O/0191/25

TRADE MARKS ACT 1994

IN THE MATTER OF INTERNATIONAL REGISTRATION NO. WO0000001674749

DESIGNATING THE UK

BY TWENTY FOUR SEVEN FASHION LTD

IN CLASS 25

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. 439625

BY AALT A. VAN DEN BOR

BACKGROUND AND PLEADINGS

1. International trade mark 1674749 ("the IR") consists of the sign shown on the cover page of this decision. The holder is TWENTY FOUR SEVEN FASHION LTD. The IR is registered with effect from 4 April 2022. With effect from the same date, the holder designated the UK as a territory in which it seeks to protect the IR under the terms of the Protocol to the Madrid Agreement. The mark also claims priority from 18 November 2021 in respect of Israel trade mark number 345689. The holder seeks protection for the IR in relation to the following goods:

Class 25 Clothing, footwear, headgear.

2. The request to protect the IR was published on 9 December 2022. On 9 March 2023, Aalt A. van den Bor ("the opponent") fully opposed the protection of the IR in the UK based upon section 5(2)(b) of the Trade Marks Act 1994 ("the Act"). The opponent relies upon the following trade marks:

Comparable UK trade mark (EU) registration no. UK00912395711
Filing date 4 December 2013; Registration date 8 October 2014.
("The First Earlier Mark")

247 jeans

Comparable UK trade mark (EU) registration no. UK00911547189
Filing date 5 February 2013; Registration date 12 July 2013.
("The Second Earlier Mark")

Comparable UK trade mark (EU) registration no. UK00911606506
Filing date 26 February 2013; Registration date 25 July 2013.
("The Third Earlier Mark")

3. Following the end of the transition period of the UK's withdrawal from the EU, all EU trade marks ("EUTM") registered before 1 January 2021 were recorded as comparable trade marks in the UK trade mark register (and as a consequence, have the same legal status as if they had been applied for and registered under UK law). A 'comparable trade mark (EU)' retains the same filing date, priority date (if applicable) and registration date of the EUTM from which it derives.

4. The opponent relies upon some of its goods and services, contained within Annex 1 of this decision.

5. The opponent claims there is a likelihood of confusion because the holder's goods are identical with and similar to the goods and services for which the earlier marks are protected, and the marks are visually similar, and phonetically and conceptually identical.

6. The holder filed a counterstatement denying the claims made.

7. A hearing took place before me on 3 December 2024. The opponent was represented by Saiyeem Juned of Wilson Gunn and the holder was represented by David Gill of Gill & Gill. I make this decision having taken full account of all the papers, referring to them below as necessary.

8. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

EVIDENCE

9. The opponent's evidence includes the witness statement of Aalt A. van den Bor which is dated 29 August 2023, and is accompanied by 7 exhibits.

10. The opponent's evidence also includes the witness statement of Enrico de Jong dated 10 October 2023. Mr Jong is a Dutch national who has translated Mr Bor's witness statement, and some of its exhibits, that being exhibits 4 to 7.

11. The applicant's evidence includes two witness statements of David J Gill dated 28 February 2023 and 21 March 2024. Mr Gill is a Chartered Trade Mark Attorney and Director of the firm Gill & Gill, who are the applicant's representatives. The first statement is accompanied by 4 exhibits (DJG/1-DJG4) and the second statement is accompanied by 1 exhibit (DJG/5).

12. Whilst I do not propose to summarise the parties' evidence here, I have taken them into consideration and will refer to them below where necessary.

DECISION

Section 5(2)(b)

13. Section 5(2)(b) 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

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

14. The opponent's marks qualify as earlier marks in accordance with section 6(1)(a) of the Act as their filing dates are earlier than the priority date of the holder's IR. As the opponent's marks have completed their registration process more than five years before the priority date of the IR in issue, they are subject to proof of use pursuant to section 6A of the Act.

Proof of use

15. I will begin by assessing whether there has been genuine use of the earlier mark. The relevant statutory provisions are as follows:

16. Section 6A of the Act states:

"(1) This section applies where

(a) an application for registration of a trade mark has been published,

(b) there is an earlier trade mark of a kind falling within section 6(1)(a), (aa) or (ba) 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 relevant period.

(1A) In this section “the relevant period” means the period of 5 years ending with the date of the application for registration mentioned in subsection (1)(a) or (where applicable) the date of the priority claimed for that application.

(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 relevant period 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 (the “variant form”) differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor), 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)-(5A) [Repealed]

(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."

17. Pursuant to section 6A of the Act, the relevant period for assessing whether there has been genuine use of the earlier marks is the five years ending on the priority date of the holder's IR i.e. 19 November 2016 to 18 November 2021. By virtue of paragraph 7 of Part 1, Schedule 2A of the Act, as the opponent's earlier marks are comparable marks, use within the EU is relevant for the part of the relevant period which falls prior to IP Completion Day (31 December 2020). After that date, only use in the UK will be relevant.

