

O-463-13  
TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO 2615710  
BY  
LOREN TAYLOR LTD  
TO REGISTER THE TRADE MARK



LOREN TAYLOR  
LONDON

IN CLASSES 9 AND 18

AND

THE OPPOSITION THERETO  
UNDER NO 103661  
BY  
KSJ KNITWEAR LTD

## BACKGROUND

1. On 28 March 2012, Loren Taylor Ltd applied to register the above trade mark in classes 9 and 18 of the Nice Classification system<sup>1</sup> for the following goods:

Class 9  
Sleeves for electronic hand-held devices.

Class 18  
Leather handbags; leather clutch bags; small leather goods including cardholders; keyfobs.

2. Following publication, on 4 May 2012, of the application, KSJ Knitwear Ltd (the opponent) filed notice of opposition against the application.

3. The grounds of opposition were brought under sections 5(2)(b), 5(3) and 5(4) of the Trade Marks Act 1994 (the Act). The opponent relies upon the mark and goods shown below:

Mark details and relevant dates	Goods
TM:2347499 Mark: Lauren Taylor Filed: 4 November 2003 Registered: 26 March 2004	Class 25 Ladies clothing

4. For the purposes of its opposition under section 5(4)(a) the opponent relies on the words 'Lauren Taylor' which it states had been used nationally since 2004. The opponent states that the mark has been used in respect of "Ladieswear".

5. In its statement of grounds, with regard to 5(2)(b) the opponent submits:

*"4. Lauren Taylor and Loren Taylor are very similar. Our goods, (ladieswear) under class 25, and the applicant's goods (ladies' handbags and other accessories) under class 18 are all ladies' fashion items and there is every likelihood of confusion on the part of the public. Further it is very common for a firm to be selling class 25 items and class 18 items under one trade mark."*

6. With regard to the opposition under 5(3) the opponent has ticked the relevant boxes on the form TM7, notice of opposition but has not provided any particulars of such a claim and therefore I shall say no more about it.

7. With regard to its opposition under section 5(4)(a) of the Act the opponent submits:

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<sup>1</sup> International Classification of Goods and Services for the Purposes of the Registration of Marks under the Nice Agreement (15 June 1957, as revised and amended).

*“4. Applicant’s mark is very similar to the opponent’s earlier trade mark. In view of the close association of the opponent’s goods (ladieswear) and the applicant’s goods (ladies’ handbags and accessories [sic]) there is a likelihood of confusion of the trade marks in the market place. There is likelihood of damage caused to the opponent’s business.”*

8. On 16 October 2012, the applicant filed a counterstatement. It denies the grounds on which the opposition is based and requests the opponent provide proof of use of its mark. It states:

*“4. The Opponent does not have any rights in Class 18 and, therefore, they are not entitled to provide any such goods under and by reference to their Trade Mark. Furthermore, the Trade Mark of the Opponent consists of the words LOREN TAYLOR and device and, for the purposes of comparison, it is necessary to consider the Trade Marks in their entirety. It is therefore denied that there is a likelihood of confusion between the respective Trade Marks. Furthermore, the name LOREN TAYLOR is the name of the owner of the Applicant company and, as afore-stated, she has been trading under and by reference to and using her own name (in some form) since 2008, which she is entitled to do.”*

9. Both parties filed evidence; neither party asked to be heard or filed written submissions in lieu of attendance at a hearing.

## **EVIDENCE**

### **The opponent’s evidence**

10. The opponent’s evidence consists of a witness statement, dated 18 December 2012<sup>2</sup>, accompanied by six exhibits by Kulwant Singh Ojla, the Managing Director of KSJ Knitwear Ltd, a position he has held since 1973. At paragraph 1 of his statement he submits:

*“We specialise in ladies’ knitwear, leisurewear, wovens, t shirts, blouses, dresses, skirts and jackets. We have grown into a very successful corporation and we are recognised as one of the leading UK importers supplying major high street stores, retail multiples and wholesalers”.*

11. He also states:

*“Lauren Taylor has been used since 4 November 2003.”*

12. Exhibit KSO1 comprises a number of pages taken from the ‘Moda’ exhibition show guide. The opponent states:

*“3. We have been promoting and exhibiting the brand name Lauren Taylor extensively, including showing twice every year (since we first registered the label) at the ‘Moda’ Exhibition, the UK’s largest fashion trade show at the NEC*

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<sup>2</sup> The witness statement was subsequently amended on 16 January 2013. I will deal with them as a whole.

*Birmingham.”*

13. The guide is dated 12-14 August 2012. The first entry on page 64 is headed ‘Lauren Taylor’ and provides the stand number and the address of the company. The names of those in attendance from the company are also supplied along with the following description of goods:

*“An exclusive range of ladies’ knitwear, t-shirts, leisurewear and wovens. Available contract or stock.”*

14. The show guide also lists relevant companies by the type of clothing they provide. Lauren Taylor is listed under the headings ‘skirts’, ‘blouses, shirts and tops’, ‘leisurewear’, ‘knitwear’ and ‘dresses’.

15. Exhibit KSO2 is described as: ‘*Exhibition show guide forms sent to Moda for the period 2008-2010*’. The first of the forms does not contain any reference to Moda. It shows the name and address of the opponent company and a description of its products, “*An exclusive range of ladies’ knitwear, t-shirts, leisurewear and wovens. Available contract or stock.*” It is signed by J Reynish and is dated 15 January 2008. The second form is headed MODA WOMAN. It contains the same information as the first form. It is signed by J Reynish and is dated ‘16/10’. The third form is also headed MODA WOMAN and contains the same information as the previous two forms, though it is neither signed nor dated. The fourth form is also headed MODA WOMAN, contains the same information and is signed by C Sheppard and dated 17 June 2011.

