⁴, due to the addition of a simple element holding either no distinctiveness or at best an exceptionally low level of distinctiveness in respect of the goods. I acknowledge there is minimal stylisation within the opponent's mark, but I find in the case of contested mark 2 this increases the likelihood of indirect confusion, and in the case of contested mark 3, I do not find this sufficient to have an impact on this finding.

³ See paragraph 78 of the General Court decision in *Zero Industry Srl v OHIM*, Case T-400/06

⁴ See case C-12/12 *Colloseum*, regarding "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.

52. For the reasons set out above, I find the opposition under 5(2)(b) succeeds in respect of UK00003262171, UK00003262177 and UK00003262178. I find that the opposition succeeds both on the basis of the opponent's earlier mark no. UK00003242821, and equally on the basis of the opponent's earlier mark no. UK00003242822.

Final Remarks

53. As the opponent has been successful under Section 5(2)(b) in respect of all three oppositions filed, the applicant's trade mark application nos. UK00003262171, UK00003262177 & UK00003262178 are refused in their entirety.

COSTS

54. The opponent has been successful and is entitled to a contribution towards its costs. No evidence has been filed by either party, and so no costs will be awarded in respect of evidence. The opponent received professional representation up until the serving of the applicant's TM8 and counterstatement. The opponent was provided with a costs pro-forma for costs in respect of the subsequent part of the proceedings, but this was not returned. In the circumstances I award the opponent the sum of £900 as a contribution towards the cost of the three proceedings, to account towards the period the opponent was professionally represented prior to the consolidation of the oppositions. The sum is calculated as follows:

Costs prior to consolidation:

OP000411628

Official opposition fee	£100
Preparing the statement of case	£200

OP000411627

Official opposition fee	£100
Preparing the statement of case	£200

OP000411629

Official opposition fee	£100
Preparing the statement of case	£200

Total	£900
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I therefore order Oladapo Fagbenle to pay Martin Bayliss the sum of £900. 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 18th day of September 2020

**Rosie Le Breton
For the Registrar**