18. In *easyGroup Ltd v Nuclei Ltd & Ors* [2023] EWCA Civ 1247, Arnold LJ summarised the law relating to genuine use as follows:

> "105. The principles applicable to determining whether there has been genuine use of a trade mark have been considered by the CJEU in a considerable number of cases, the principal decisions being Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, Case C-259/02 *La Mer Technology Inc v Laboratories Goemar SA* [2004] ECR I-1159, Case C-416/04 P *Sunrider Corp* v *Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237, Case C-442/07 *Verein Radetsky-Order v Bundervsvereinigung Kamaradschaft 'Feldmarschall Radetsky'*[2008] ECR I-9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Merken BV v Hagelkruis Beheer BV* [EU:C:2012:816], Case C-609/11 *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], Case C-141/13 *P Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089], Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434] and Joined Cases C–720/18 and C–721/18 *Ferrari SpA v DU* [EU:C:2020:854].
>
> 106. Ignoring issues which do not arise in the present case, such as use in relation to spare parts or second-hand goods and use in relation to a sub-category of goods or services, the principles may be summarised as follows:

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

(2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at[36]; *Sunrider* at [70]; *Verein* at [13]; *Centrotherm* at [71]; *Leno* at [29]; *Ferrari* at [32].

(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 consumer or end user by enabling him to distinguish the goods or services from others which have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Centrotherm* at [71]; *Leno* at [29]; *Gözze* at [37], [40]; *Ferrari* at [32].

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: *Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37]; *Verein* at [14]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle* at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23].

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial *raison d'être* of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and

services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: *Ansul* at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34]; *Leno* at [29]-[30], [56]; *Ferrari* at [33].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving 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. Thus there is no *de minimis* rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72]; *Leno* at [55].

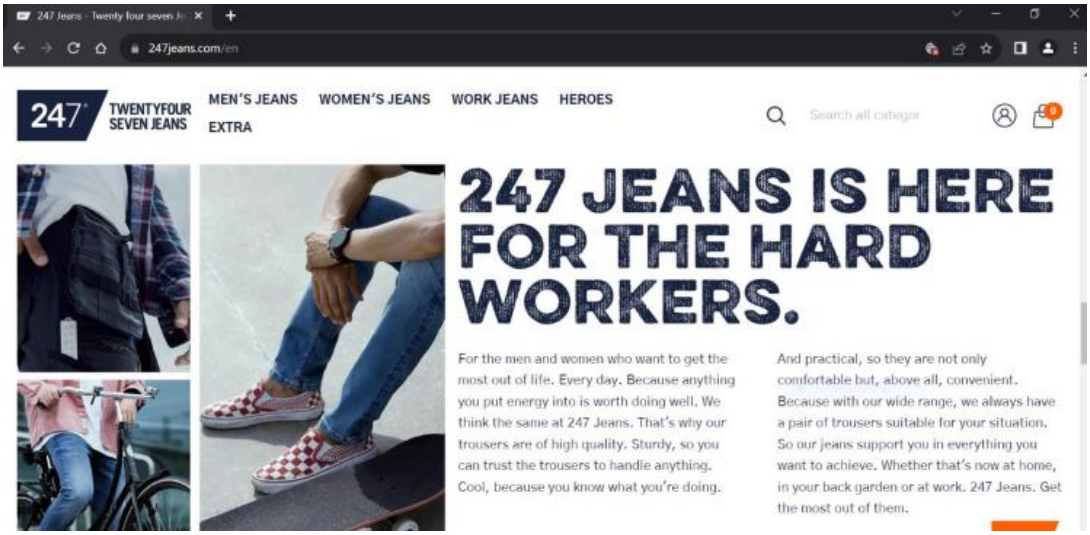
(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: *Reber* at [32]."

Evidence of use

19. I note the following from the opponent's evidence:

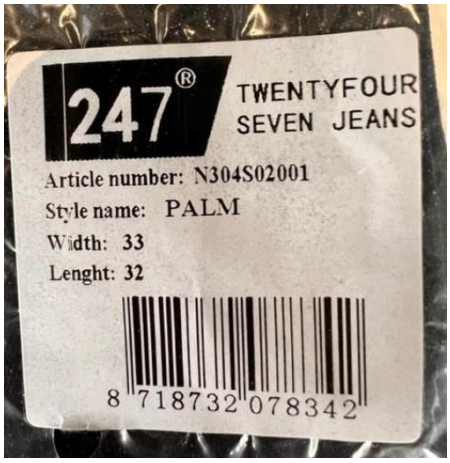
a) Throughout his witness statement, Mr Bor calls the "opponent" the "applicant". This is clearly a typographical error I can ignore.

b) **Exhibit 1** contains 7 undated screenshots from the opponent's website www.247jeans.com, one of which is as follows:



c) **Exhibit 2** contains 6 undated screenshots of jeans and their tags attached to them, including the following:

d) Mr Bor states that **exhibit 3** shows how their marks are affixed to the packaging of their products. This exhibit is undated, and contains the following photo:



e) **Exhibit 4** contains one invoice, which has been translated by Mr Jong, which is dated 26 September 2018. The opponent's address is shown as being based in the Netherlands, and the invoice is addressed to a company in the UK called "Dimensions". The invoice amounts to €9,055.65 and the goods listed are "Dahlia T20- High rise straight fit, black stretch twill". The "sales representative" noted on the invoice is "Anton van den Bor". Lastly, the following mark is used in the top left hand corner of the invoice:

247® TWENTYFOUR SEVEN JEANS

f) Mr Bor states that **exhibit 5** contains two purchase orders dated August 2018 and August 2019 to the opponent's UK distributor. The 2018 invoice is from a third party company, and is addressed to "247 Jeans B.V".