16. The final page of exhibit KSO2 is a letter from ITE Moda Ltd, dated 11 December 2012. It is addressed ‘Dear Sirs’ and states:

*“I can confirm that KSJ Knitwear...have exhibited at the Moda exhibition with their brand Lauren Taylor since 2004, up to and including August 2012.”*

17. Exhibit KS03 is described by Mr Ojla as:

*“...computer generated reports which show details of sales figures for our label Lauren Taylor for every year since 2004.”*

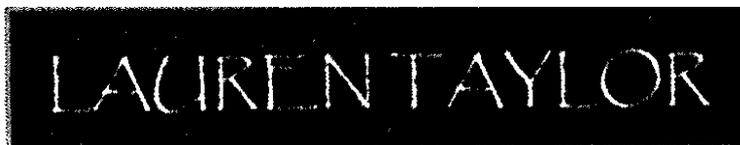
Nine documents have been submitted. The figures dated 2004, 2005, 2007, 2008, 2009, 2011 and 2012 are all headed ‘Item performance report’. Beneath the heading are the words, ‘This report also includes items that are not sold’. Figures for 2006 and 2010 are headed ‘sold’ and are as follows (the currency is not specified):

<b>Year</b>	<b>Value of total sales</b>
2006	860,698.46
2010	289,285.55

18. With regard to marketing, Mr Ojla states:

*“6. We have not been advertising our products and brand labels (including Lauren Taylor) in the media due to the fact we supply selected trade customers exclusively. We employ full time salespeople and agents to promote and sell our products to these trade customers.”*

19. Exhibit KS04 is described as photographs of ladies' clothing sold under the Lauren Taylor brand. Twenty one pages have been provided, each showing a full length image of an item of clothing and a close-up of that item. The items include, inter alia, shirts, cardigans, dresses (knitted and fabric), shorts and jumpers. Seventeen of the images show clothing items with a sewn-in Lauren Taylor label and a swing tag which shows the words 'Lauren Taylor'. Three show only the sewn-in label and one shows only a swing tag. 'Lauren Taylor' is shown in the following form:



20. Exhibit KS05 is a 23-page catalogue titled 'KSJ, KSJ KNITWEAR LTD, Spring/Summer 2011'. The right hand pages all have five brands shown along the bottom of the page. In each case Lauren Taylor is the fifth in the list and is presented in the form shown above. The catalogue shows a range of clothing for women. It is not clear from the catalogue which ranges of clothing are on which pages, However, Mr Ojla states that the Lauren Taylor clothing is shown on pages 2-3 of the catalogue. The items of clothing are pictured with an information panel which provides the colour/size options and the product number. No prices are given.

21. Exhibit KS06 comprises two presentations. The first is titled 'SUMMER RANGE 2010' over the words KSJ, KSJ KNITWEAR LTD and consists of 26 pages. The second is titled 'KSJ KNITWEAR LTD AUTUMN 11' and consists of 62 pages. Mr Ojla states that the presentations are sent to trade customers on a CD twice yearly. With regard to the clothing items depicted in the presentations he says, "*only items sold under the label Lauren Taylor are shown on the presentation*". Each page shows a different item of clothing. A photograph of the item, displayed on a mannequin, takes up the left side of the page, on the right is an information panel which shows the item number, the material and its composition, a description of the item, sizes available, colours available, quantity per carton and price per unit. Every page of the presentation has the letters KSJ presented above KSJ KNITWEAR LTD in the top right hand corner of the page. The Lauren Taylor mark is not shown anywhere in either presentation.

### **The applicant's evidence**

22. The applicant's evidence comprises a witness statement, and seven exhibits, by Loren Taylor, sole Director and Designer of Loren Taylor Limited. The statement is dated 18 March 2013. Facts emerging from Ms Taylor's witness statement are as follows:

- Loren Taylor handbags have been designed since 2005.
- The company Loren Taylor Limited was registered on 28 June 2008.
- The trade mark Loren Taylor 2532293 was registered 20 November 2009.
- Loren Taylor handbags and mobile telephone cases are sold in John Lewis (including the Peter Jones store) and online.

- Loren Taylor has *Facebook, Twitter and Pinterest* pages.
- Loren Taylor products have been featured in a range of magazines and newspapers, including *Grazia* and *Women and Home*.
- In April 2012, Loren Taylor *“teamed up with an international makeup label, Rimmel London, to offer an exclusive competition giveaway.”*
- Loren Taylor has donated handbags for a range of charity events.

23. At paragraph 9 of her witness statement, Ms Taylor submits:

*“LOREN TAYLOR leather goods retail to only the premium/luxury market which is a relatively small niche. My company does not mass produce and wholesale its line of goods through sales agents as the Opponent advises is their practice in point 6 of their witness statement”.*

24. At paragraph 14 of her witness statement Ms Taylor states:

*“Fundamentally, my company of which I am a sole Director, is trading under my own name LOREN TAYLOR in good faith. It is my understanding that I am within my rights to trade under my own name with or without a Trade Mark”.*

### **Opponent’s evidence in reply**

25. The opponent’s evidence in reply is a second witness statement from Mr Ojla, dated 5 June 2013. There are no exhibits attached.

26. Mr Ojla says:

*“3...Ms Taylor refers to different price points and target customers as being an important distinction between our products. However, marketing strategies are always subject to changes and so business can choose to change their price points at any stage.*

...

*5...It is my understanding that the Trade Marks Act states that the use by a person of their own name does not infringe a registered trade mark. However, my understanding is that this does not guarantee that they have a right to register their name as a trade mark.”*

### **DECISION**

27. I will deal first with the opposition under section 5(2)(b) of the Act which reads as follows:

*“5. - (2) A trade mark shall not be registered if because -*

*(a)....*

*(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected, or there exists a likelihood of confusion on the part of the public,*

*which includes the likelihood of association with the earlier trade mark.”*

28. An earlier trade mark is defined in section 6 of the Act, the relevant parts of which 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.”*

29. The relevant sections of the Act read as follows:

*“6A Raising of relative grounds in opposition proceedings in case of non-use*

*(1) This section applies where –*

*(a) an application for registration of a trade mark has been published,*  
*(b) there is an earlier trade mark in relation to which the conditions set out in section 5(1),(2) or (3) obtain, and*  
*(c) the registration procedure for the earlier trade mark was completed before the start of the period of five years ending with the date of publication.*

*(2) In opposition proceedings, the registrar shall not refuse to register the trade mark by reason of the earlier trade mark unless the use conditions are met.*

*(3) The use conditions are met if –*

*(a) within the period of five years ending with the date of publication of the application the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or*  
*(b) the earlier trade mark has not been so used, but there are proper reasons for non-use.*

*(4) For these purposes –*

*(a) use of a trade mark includes use in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered, and*  
*(b) use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.*

*(5) In relation to a Community trade mark, any reference in subsection (3) or*

(4) to the United Kingdom shall be construed as a reference to the European Community.