   a. The distributors name is "Dimensions Corporatewear", and its UK address mirrors the same address contained in the exhibit 4 invoice. The goods are listed as "1 Pallet(s)" which weighs "0 KG".

b. The 2019 invoice is addressed from “TWENTYFOUR SEVEN” to “Alexandra Corporate Fashion BV” which is based in the Netherlands. However, Mr Bor has not provided any narrative evidence to explain what the following information contained within this invoice means:

Line	Product	Description	HTS Code	Qty	Price	Value
1	Sundry Item	TEAK D10 36/36		10	13.86	138.60
2	Sundry Item	PALM S08 30/32		7	17.83	124.81
3	Sundry Item	PALM S08 32/32		4	17.83	71.32
1	CARH	CARRAIGE		1	9.95	9.95

g) **Exhibit 6** contains 13 invoices from “247 Jeans B.V” dated between November 2018 to December 2020 showing the sale of its goods to “Factuuadres”, with the delivery of these goods going to “Afleverdres”, a company which has 2 different addresses (neither of which have been translated). However, within his witness statement, Mr Bor states that these invoices evidence sales of their goods to “retailers and distributors within the Netherlands”. On some of the invoices, a “sales representative” is listed. I note that the names recorded are either Anton van den Bor or Dirk Jan van Beem and the following goods are listed within the invoices:

a. Bison D30- Original Worker fit, dark blue ringspun denim L32-W29
b. Hazel S20 dark- Modern fit, dark blue stretch denim L34-W34
c. Hazel S20 Med- Modern fit, medium blue stretch denim L32-W36
d. Palm S01 – Modern fit, medium blue stretch denim L30-W31
e. Palm S02- Modern fit, blue/black stretch denim L36-W33
f. Beech S30- Classic fit, medium blue stretch denim L30-W44
g. Palm Slim S07- Modern fit, slim leg, sand blasted medium blue stretch denim L30-W31
h. Lynx D30- Bermuda worker fit, dark blue ringspun denim L11-W31
i. Collection Men Elm Short Jog Light Grey Denim L13-W38
j. Rhino S20- Modern Worker fit, medium blue stretch denim L36-W34
k. Bison D30- Original Worker fit, dark blue ringspun denim L32-W32
l. Palm Slim Jog 06- Modern fit, slim leg, sand blasted grey jog denim, L34-W36

h) The above goods are individually priced between €26.86 and €47.07, and the total amount on the invoices amount to between €405.07 and €165,131.58.

i) I also bear in mind that each invoice contained in exhibit 6 is, on average, 4 to 5 pages long. However, one invoice is 26 pages long. I also note that the same mark contained in paragraph 19(e) above is used on the top left hand corner of every invoice.

j) **Exhibit 7** contains one invoice dated March 2020 addressed "Factuuadres", with the delivery of these goods going to the company "Afleverdres", but their address is based in Germany. The invoice amounts to €8,142.39, and shows the sale of some of the above goods and "Teak D10- Classic Fit, Medium Blue stone washed denim L38-W36", with the goods individually priced between €29.75 and €38.43.

Form of the mark

20. In *Colloseum Holdings AG v Levi Strauss & Co.*, Case C-12/12, which concerned the use of one mark with, or as part of, another mark, the Court of Justice of the European Union ("CJEU") found that (my emphasis):

> "31. It is true that the 'use' through which a sign acquires a distinctive character under Article 7(3) of Regulation No 40/94 relates to the period before its registration as a trade mark, whereas 'genuine use', within the meaning of Article 15(1) of that regulation, relates to a five-year period following registration and, accordingly, 'use' within the meaning of Article 7(3) for the purpose of registration may not be relied on as such to establish 'use' within the meaning of Article 15(1) for the purpose of preserving the rights of the proprietor of the registered trade mark.
>
> 32. Nevertheless, as is apparent from paragraphs 27 to 30 of the judgment in Nestle, the 'use' of a mark, in its literal sense, generally encompasses both its independent use and its use as part of another mark taken as a whole or in conjunction with that other mark.

33. As the German and United Kingdom Governments pointed out at the hearing before the Court, the criterion of use, which continues to be fundamental, cannot be assessed in the light of different considerations according to whether the issue to be decided is whether use is capable of giving rise to rights relating to a mark or of ensuring that such rights are preserved. If it is possible to acquire trade mark protection for a sign through a specific use made of the sign, that same form of use must also be capable of ensuring that such protection is preserved.

34. Therefore, the requirements that apply to verification of the genuine use of a mark, within the meaning of Article 15(1) of Regulation No 40/94, are analogous to those concerning the acquisition of a sign of distinctive character through use for the purpose of its registration, within the meaning of Article 7(3) of the regulation.

35. Nevertheless, as pointed out by the German Government, the United Kingdom Government and the European Commission, a registered trade mark that is used only as part of a composite mark or in conjunction with another mark must continue to be perceived as indicative of the origin of the product at issue for that use to be covered by the term 'genuine use' within the meaning of Article 15(1)". (emphasis added)

21. The First, Second and Third Earlier Marks as registered are:

a) 

b) **247 jeans**

c) 

22. The First Earlier Mark shown at 21(a) is used the most within the opponent's evidence. It is used on all of the undated evidence (website screenshots, tags on the goods and the packaging for the goods), as well as on the dated invoices. However, I note that it is predominantly used next to the wording "TWENTYFOUR SEVEN JEANS". At the hearing, Mr Gill stated that the addition of this of this wording "fundamentally changes the distincitve character of the trade mark" because it changes it from a "247" mark to a "24 7" mark. However, I disgaree. The First Earlier Mark will be understood and read as a "24 7" mark on the basis that the "24" element is presented in bold, whereas the "7" element is not. The average consumer will, therefore, see the indvidual numbers due to the marks stylisation, seeing and reading the bolded "24" element first, and seeing and reading the unbolded "7" element second. Furthermore, the likelihood of the mark being recognised as a "24 7" mark is enhanced by the fact that the term 24-7 is widely used and understood by average consumers to indicate avaliability twenty four hours a day, seven days a week. On this basis, the addition of the wording elements "TWENTYFOUR SEVEN" reinforces the concept already conveyed by the First Earlier Mark. Moreover, the additon of the word "JEANS" is clearly descriptive of the opponent's goods. Taking all of the above into account, the addition of the wording "TWENTYFOUR SEVEN JEANS" does not alter the distinctive character of the "**24**7" element presented on the black four-sided shape, which is clearly visible and still continues to indicate origin.[1] I therefore find that this is an acceptable variant of the First Earlier Mark.

23. The Second Earlier Mark shown at 21(b) is presented alongside a "B.V." element within the invoices, as the opponent's company name. I note that the "B.V." element is an indicator of a private limited company within the Netherlands (the same way "Ltd" or "Limited" is used in the UK). I am satisfied that the use in question is not just as a

[1] *Colloseum Holdings AG v Levi Strauss & Co.,* Case C-12/12, paras 31-35

company name, but that its use also designates the trade source of the goods covered by the purchase orders. I am also satisfied that, due to the meaning of the "B.V." element, that its addition does not alter the distinctive character of the Second Earlier Mark, and therefore the use within the invoice evidence is an acceptable variant of the Second Earlier Mark.

24. Where the earlier marks have been used as registered, this will clearly be use upon which the opponent can rely, and I am satisfied that the Third Earlier mark shown at 21(c) is used as registered on the undated tag evidence.

Assessment of genuine use

25. As I have found the variant mark used in the evidence to be acceptable, I will now consider whether the evidence shows that the earlier marks have been genuinely used. An assessment of genuine use is a global assessment, which includes looking at the evidential picture as a whole, not whether each individual piece of evidence shows use by itself.[2]

26. As indicated in the case law cited above, use does not need to be quantitively significant in order to be genuine. The assessment must take into account a number of factors in order to ascertain whether there has been real commercial exploitation of the mark which can be regarded as "warranted in the economic sector concerned to maintain or create a share in the market for the goods or services protected by the mark".

27. The evidence provided by the opponent is not without its limitations. At the hearing, Mr Gill drew my attention to the first paragraph of Mr Bor's witness statement which states the following:

> "The facts in this Witness Statement come from the accounts and records of the Business and my own personal knowledge. I am duly authorised to speak on behalf of myself and the Business in this matter."

[2] *New Yorker SHK Jeans GmbH & Co KG v OHIM*, T-415/09

28. Mr Gill states that the company "247 Jeans B.V." is not mentioned in the witness statement of the opponent, which he believes was not a minor oversight, but it is the "fundamental purpose of the witness statement to show that the person giving the statement has the authority to speak on behalf of whoever they may be providing the evidence".

29. At the hearing, Mr Juned noted that omitting to refer to "247 Jeans B.V." in Mr Bor's witness statement was "nothing more than a typographical oversight" and that the company Mr Bor refers to is indeed "247 Jeans B.V.", to which he is both the CEO and owner of. However, Mr Gill also draws my attention to the invoice evidence where Mr Bor's name appears on the invoices, but as a "sales representative". The applicant also filed evidence, being **exhibit DJG/5**, which contains a copy of the opponent's commercial extract of the Netherlands Chamber of Commerce, which Mr Gill states is, in effect, the company's registration certificate. This exhibit shows that there are 2 board members for "247 Jeans B.V." (being SU Invest B.V. and Abor Investment B.V.), and thus Mr Bor is not referred to. The board members powers are "solely/independently authorised", and therefore Mr Gill argues that they are the only ones who are authorised to speak on behalf of the company, and that Mr Bor would need authorisation from one of these companies to speak on their behalf, which has not been provided within the evidence. On this basis, Mr Gill states that this is a "fundamental problem with the opposition's case".

30. The opponent did not file any evidence replying to **exhibit DJG/5** to clarify Mr Bor's position or connection to the opponent. However, I also bear in mind that the opponent's evidence has not been subject to cross examination.[3] Whilst I agree that Mr Bor's witness statement should have referred to the company "247 Jeans B.V.", and that his relationship to the company should have also been recorded, I do not find that the omission of these is enough for me to dismiss the witness statement in its entirety. This is on the basis that, as rightly highlighted by Mr Gill, Mr Bor's name is shown on some of the opponent's invoices. Albeit his name is recorded as a "sales

[3] At paragraph 42 of the judgement of *Supreme Court in TUI v Griffiths* [2023] UKSC 48, it endorsed the general rule set in out in Phipson on Evidence (20th ed. Paragraph 12) being that: *"In general a party is required to challenge in cross-examination the evidence of any witness of the opposing party if he wishes to submit to the court that the evidence should not be accepted on that point. The rule applies in civil cases…"*

representative", it provides a clear connection between the company and Mr Bor. Moreover, the fact that Mr Bor was able to provide invoices for the company means that it is reasonable to infer that he has a connection to the company, and based on the evidence above, an employment relationship clearly existed, with Mr Bor working as a sales representative for 247 Jeans B.V. I also bear in mind that if Mr Bor did not have this connection, it would have been highly unlikely for him to have been able to obtain such evidence. Therefore, Mr Bor is clearly in the position to collate all of this evidence on behalf of the opponent.