(6) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services.

(7) Nothing in this section affects –

(a) the refusal of registration on the grounds mentioned in section 3 (absolute grounds for refusal) or section 5(4) (relative grounds of refusal on the basis of an earlier right), or

(b) the making of an application for a declaration of invalidity under section 47(2) (application on relative grounds where no consent to registration).”

30. The relevant period during which the opponent is required to prove use of its mark is the five year period ending on the date of publication of the application, namely 5 May 2006 to 4 May 2012. The onus is on the opponent, under section 100 of the Act<sup>3</sup>, to show genuine use of its mark during this period in respect of those goods relied on or, alternatively, to show that there are proper reasons for non-use of the mark during this period.

### **Proof of use**

31. In reaching a conclusion on this point, I must apply the same factors as I would if I were determining an application for revocation based on grounds of non-use.

32. The requirements for “genuine use” have been set out by the Court of Justice of the European Union (CJEU) in its judgments in *Ansul BV v Ajax Brandbeveiliging BV*, Case C-40/01 [2003] RPC 40 and *Silberquelle GmbH v Maselli-Strickmode GmbH* Case C495/07, [2009] ETMR 28 and by the Court of Appeal in the UK in *LABORATOIRE DE LA MER Trade Mark* [2006] FSR 5. The principles established in these judgments have been conveniently summarised by Ms Anna Carboni, sitting as the Appointed Person in *O-371-09 SANT AMBROEUS*:

“42. The hearing officer set out most of the key extracts from *Ansul* and *La Mer* in his decision, so I shall not reproduce them here. Instead, I try to summarise the “legal learning” that flows from them, adding in references to *Silberquelle* where relevant:

(1) Genuine use means actual use of the mark by the proprietor or a third party with authority to use the mark: *Ansul*, [35] and [37].

(2) The use must be more than merely “token”, which means in this context that it must not serve solely to preserve the rights conferred by the registration: *Ansul*, [36].

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the

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<sup>3</sup> “If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it.”

consumer or end-user by enabling him, without any possibility of confusion, to distinguish the goods or services from others which have another origin: *Ansul*, [36]; *Silberquelle*, [17].

(4) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, i.e. exploitation that is aimed at maintaining or creating an outlet for the goods or services or a share in that market: *Ansul*, [37]-[38]; *Silberquelle*, [18].

(a) Example that meets this criterion: preparations to put goods or services on the market, such as advertising campaigns: *Ansul*, [37].

(b) Examples that do not meet this criterion: (i) internal use by the proprietor: *Ansul*, [37]; (ii) the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle*, [20]-[21].

(5) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including in particular, the nature of the goods or services at issue, the characteristics of the market concerned, the scale and frequency of use of the mark, whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them, and the evidence that the proprietor is able to provide: *Ansul*, [38] and [39]; *La Mer*, [22] - [23].

(6) Use of the mark need not always be quantitatively significant for it to be deemed genuine. There is no *de minimis* rule. Even minimal use may qualify as genuine use if it is the sort of use that is appropriate in the economic sector concerned for preserving or creating market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor: *Ansul*, [39]; *La Mer*, [21], [24] and [25].”

33. In addition, I will keep in mind the guidance in *Thomson Holidays Ltd v Norwegian Cruise Lines Ltd* [2003] RPC 32 in relation to determining what constitutes a fair specification, namely:

“29. I have no doubt that Pumfrey J. was correct to reject the approach advocated in the *Premier Brands* case. His reasoning in paras [22] and [24] of his judgment is correct. Because of s.10(2), fairness to the proprietor does not require a wide specification of goods or services nor the incentive to apply for a general description of goods and services. As Mr Bloch pointed out, to continue to allow a wide specification can impinge unfairly upon the rights of the public. Take, for instance, a registration for "motor vehicles" only used by the proprietor for motor cars. The registration would provide a right against a user of the trade mark for motor bikes under s.10(1). That might be understandable having regard to the similarity of goods. However, the vice of allowing such a wide specification becomes apparent when it is envisaged that the proprietor seeks to enforce his trade mark against use in relation to pedal cycles. His chances of success under s.10(2) would be considerably increased if the specification of goods included both motor cars and motor bicycles. That would be unfair when

the only use was in relation to motor cars. In my view the court is required in the words of Jacob J. to "dig deeper". But the crucial question is--how deep?

30. Pumfrey J. was, I believe, correct that the starting point must be for the court to find as a fact what use has been made of the trade mark. The next task is to decide how the goods or services should be described. For example, if the trade mark has only been used in relation to a specific variety of apples, say Cox's Orange Pippins, should the registration be for fruit, apples, eating apples, or Cox's Orange Pippins?

31. Pumfrey J. in Decon suggested that the court's task was to arrive at a fair specification of goods having regard to the use made. I agree, but the court still has the difficult task of deciding what is fair. In my view that task should be carried out so as to limit the specification so that it reflects the circumstances of the particular trade and the way that the public would perceive the use. The court, when deciding whether there is confusion under s.10(2), adopts the attitude of the average reasonably informed consumer of the products. If the test of infringement is to be applied by the court having adopted the attitude of such a person, then I believe it appropriate that the court should do the same when deciding what is the fair way to describe the use that a proprietor has made of his mark. Thus, the court should inform itself of the nature of trade and then decide how the notional consumer would describe such use."

34. The comments of Mr Justice Jacob in Animal Trade Mark [2004] FSR 19 are also relevant and read:

"20. The reason for bringing in the public perception in this way is because it is the public which uses and relies upon trade marks. I do not think there is anything technical about this: the consumer is not expected to think in a pernickety way because the average consumer does not do so. In coming to a fair description the notional average consumer must, I think, be taken to know the purpose of the description. Otherwise they might choose something too narrow or too wide. Thus, for instance, if there has only been use for threeholed razor blades imported from Venezuela (Mr T.A. Blanco White's brilliant and memorable example of a narrow specification) "three-holed razor blades imported from Venezuela" is an accurate description of the goods. But it is not one which an average consumer would pick for trade mark purposes. He would surely say "razor blades" or just "razors". Thus the "fair description" is one which would be given in the context of trade mark protection. So one must assume that the average consumer is told that the mark will get absolute protection ("the umbra") for use of the identical mark for any goods coming within his description and protection depending on confusability for a similar mark or the same mark on similar goods ("the penumbra"). A lot depends on the nature of the goods--are they specialist or of a more general, everyday nature? Has there been use for just one specific item or for a range of goods? Are the goods on the High Street? And so on. The whole exercise consists in the end of forming a value judgment as to the appropriate specification having regard to the use which has been made."

35. The comments of the Court of First Instance (now the General Court) in Reckitt Benckiser (Espana), SL v OHIM, Case T- 126/03 are also relevant where it held that:

“45. It follows from the provisions cited above that, if a trade mark has been registered for a category of goods or services which is sufficiently broad for it to be possible to identify within it a number of sub-categories capable of being viewed independently, proof that the mark has been put to genuine use in relation to a part of those goods or services affords protection, in opposition proceedings, only for the sub-category or subcategories to which the goods or services for which the trade mark has actually been used belong. However, if a trade mark has been registered for goods or services defined so precisely and narrowly that it is not possible to make any significant sub- divisions within the category concerned, then the proof of genuine use of the mark for the goods or services necessarily covers the entire category for the purposes of the opposition.

46. Although the principle of partial use operates to ensure that trade marks which have not been used for a given category of goods are not rendered unavailable, it must not, however, result in the proprietor of the earlier trade mark being stripped of all protection for goods which, although not strictly identical to those in respect of which he has succeeded in proving genuine use, are not in essence different from them and belong to a single group which cannot be divided other than in an arbitrary manner. The Court observes in that regard that in practice it is impossible for the proprietor of a trade mark to prove that the mark has been used for all conceivable variations of the goods concerned by the registration. Consequently, the concept of ‘part of the goods or services’ cannot be taken to mean all the commercial variations of similar goods or services but merely goods or services which are sufficiently distinct to constitute coherent categories or sub-categories.”

36. First, I have to identify, as a matter of fact, whether the trade mark relied on by the opponent has actually been used and if so, in respect of which goods. Having reached a conclusion on that point, I must then go on to decide what, from the perspective of the average consumer of the goods, constitutes a fair specification.

37. The opponent’s evidence provided by Mr Ojla, which has not been contested or challenged by the other side, shows the mark in the form I have shown at paragraph 21 above. The swing tags and labels on all of the photographs of clothing included in exhibit KS04 and the mark on each of the brochure pages at exhibit KS05 feature the mark as I have shown it above.

38. The opponent’s mark is not used in the form in which it is registered, it is used in a slightly different font. However, in accordance with section 6A(4)(a) of the Act<sup>4</sup> this slight variation does not alter the distinctive character of the mark.

39. Mr Ojla’s evidence shows turnover figures for 2006 and 2010, which combined amount to £1.15m. I cannot be sure of the turnover figures for the other years, for the reasons given above and I am conscious of the fact that figures for 2006 are only relevant from May of that year. However, these figures combined with presence at an annual trade show, associated product brochures and presentations sent to trade customers lead me to conclude that when considered as a totality the opponent’s evidence clearly shows

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<sup>4</sup> *Reproduced at paragraph 31 above.*

genuine use of the mark within the relevant period. Having established that there has been genuine use, I must now go on to consider what constitutes a fair specification.

40. In *Euro Gida Sanayi Ve Ticaret Limited v Gima (UK) Limited* BL O/345/10 Mr Geoffrey Hobbs QC, sitting as the appointed person, stated:

“In the present state of the law, fair protection is to be achieved by identifying and defining not the particular examples of goods or services for which there has been genuine use but the particular categories of goods or services they should realistically be taken to exemplify. For that purpose the terminology of the resulting specification should accord with the perceptions of the average consumer of the goods or services concerned.”

41. In his witness statement Mr Ojla states that the opponent’s goods are ‘ladies’ knitwear, leisurewear, wovens, t/shirts, blouses, dresses, skirts and jackets’.

42. The products shown in evidence supplied under the ‘Lauren Taylor’ mark are clearly items of ladies’ clothing. There is a range of goods shown throughout the exhibits which include jumpers, cardigans and jackets, dresses, skirts, shorts, shirts and t-shirts. The evidence is such that it is clear that the goods are not limited to a specific item of ladies’ clothing, nor does the use of the mark extend beyond items of ladies’ wear. As a consequence I conclude that ‘ladies’ clothing’ is how the average consumer would describe the goods in respect of which the mark has been used and represents a fair specification (which is neither too broad nor too pernicky) and is the basis on which I intend to proceed to carry out the required comparisons.

### **Section 5(2)(b) case law**

43. In his decision in *La Chemise Lacoste SA v Baker Street Clothing Ltd* - BL O/330/10 (approved by Arnold J in *Och-Ziff Management Europe Ltd v Och Capital LLP* [2011] FSR 11), the Appointed Person, Mr Geoffrey Hobbs QC, expressed the test under this section (by reference to the CJEU cases mentioned) on the basis indicated below:

#### The CJEU cases

*Sabel BV v Puma AG* [1998] RPC 199; *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc* [1999] RPC 117; *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* [2000] F.S.R. 77; *Marca Mode CV v Adidas AG & Adidas Benelux BV* [2000] E.T.M.R. 723; *Matratzen Concord GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-6/01; *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH* C-120/04; *Shaker di L. Laudato & C. Sas v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* C-334/05 P.