31. Where proof of use is required, it is typical to see evidence such as turnover figures and advertising figures, but as pointed out by Mr Gill, I have not been provided with any of this evidence, which is plainly information which should have been available and relatively easy to provide. However, it is not necessarily fatal to the assertion of genuine use that there is no such evidence, if other material filed by the opponent is sufficient to show that there has been a real attempt to exploit the mark in the sector. In this case, I have been provided with 14 EU invoices and one UK invoice for "247 Jeans B.V.", all of which are dated before IP completion day. These invoices show sales made between €405.07 and €165,131.58 for goods which are all listed as "denim" and has a leg and waist measurement next to them (presented as, for example, L32-W29). Moreover, whilst I note that the opponent's website evidence and photo evidence are undated, they clearly show use of their marks only on denim jeans. I therefore consider that this, in conjunction with the company name on the invoices being "247 Jeans B.V.", allows me to reasonably conclude that the only denim goods the opponent sells are jeans.

32. Mr Gill highlighted that Mr Bor has asserted that all of its sales are directed to distributors and retailers, and not members of the general public. Thus, Mr Gill states that this would only show use of class 35 wholesale and retail services for jeans, which is protected by the Second and Third Earlier Marks. However, evidence of sales to distributors alone does not rule out the possibility of finding genuine use of class 25 goods, especially if they have been sold on under (and bearing) the opponent's marks, as would usually be the case. I note that the invoice evidence for "247 Jeans B.V." shows that the opponent's goods were sold to distributors based in the UK, Netherlands and Germany. I bear in mind that the opponent has not provided any

evidence as to the market share it possesses, and whilst the clothing market will be significant, the above sales made for jeans, priced between €26.86 and €47.07 are notable, and they are geographically spread. I therefore find that, taking all of the above into account, I consider that genuine use of the opponent's First and Second Earlier Marks have been shown in relation to denim jeans, in the EU, during the relevant period.

33. For the opponent's remaining Third Earlier Mark, this has only been used on the undated photographic evidence of the labels on the opponent's denim jeans (and not on the invoices, for example). On this basis, the evidence of use of this mark is insufficient to establish genuine use of that mark in relation to the opponent's goods.

Fair Specification

34. I must now consider whether, or the extent to which, the evidence shows use of the goods relied upon. In *Euro Gida Sanayi Ve Ticaret Limited v Gima (UK) Limited*, BL O/345/10, Mr Geoffrey Hobbs Q.C. as the Appointed Person summed up the law as being:

> "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."

35. In *Property Renaissance Ltd (t/a Titanic Spa) v Stanley Dock Hotel Ltd (t/a Titanic Hotel Liverpool) & Ors* [2016] EWHC 3103 (Ch), Mr Justice Carr summed up the law relating to partial revocation as follows:

> "iii) Where the trade mark proprietor has made genuine use of the mark in respect of some goods or services covered by the general wording of the specification, and not others, it is necessary for the court to arrive at a fair

specification in the circumstance, which may require amendment; *Thomas Pink Ltd v Victoria's Secret UK Ltd* [2014] EWHC 2631 (Ch) ("Thomas Pink") at [52].

iv) In cases of partial revocation, pursuant to section 46(5) of the Trade Marks Act 1994, the question is how would the average consumer fairly describe the services in relation to which the trade mark has been used; *Thomas Pink* at [53].

v) It is not the task of the court to describe the use made by the trade mark proprietor in the narrowest possible terms unless that is what the average consumer would do. For example, in *Pan World Brands v Tripp Ltd* (Extreme Trade Mark) [2008] RPC 2 it was held that use in relation to holdalls justified a registration for luggage generally; *Thomas Pink* at [53].

vi) A trade mark proprietor should not be allowed to monopolise the use of a trade mark in relation to a general category of goods or services simply because he has used it in relation to a few. Conversely, a proprietor cannot reasonably be expected to use a mark in relation to all possible variations of the particular goods or services covered by the registration. *Maier v Asos Plc* [2015] EWCA Civ 220 ("Asos") at [56] and [60].

vii) In some cases, it may be possible to identify subcategories of goods or services within a general term which are capable of being viewed independently. In such cases, use in relation to only one subcategory will not constitute use in relation to all other subcategories. On the other hand, protection must not be cut down to those precise goods or services in relation to which the mark has been used. This would be to strip the proprietor of protection for all goods or services which the average consumer would consider to belong to the same group or category as those for which the mark has been used and which are not in substance different from them; *Mundipharma AG v OHIM* (Case T-256/04) ECR II-449; EU:T:2007:46.

36. Clearly, the evidence shows that the opponent sells denim jeans, which is a term listed in the First Earlier Marks specification. The First and Second Earlier Marks also

have the terms “clothing”, “trousers” and “denim clothing”, all of which needs to be narrowed down to reflect the opponent’s denim jean goods only (which I consider are appropriate sub-categories).