#### 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, in certain circumstances, be dominated by one or more of its components;

(f) and beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite 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 causes the public to wrongly believe that the respective goods [or services] come from the same or economically-linked undertakings, there is a likelihood of confusion.”

### **The average consumer and the nature of the purchasing act**

44. In accordance with the above cited case law, I must determine who the average consumer is and also identify the nature of the purchasing process. The average consumer is reasonably well informed and reasonably circumspect and observant but with a level of attention likely to vary according to the category of goods. The attention paid is likely to vary depending on price and, to some extent, the nature of the goods and the frequency of the purchase.

45. The average consumer of the goods at issue will be a member of the general public or a trade buyer. The purchase is likely to be primarily visual as it is likely to be made from a website, catalogue, or directly from a shelf. The specifications of goods cover a range of

products which vary in price and frequency of purchase. Consequently, the level of attention is likely to vary: a luxury leather handbag is likely to be a fairly expensive, infrequent purchase. It will demand a higher level of attention to be paid than, for example, buying a t-shirt.

46. Specifically, in respect of the goods in class 25, in considering the level of attention that will be paid to such a purchase and the nature of the purchasing act, I am mindful of the decision of the General Court (GC) in *New Look Ltd v Office for the Harmonization in the Internal Market (Trade Marks and Designs) Joined cases T-117/03 to T-119/03 and T-171/03*, in which it commented:

"43 It should be noted in this regard that the average consumer's level of attention may vary according to the category of goods or services in question (see, by analogy, Case C-342/97 *Lloyd Schuhfabrik Meyer* [1999] ECR I-3819, paragraph 26). As OHIM rightly pointed out, an applicant cannot simply assert that in a particular sector the consumer is particularly attentive to trademarks without supporting that claim with facts or evidence. As regards the clothing sector, the Court finds that it comprises goods which vary widely in quality and price. Whilst it is possible that the consumer is more attentive to the choice of mark where he or she buys a particularly expensive item of clothing, such an approach on the part of the consumer cannot be presumed without evidence with regard to all goods in that sector. It follows that that argument must be rejected."

...

53. Generally in clothes shops customers can themselves either choose the clothes they wish to buy or be assisted by the sales staff. Whilst oral communication in respect of the product and the trade mark is not excluded, the choice of the item of clothing is generally made visually. Therefore, the visual perception of the marks in question will generally take place prior to purchase. Accordingly the visual aspect plays a greater role in the global assessment of the likelihood of confusion."

47. The nature of all of these purchases is primarily visual, though I do not discount the fact that there may be an aural element. The goods may be purchased on the high street, online or by mail order and the level of attention paid will be no more than average; the consumer will pay the attention necessary to obtain, inter alia, the correct, size, colour and technical specification.

### Comparison of goods

48. The goods and services to be compared are as follows:

<b>The opponent's goods</b>	<b>The applicant's goods</b>
<b>Class 25</b> Ladies clothing.	<b>Class 9</b> Sleeves for electronic hand-held devices.

	<p><b>Class 18</b> Leather handbags; leather clutch bags; small leather goods including cardholders; keyfobs.</p>
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49. Whilst the parties have made a number of comments about their respective areas of trade and their effect on the likelihood of confusion, in making a comparison between both parties' goods I must consider the opponent's fair specification, as I have determined above. This must be compared with the applicant's specification as it appears in the application.

50. I am mindful of the findings of the Court of First Instance (now General Court) in *Saint-Gobain SA v OHIM* Case T-364/05 where it said:

"67... it is important to reiterate that the comparison between the goods in question is to be made on the basis of the description of the goods set out in the registration of the earlier mark. That description in no way limits the methods by which the goods covered by the earlier mark are likely to be marketed."

51. I am also mindful of the findings of the Court of First Instance (now General Court) in the case of *NHL Enterprises BV v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)* Case T-414/05:

"71 The Court considers, first, that that assessment by the Board of Appeal is not called in question by the particular conditions in which the applicant's goods are marketed, since only the objective marketing conditions of the goods in question are to be taken into account when determining the respective importance to be given to visual, phonetic or conceptual aspects of the marks at issue. Since the particular circumstances in which the goods covered by the marks at issue are marketed may vary in time and depending on the wishes of the proprietors of those marks, the prospective analysis of the likelihood of confusion between two marks, which pursues an aim in the general interest, namely that the relevant public may not be exposed to the risk of being misled as to the commercial origin of the goods in question, cannot be dependent on the commercial intentions of the trade mark proprietors - whether carried out or not - which are naturally subjective (see, to that effect, *NLSPORT*, *NLJEANS*, *NLACTIVE* and *NLCollection*, cited at paragraph 61 above, paragraph 49, and Case T-147/03 *Devinlec v OHIM –TIME ART (QUANTUM)* [2006] ECR II-11, paragraphs 103 to 105, upheld on appeal by the Court by judgment of 15 March 2007 in Case C-171/06 P *TIME ART v OHIM*, not published in the ECR, paragraph 59)."

52. In comparing the goods, I bear in mind the following guidance provided by the GC in *Gérard Meric v OHIM*, Case T-133/05:

"29. ...goods can be considered identical when the goods designated by the earlier mark are included in a more general category, designated by the trade mark application or when the goods designated by the trade mark application are included in a more general category designated by the earlier mark."

53. Other factors which may be considered include the criteria identified in *British Sugar Plc v James Robertson & Sons Limited (Treat)* [1996] R.P.C. 281 (hereafter *Treat*) for assessing similarity between goods and services:

- (a) the respective *uses* of the respective goods or services;
- (b) the respective *users* of the respective goods or services;
- (c) the physical nature of the goods or acts of service;
- (d) the respective trade channels through which the goods or services reach the market;
- (e) in the case of self-serve consumer items, where in practice they are found or likely to be found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;
- (f) the extent to which the respective goods or services are competitive, taking into account how goods/services are classified in trade.