37. For the remaining class 25 goods the opponent has under its First and Second Earlier Marks, that being footwear, headgear, belts and shawls; there has been no evidence of use filed for these.

38. For the remaining class 35 services the opponent has under its Second and Third Earlier Marks, that being wholesaling and retail services for clothing, I find that the evidence does not show use of the marks in relation to these services. The opponent has only sold its goods to distributors, and it therefore has not provided a wholesale or retail service. For the sake of completeness, at the hearing, Mr Juned asserted the shopping cart icon on the undated website screenshots for “247 Jeans B.V.” indicated the general public could purchase its goods directly. However, I have not been provided with any supporting evidence that its goods were sold directly to consumers via this platform, and consequently I find that use of the marks for retail services has not been established.

39. Taking the above into account, I consider a fair specification for the First and Second Earlier Mark to be:

Class 25 Denim jeans.

Section 5(2)(b) - case law

40. In making this decision, I bear in mind the following principles gleaned from the decisions of the EU courts in *Sabel BV v Puma AG,* Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc,* Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV,* Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH,* Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM,* Case C-334/05P and *Bimbo SA v OHIM,* Case C-591/12P:

(a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall 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

41. The competing goods are as follows:

Opponent's goods	**Applicant's goods**
Class 25 Denim Jeans	Class 25 Clothing, footwear, headgear.

42. When making the comparison, all relevant factors relating to the goods in the specifications should be taken into account. In the judgment of the CJEU in *Canon*, Case C-39/97, the court stated at paragraph 23 that:

> "In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary."

43. Guidance on this issue has come from Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, where he identified the factors for assessing similarity as:

(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 respectively 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. This inquiry may take into account how those in trade classify goods, for instance, whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

44. In *Gérard Meric v OHIM*, Case T- 133/05, the General Court ("GC") stated that:

> "29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 Institut für Lernsysteme v OHIM – Educational Services (ELS) [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark."

45. For the purposes of considering the issue of similarity of goods, it is permissible to consider groups of terms collectively where they are sufficiently comparable to be assessed in essentially the same way and for the same reasons (see *Separode Trade Mark* (BL O/399/10) and *BVBA Management, Training en Consultancy v. BeneluxMerkenbureau* [2007] ETMR 35 at paragraphs 30 to 38).

46. *In Kurt Hesse v OHIM,* Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity

between goods. In *Boston Scientific Ltd v OHIM*, Case T-325/06, the GC stated that "complementary" means:

> "… 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 the responsibility for those goods lies with the same undertaking."

Clothing

47. The opponent's "denim jeans" falls within the applicant's above broader category. The goods are identical on the principle outlined in *Meric*.

Footwear, headgear

48. The applicant's above goods are similar to the opponent's "denim jeans". This is on the basis that all of the goods are worn on the body, albeit different parts, for coverage and protection. The goods can also be worn for fashionable purposes and therefore overlap in purpose and user. Furthermore, the goods would be sold by the same clothing undertakings and in the same clothing retail stores, located in close proximity. However, the goods are clearly neither in competition nor are they complementary. Thus the goods are similar to between a low and medium degree.

The average consumer and the nature of the purchasing act

49. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties' goods. I must then determine the manner in which the goods are likely to be selected by the average consumer. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J described the average consumer in these terms:

> "60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well

> informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The words "average" denotes that the person is typical. The term "average" does not denote some form of numerical mean, mode or median."

50. The average consumer for the goods will be members of the general public. The cost of purchase is likely to vary, and the goods will be purchased relatively frequently. However, various factors are still likely to be taken into consideration during the purchasing process, such as materials used, cut, aesthetic appearance and durability. Consequently, I consider that a medium degree of attention will be paid by the average consumer when selecting the goods.

51. The goods are likely to be obtained by self-selection from the shelves of a retail outlet, online or catalogue equivalent. Alternatively, the goods may be purchased following the perusal of advertisements. This means that visual considerations will be the most significant.[4] However, I do not discount that there will also be an aural component to the purchase of the goods, as advice may be sought from a sales assistant or representative and word-of-mouth recommendations may play a part.

Comparison of the marks

52. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the trade marks must be assessed by reference to the overall impressions created by the trade marks, bearing in mind their distinctive and dominant components. The CJEU stated, at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

> "… it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means

[4] *New Look Limited v OHIM*, Joined cases T-117/03 to T-119/03 and T-171/03, paragraph 50.

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."

53. 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.

My approach to the assessment

54. The First Earlier Mark appears to me to represent the opponent's best case. This is on the basis that, as highlighted by paragraph 22 above, the mark will be understood and read as a "24 7" mark on the basis that the "24" element is presented in bold, whereas the "7" element is not. The Second Earlier Mark, "247 jeans", would be read as the number two hundred and fourty seven, and thus creates a greater distance between them. Consequently, I will begin by comparing the First Earlier Mark and the applicant's mark, returning to the Second Earlier mark, only if it becomes necessary to do so.