54. I also bear in mind the decision in *El Corte Inglés v OHIM Case T-420/03*, in which the court commented:

“96...goods or services which are complementary are those where there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for the production of those goods or provision of those services lies with the same undertaking (*Case T-169/03 Sergio Rossi v OHIM-Sissi Rossi* [2005] ECR II-685)”

55. And the comments of Daniel Alexander, sitting as the Appointed Person, in O/255/13 when he said:

“18... the purpose of the test, taken as a whole, is to determine similarity of the respective goods in the specific context of trade mark law. It may well be the case that wine glasses are almost always used with wine – and are, on any normal view, complementary in that sense - but it does not follow that wine and glassware are similar goods for trade mark purposes.”

#### The applicant's class 9 goods

56. Despite filing an opposition to all of the goods in the application, the opponent has not provided any explanation as to why it considers the applicant's goods in class 9 to be similar to its own goods in class 25.

57. The users of both parties' goods are the same, at a very high level, in that they may be bought by (generally female) members of the general public. The uses of the goods are entirely different, clothing being used to cover the body, whereas the applicant's goods are used to cover electronic devices. Whilst both may be made from the same fabrics, the natures of the respective goods clearly differ as do their method of use. The respective goods are not in competition with each other, do not come from the same source, and are

unlikely to be available in the same outlets. Even if they are available in the same store, e.g. a large department store, they reach that store by different routes and will be displayed in very different areas of that store. They are not in competition and one will not be used as a substitute for the other. The respective goods are dissimilar.

#### The applicant's class 18 goods

58. In making a finding in respect of these competing goods, I am mindful of the decision in *Gitana SA v Office for Harmonisation in the Internal Market (Trade Marks and Designs)(OHIM)* Case T-569/11, in which it was held:

“45. Moreover, in respect of the relationship between the ‘goods in leather and imitations of leather’ in Class 18 covered by the trade mark sought and the goods in Class 25 covered by the earlier mark, it is apparent also from settled case-law that the ‘goods in leather and imitations of leather’ include clothing accessories such as ‘bags or wallets’ made from that raw material and which, as such, contribute, with clothing and other clothing goods, to the external image (‘look’) of the consumer concerned, that is to say coordination of its various components at the design stage or when they are purchased. Furthermore, the fact that those goods are often sold in the same specialist sales outlets is likely to facilitate the perception by the relevant consumer of the close connections between them and support the impression that the same undertaking is responsible for the production of those goods. It follows that some consumers may perceive a close connection between clothing, footwear and headgear in Class 25 and certain ‘goods made of these materials [leather and imitations of leather] and not included in other classes’ in Class 18 which are clothing accessories. Consequently, clothing, shoes and headgear in Class 25 bear more than a slight degree of similarity to a category of ‘goods made of these materials [leather and imitations of leather] and not included in other classes’ in Class 18 consisting of clothing accessories made of those materials.”

59. The users of the opponent's class 25 goods and the applicant's leather handbags and leather clutch bags will likely be the same. The uses are similar to the extent that the intention is to create a coordinated look. The trade channels may be the same and there is a degree of complementarity between them. In accordance with the findings above, leather handbags and leather clutch bags in the application can be considered to have ‘more than a slight degree of similarity’ to the opponent's goods in class 25, namely ladies' wear. Consequently, I find the respective goods to possess a moderate degree of similarity.

60. The remaining goods in class 18 are ‘small leather goods including cardholders; keyfobs’. The average consumer for these goods and ladies' wear will have a large area of similarity, however, the purchasers of cardholders and keyfobs and the associated end users, are not limited to women. The uses are different to the extent that, while appearance may be a factor, a keyfob or cardholder will also be purchased according to practical considerations and is unlikely to be bought in order to create a coordinated look. The trade channels will, for the most part, be different. But even when sold in, for example, a large department store, they will be in different areas of that store. The goods are not complementary, nor are they in competition. I find these goods to be dissimilar.

## Comparison of marks

61. The marks to be compared are as follows:

The opponent's mark	The applicant's mark
Lauren Taylor	 <p>LOREN TAYLOR LONDON</p>

62. In making a comparison between the marks, I must consider the respective marks' visual, aural and conceptual similarities with reference to the overall impressions created by them, bearing in mind their distinctive and dominant components<sup>5</sup>, but without engaging in an artificial dissection of the marks, because the average consumer normally perceives a mark as a whole and does not analyse its details.

63. The opponent's mark consists of the two words 'Lauren Taylor' in title case. No part of the word is stylised or emphasised in any way. Both words are fairly common names, neither of which is dominant. Consequently, the distinctiveness lies in the mark as a whole.

64. The applicant's mark consists of what Ms Taylor describes as a 'distinct protea flower mark' above the words LOREN TAYLOR which are in turn presented above the word LONDON. The device makes up the top half of the mark.

65. The flower device is a distinctive element of the mark and has a prominent position within the mark as a whole. However, the words 'LOREN TAYLOR' are also a distinctive element and form the part of the mark which will be articulated. The word LONDON simply denotes geographic origin and is not a distinctive element of the mark.

66. There is a general principle that words in trade marks "speak louder" than devices which, whilst not a rule of law, is an important factor to be kept in mind. In my view, the words 'LOREN TAYLOR' are distinctive and the dominant element of the applicant's mark.

### Visual similarities

67. There is an obvious point of visual similarity between the marks due to the fact that the word 'Taylor' appears as the second word in both of them. The first words of both marks begin with L and end with the three letters 'REN'. They differ in that the opponent's mark is one letter longer, and has the second and third letters 'AU', whereas, the applicant's mark has the second letter 'O'. The applicant's mark also includes a flower device and the word LONDON (which I have already concluded is non-distinctive for the reasons given above). Whether or not letters are presented in upper or lower case is a fact likely to go unnoticed

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<sup>5</sup> *Sabel v Puma AG*, para.23

by the average consumer. Taking these factors into account I find there to be a reasonable degree of visual similarity between the marks.