55. Therefore, the respective trade marks are shown below:

Opponent's mark	Applicant's mark
	

56. The opponent's mark consists of the bolded number "24" followed by the number "7", which is not in bold. I find that the stylisation creates a distinction between these numbers, and therefore, the average consumer will read the number "24" separate to the "7". As a result, the mark as a whole will be read as "24 7". I note that both of these

elements are presented in a white standard typeface, presented against a black four-sided shape (which has a slanted diagonal line on its right-hand side). I also find that the "**24**7" element plays a greater role in the overall impression, with the background playing a lesser role.

57. The applicant's mark consists of the word "TWENTYFOURSEVEN" presented in a white upper-case typeface, presented on a black rectangular background. I find that the word "TWENTYFOURSEVEN" plays a greater role in the overall impression, with the background playing a lesser role.

58. Visually, regardless of whether the opponent's "**24**7" element is the number presentation of the word element which appears within the applicant's mark, "TWENTYFOURSEVEN", the words and numbers are clearly visually dissimilar. However, I note that both of these elements are presented on similar black four-sided shapes (albeit not identically presented), and therefore, at best, the marks are visually similar to a very low degree.

59. Aurally, the black four-sided shaped backgrounds of both marks will not be articulated. Therefore. the opponent's mark will likely be pronounced as TWENTY-FOUR-SEVEN, on the basis that the "24" element is presented in bold, whereas the "7" element is not (which creates a seperation and distinction between them). The applicant's mark will also likely be pronounced as TWENTY-FOUR-SEVEN. Thus, the marks are aurally identical.

60. Conceptually, the opponent submits that the marks are identical. This is on the basis that the word "TWENTYFOURSEVEN" in the applicant's mark is the verbal form of the number "**24**7" in the opponents mark. I agree. I bear in mind that both of these elements are presented on similar black four-sided shapes, however, these do not contribute to the marks conceptually.

Distinctive character of the earlier trade mark

61. 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 C108/97 and C-109/97 Windsurfing Chiemsee v Huber and Attenberger [1999] ECR 1-2779, paragraph 49).
>
> 23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promotion of 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).”

62. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods and services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use that has been made of it.

63. I bear in mind that Mr Gill provides evidence exhibited at **DJG/1** to **DJG/3** alongside his witness statement, to show an internet search which was conducted by him, showing examples of twenty four seven marks being used on a variety of clothing goods. I note that the majority of the screenshots are from different company websites, as well as screenshots from amazon, Facebook, ebay, Instagram and Etsy, showing use of the following marks:

- TWENTYFOURSEVEN

- Twenty Four Seven
- 24-7
- 24/7
- Twenty4Seven
- 24Seven
- 24/Seven
- Twenty-Four-Seven

64. In *Zero Industry Srl v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM),* Case T-400/06 the GC stated that:

> "73. As regards the results of the research submitted by the applicant, according to which 93 Community trade marks are made up of or include the word 'zero', it should be pointed out that the Opposition Division found, in that regard, that '… there are no indications as to how many of such trade marks are effectively used in the market'. The applicant did not dispute that finding before the Board of Appeal but none the less reverted to the issue of that evidence in its application lodged at the Court. It must be found that the mere fact that a number of trade marks relating to the goods at issue contain the word 'zero' is not enough to establish that the distinctive character of that element has been weakened because of its frequent use in the field concerned (see, by analogy, Case T-135/04 GfK v OHIM – BUS(Online Bus) [2005] ECR II-4865, paragraph 68, and Case T-29/04 Castellblanch v OHIM – Champagne Roederer (CRISTAL CASTELLBLANCH) [2005] ECR II-5309, paragraph 71)."

65. Whilst Mr Gill has tried to provide evidence of how the companies have been using the above marks in practice on class 25 goods, the evidence still suffers from the following deficiencies:

- Some of the websites are ".com" sites which can be accessed worldwide and therefore does not specifically pertain to the UK.
- I have no turnover or sales information, or market share percentage, for any of the marks.

- All of the applicant's screenshot evidence are either undated or dated "12 February" without the year provided. I am, therefore, unable to ascertain whether these screenshots fall before or after the relevant date.
- Whilst the screenshot of a trade mark (UK0000243699) which was taken from the UKIPO website shows it was registered on 22 February 2008, the supporting evidence (as noted above) is all undated and therefore I do not have any dated evidence of the mark being used in practice.
- The TWENTYFOURSEVENCLO LIMITED screenshot from Companies House shows that as a business it was "incorporated on 4 January 2024" which falls after the relevant date.

66. Therefore, taking all of the above into account, I do not consider that the evidence sufficiently shows that the distinctive character of the words "twenty four seven", or their number equivalent "24 7", have been weakened because of their frequent use in the fields concerned. Consequently, this evidence does not assist the applicant.

67. I will now assess the inherent distinctive character of the opponent's First Earlier Mark.

68. As noted above, the mark consists of the bolded number "24" followed by the number "7", which is not in bold, presented on a black four-sided shape. Due to its stylisation, the average consumer will read the number "24" separate to the "7, and as a result, the mark as a whole will be read as "24 7". I note that "24 7" means twenty-four hours a day, seven days a week. Therefore, whilst it is not directly descriptive of the opponent's denim jean goods, I consider it is highly allusive as to its purpose, that they are to be worn twenty-four seven (i.e. every day, all the time). I also do not consider that the black background particularly adds to the distinctiveness of the mark. Thus, I consider that the opponent's mark is inherently distinctive to a low degree.