### **Aural similarities**

68. The spelling of the first word of each mark differs, i.e. 'Lauren' and 'Loren', however, both will be pronounced in same way. The device element of the applicant's mark will not be articulated. The marks are aurally identical.

### **Conceptual similarities**

69. For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer.<sup>6</sup> The assessment must be made from the point of view of the average consumer.

70. The conceptual message of the opponent's mark is that of a person named Lauren Taylor. The conceptual message of the applicant's mark is that of a person called Loren Taylor or may be considered a combination of two surnames, namely, 'LOREN' and 'TAYLOR'; either conducting business in or hailing from London. Consequently, I find the marks to have a fairly high degree of conceptual similarity.

### **Distinctive character of the earlier mark**

71. I must now assess the distinctive character of the opponent's earlier trade mark. The distinctive character of the opponent's earlier trade mark must be appraised first, by reference to the goods upon which I have found it has been used and, secondly by reference to the way it is perceived by the relevant public – *Rewe Zentral AG v OHIM (LITE)* [2002] ETMR 91. In determining the distinctive character of a trade mark and, accordingly, in assessing whether it is highly distinctive, it is necessary to make an overall assessment of the greater or lesser capacity of the trade mark to identify the goods and services for which it has been used as coming from a particular undertaking and thus to distinguish those goods and services from those of other undertakings - *Windsurfing Chiemsee v Huber and Attenberger Joined Cases C-108/97 and C-109/97* [1999] ETMR 585.

72. Lauren Taylor is a name and will be perceived as such by the average consumer. It is not descriptive or allusive of the goods in class 25. It is, however, fairly common practice to sell clothing under the name of the designer. As a consequence the mark enjoys an average level of inherent distinctive character

73. As I have concluded above, the figures provided by the opponent in respect of its turnover are not clear. I have only been able to consider the figures for 2006 and 2010. The opponent has made clear that it does not advertise in any media and whilst it clearly attends trade shows, I cannot be sure of the number of attendees or their respective positions within the opponent company. I do not have before me any indication of the size of the market for ladies' wear which is no doubt considerable, nor do I have any indication of the respective share of that market held by the opponent. Consequently, I am not able to determine whether the opponent has enhanced its reputation by use of its earlier mark.

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<sup>6</sup> This is highlighted in numerous judgments of the GC and the CJEU including *Ruiz Picasso v OHIM* [2006] e.c.r.-I-643; [2006] E.T.M.R. 29.

## Likelihood of confusion

74. In its notice of defence the applicant sought to rely on the fact that LOREN TAYLOR is the name of the owner/sole director of the applicant company. Section 11(2)(a) of the Trade Marks Act was designed to stop the proprietors of trade mark registrations from preventing a person or persons from using their own name and address to identify themselves, providing such use was in accordance with honest practices. It cannot be used as a defence in opposition proceedings, the relevant provisions for which I have outlined above. In addition the mark the applicant seeks to register is the mark as shown on the cover page of this decision, i.e. with a device and the additional word LONDON.

75. In assessing the likelihood of confusion, I must adopt the global approach advocated by case law and take into account the fact that marks are rarely recalled perfectly, the consumer relying instead on the imperfect picture of them he has kept in his mind.<sup>7</sup> I must also keep in mind the average consumer for the goods, the nature of the purchasing process and have regard to the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and vice versa.

76. I have found that the marks share a reasonable degree of visual similarity, are aurally identical and conceptually share a fairly high degree of similarity. I have found the earlier mark to have an average level of inherent distinctive character and cannot conclude that the distinctiveness has been enhanced through the use made of it. I have found the applicant's goods in class 9 to be dissimilar to the opponent's goods in class 25. I have also found 'small leather goods including cardholders; keyfobs', in class 18 to be dissimilar to the opponent's class 25 goods. Consequently, in respect of class 9, and 'small leather goods including cardholders; keyfobs', in class 18, I need not go on to consider the similarity of the marks.<sup>8</sup> I have found leather handbags and leather clutch bags in class 18 of the application to be similar to the opponent's goods in class 25, in accordance with settled case law, and my own findings following application of the relevant tests. I have identified the average consumer, namely a member of the general public and have concluded that no more than an average degree of attention will be paid to the purchase of such goods (which will be primarily visual), to the extent that the purchaser will consider, inter alia, size, colour, materials and so on.

77. Taking all of these factors into account, particularly the concept of imperfect recollection, in my view the similarity of the marks is such that in the context of similar goods purchased, for the most part, visually, there will be direct confusion (where one mark is mistaken for the other).

78. Having reached the above conclusions, I have not overlooked that in her statement and submissions, Ms Taylor points to 'branded premium packaging' about which she states:

*"6...All of this expensive and well thought out branded packaging further distinguishes my company from its competitors in the leather goods industry and is entirely different to the packaging and use that the Opponent has shown of their Trade Mark in the evidence submitted."*

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<sup>7</sup> *Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V* paragraph 27

<sup>8</sup> *The test is a cumulative one, see Vedial SA v OHIM C-106/03*

79. This argument does not assist Ms Taylor for the reasons outlined in *Devinlec Développement Innovation Leclerc SA v Office for Harmonization in the Internal Market (Trade Marks and Designs)(OHIM) Case T- 147/03*, in which the Court of First Instance (now the General Court) said:

“104. Consideration of the objective circumstances in which the goods covered by the marks are marketed is fully justified. The examination of the likelihood of confusion which the OHIM authorities are called on to carry out is a prospective examination. Since the particular circumstances in which the goods covered by the marks are marketed may vary in time and depending on the wishes of the proprietors of the trade marks, the prospective analysis of the likelihood of confusion between two marks, which pursues an aim in the general interest, that is, the aim that the relevant public may not be exposed to the risk of being misled as to the commercial origin of the goods in question, cannot be dependent on the commercial intentions, whether carried out or not, and naturally subjective, of the trade mark proprietors.”