69. I will now assess whether the evidence filed by the opponent is sufficient to demonstrate enhanced distinctiveness. The relevant market for assessing this is the UK market, and I have only been provided with 1 UK invoice dated 26 September 2018, which amounts to €9,055.65. I have not been provided with any turnover figures,

evidence of the opponent's market share, marketing figures or examples of marketing. Moreover the evidence of the opponent's website, product labels and packaging is all undated. Therefore, taking all of the above into account, I do not consider the evidence sufficient to establish enhanced distinctiveness of the opponent's mark at the relevant date.

Likelihood of confusion

70. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods down to the responsible undertakings being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e., a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and vice versa. It is necessary for me to keep in mind the distinctive character of the earlier mark, the average consumer for the goods and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he has retained in his mind.

71. The following factors must be considered to determine if a likelihood of confusion can be established:

- I have found the marks to be visually similar, at best, to a very low degree.
- I have found the marks to be aurally identical.
- I have found the marks to be conceptually identical.
- I have found the earlier mark to be inherently distinctive to a low degree.
- I have identified the average consumer as members of the general public who will select the goods primarily by visual means, although I do not discount an aural component.

- I have concluded that a medium degree of attention will be paid during the purchasing process for all of the goods.
- I have found the parties' goods to be identical to similar to between a low and medium degree.

72. I bear in mind the decision of the CJEU in *L'Oréal SA v OHIM*, Case C-235/05 P, in which the court confirmed that weak distinctive character of the earlier trade mark does not preclude a likelihood of confusion.

73. Whilst I note that the elements which play a greater role in the overall impression of the marks are visually dissimilar (**24**7 vs TWENTYFOURSEVEN) these elements are conceptually identical; both evoking the meaning of "twenty-four hours a day, seven days a week". I also note that these elements are aurally identical. I therefore find that due to their conceptual and aural identity, the average consumer could easily misremember the parties marks' as each other, misremembering the applicant's mark as a number mark, or misremembering the opponent's mark as a word mark. I therefore find a likelihood of direct confusion.

74. I will also assess if there is a likelihood of indirect confusion. Indirect confusion was described in the following terms by Iain Purvis Q.C. sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10:

> "16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: "The later mark is different from the earlier mark, but also has something in common with it. Taking account of the

common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark.

17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:

> (a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right ('26 RED TESCO' would no doubt be such a case).
>
> (b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as 'LITE', 'EXPRESS', 'WORLDWIDE', 'MINI' etc.).
>
> (c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension ('FAT FACE' to 'BRAT FACE' for example)".

75. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ referred to the comments of James Mellor Q.C. (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at [16] that "a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion". Arnold LJ agreed, pointing out that there must be a "proper basis" for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

76. I bear in mind that the indirect confusion examples set out in paragraph 17 above by Mr Purvis are not exhaustive. However, in this case, I consider that indirect confusion would arise under category (c). I find that the change of "**24**7" to "TWENTYFOURSEVEN", or vice versa, would be entirely logical, inherently plausible

and consistent with a brand extension.[5] This is on the basis that both the numbers and the words conceptually evoke the same meanings and therefore can be used interchangeably to represent one another. I find that this is also reinforced by the fact that both marks are presented on similar four-sided black backgrounds. Lastly, I bear in mind that it is not uncommon for undertakings to re-brand themselves from time to time to accommodate changes in marketing considerations. Therefore, taking the above into account, I find there to be a likelihood of indirect confusion.

Final remarks

77. As noted in paragraph 54 above, the Second Earlier Mark, "247 jeans", would be read as the number two hundred and fourty seven, and thus creates a greater distance between it and the applicant's "TWENTYFOURSEVEN" mark.

78. I therefore do not consider that the opposition based on the Second Earlier Mark would have put the opponent in any stronger position.

CONCLUSION

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

COSTS

80. The opponent has been successful and is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice 1/2023. In the circumstances, I award the opponent the sum of **£1,550** as a contribution towards the costs of the proceedings.

81. The sum is calculated as follows:

[5] See *Colloseum Holdings AG v Levi Strauss & Co.,* Case C-12/12, regarding "wrong way round confusion", referring to Comic Enterprises. In that case Kitchin LJ explained that "right way round" or "wrong way round" confusion may be a consequence of nothing more meaningful than the order in which the consumer happened to come across the mark and the sign. He explain further that in both instances 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.

Filing a Notice of opposition and considering the applicant's counterstatement	£250
Preparing and filing evidence	£600
Preparation for and attendance at hearing	£700
Total	**£1,550**

82. I therefore order TWENTY FOUR SEVEN FASHION LTD to pay Aalt A. van den Bor the sum of £1,550. This sum is to be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 3rd day of March 2025

L FAYTER

For the Registrar

ANNEX 1

First Earlier Mark

Class 25

Clothing, footwear, headgear; Belts [clothing]; Shawls; Trousers; Denim jeans.

Second Earlier Mark

Class 25

Clothing, footwear, headgear; Belts [clothing]; Shawls; Leg clothing; Denim clothing.

Class 35

Wholesaling and retailing in relation to clothing, footwear, headgear, trousers and jeans.

Third Earlier Mark

Class 25

Clothing, footwear, headgear; Belts [clothing]; Shawls; Leg clothing; Denim clothing.

Class 35

Wholesaling and retailing in relation to clothing, footwear, headgear, trousers and jeans.