80. Finally, in her witness statement for the applicant, Ms Taylor states:

*“9. My company does not exhibit at any of the same trade fairs and does not, as far as I am aware, supply to or stock with any of the same retailers...LOREN TAYLOR leather goods retail to only the premium/luxury market which is a relatively small niche. My company does not mass produce or wholesale its line of goods through sales agents as the Opponent advises is their practice...”*

*13...My company only sells leather items under the LOREN TAYLOR label and has done so for many years without there being any actual confusion.*

*14...We have not had any enquiries from our respected UK stockist John Lewis PLC or from any of our other customers with regards to the LAUREN TAYLOR clothing label. ”*

81. On the issue of reliance on the absence of confusion in the marketplace, TPN<sup>9</sup> 4/2009 states:

“6. Parties are also reminded that claims as to a lack of confusion in the market place will seldom have an effect on the outcome of a case under section 5(2) of the Act.

7. In *Compass Publishing BV v Compass Logistics Ltd [2004] RPC 41* Laddie J held:

‘22. It is frequently said by trade mark lawyers that when the proprietor's mark and the defendant's sign have been used in the market place but no confusion has been caused, then there cannot exist a likelihood of confusion under Article 9.1(b) or the equivalent provision in the Trade Marks Act 1994 ("the 1994 Act"), that is to say s. 10(2). So, no confusion in the market place means no infringement of the registered trade mark. This is, however, no more than a rule of thumb. It must be borne in mind that the provisions in the

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<sup>9</sup> *Tribunal Practice Notice*

legislation relating to infringement are not simply reflective of what is happening in the market. It is possible to register a mark which is not being used. Infringement in such a case must involve considering notional use of the registered mark. In such a case there can be no confusion in practice, yet it is possible for there to be a finding of infringement. Similarly, even when the proprietor of a registered mark uses it, he may well not use it throughout the whole width of the registration or he may use it on a scale which is very small compared with the sector of trade in which the mark is registered and the alleged infringer's use may be very limited also. In the former situation, the court must consider notional use extended to the full width of the classification of goods or services. In the latter it must consider notional use on a scale where direct competition between the proprietor and the alleged infringer could take place.'

8. (*In Rousselon Freres et Cie v Horwood Homewares Limited [2008] EWHC 881 (Ch)*) Warren J commented:

'99. There is a dispute between Mr Arnold and Mr Vanhegan whether the question of a likelihood of confusion is an abstract question rather than whether anyone has been confused in practice. Mr Vanhegan relies on what was said by Laddie J in *Compass Publishing BV v Compass Logistics Ltd [2004] RPC 41* at paragraphs 22 to 26, especially paragraph 23. Mr Arnold says that that cannot any longer be regarded as a correct statement of the law in the light of *O2 Holdings Ltd v Hutchison 3G Ltd [2007] RPC 16*. For my part, I do not see any reason to doubt what Laddie J says...')

9. In *The European Limited v The Economist Newspaper Ltd [1998] FSR 283* Millett LJ stated:

'Absence of evidence of actual confusion is rarely significant, especially in a trade mark case where it may be due to differences extraneous to the plaintiff's registered trade mark.'

82. Ms Taylor's evidence and submissions suggest that she has used the trade mark the subject of her application since 2009. However, the evidence shows no use of the mark applied for prior to 2011.<sup>10</sup> I have no turnover figures in evidence nor do I have any indication of the amount spent on marketing and advertising in respect of the mark applied for. I have nothing before me to show that the parties' goods are available in the same outlets. Consequently, the evidence falls a long way short of allowing me to conclude that by the date of the application for registration, the average consumer had become exposed to the competing trade marks to such an extent that s/he is able to distinguish between them.

83. Having reached these conclusions I will go on to consider the opponent's opposition on the remaining 5 (4) grounds.

### **The 5(4)(a) opposition**

84. In its statement of grounds, in respect of its opposition under section 5(4)(a) the opponent said:

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<sup>10</sup> I am aware that the applicant has a trade mark registered for the words *LOREN TAYLOR*, however, this is not relevant for the purposes of my analysis under 5(2)(b) of the Act.

*“Applicant’s mark is very similar to the opponent’s earlier trade mark. In view of the close association of the opponent’s goods (ladieswear) and the applicant’s goods (ladies handbags and accessories[sic]) there is a likelihood of confusion of the trade marks in the market place. There is likelihood of damage caused to the opponent’s business.”*

85. This objection can be dealt with very briefly. The opponent has provided figures for its evidence of use for the second half of 2006 and 2010. I have outlined the shortcomings of the remaining evidence above. This use of the mark is highly unlikely to be enough to establish a reputation of the kind envisaged by the CJEU in *General Motors Corp v Yplon SA*<sup>11</sup> and summarised by the Principal Hearing Officer in O-179-11 at paragraph 48, particularly in view of the goods at issue. Success under this ground is, therefore, highly unlikely.

86. Even if the evidence was sufficient to establish the goodwill required to get a passing-off action off the ground, the goods on which use has been shown are in class 25, the same goods on which the opponent has already relied in respect of its opposition under 5(2)(b). Put simply, the opponent is in no better position under section 5(4)(a) of the Act.

## **CONCLUSION**

87. The opposition succeeds under section 5(2)(b) of the Act in respect of the following goods in class 18:

‘leather handbags; leather clutch bags’.

88. The opposition fails under section 5(2)(b) of the Act in respect of the following goods in classes 9 and 18 respectively:

‘Sleeves for electronic hand-held devices’

‘small leather goods including cardholders; keyfobs’

## **Costs**

89. Both parties have achieved a measure of success. Consequently, both parties should bear their own costs.

**Dated this 19th day of November 2013**

**Ms AI Skilton  
For the Registrar,**

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<sup>11</sup> [2000] RPC 572