O/0292/25

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. 3927291
IN THE NAME OF MAXWELL BRIERLEY
TO REGISTER THE FOLLOWING TRADE MARK:

BRILLARE

IN CLASS 33

AND

IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 443604
BY BOTTER S.P.A.

Background and pleadings

1. MAXWELL BRIERLEY ("the applicant") applied to register the trade mark **BRILLARE** ("the applicant's mark") in the UK on 27 June 2023, under number 3927291. It was accepted and published in the Trade Marks Journal on 14 July 2023 in respect of the following goods:

> *Class 33: Alcoholic beverages; wines; sparkling wines; prosecco; spirits; liqueurs; cider, cocktails; perry; vodka; rum; tequila; whisky; whiskey; gin; brandy.*

2. BOTTER S.P.A. ("the opponent") opposes the trade mark on the basis of section 5(2)(b) of the Trade Marks Act 1994 ("the Act"). This is on the basis of its UK trade mark number 801441325, **BRILLA** ("the opponent's mark"). The opponent's mark was filed on 27 September 2018 and became registered on 5 June 2019. It claims a priority date of 11 September 2018 (Italy). It stands registered for the following goods, all of which are relied upon by the opponent:

> *Class 33: Alcoholic beverages (except beers); wines; sparkling wines.*

3. Given the respective filing dates, the opponent's mark is an earlier mark, in accordance with section 6 of the Act. However, as it had not been registered for five years or more at the filing date of the application, it is not subject to the proof of use requirements specified within section 6A of the Act. As a consequence, the opponent may rely upon all of the goods identified without having to establish genuine use.

4. The opponent argues that the respective goods are identical and that the marks are similar. On this basis, it submits that there is a likelihood of confusion, which includes the likelihood of association.

5. The applicant filed a counterstatement denying the ground of opposition.

6. The opponent is professionally represented by Boult Wade Tennant LLP and the applicant is represented by TR Intellectual Property Ltd.

7. The opponent filed evidence on 18 March 2024. This includes a witness statement signed by Daniela Paull, who is a Chartered Trade Mark Attorney and Senior Associate at Boult Wade Tennant LLP. There are three exhibits filed, namely DP1,

DP2, and DP3. These exhibits show screenshots of searches undertaken on the UKIPO website, demonstrating the results of searching for terms related to the opponent's mark.

8. No hearing was requested. Only the opponent filed written submissions in lieu, though I note that the applicant filed submissions during the evidence rounds. These will not be summarised but will be referred to as and where appropriate during this decision. This decision is taken following careful consideration of all the papers before me.

Relevance of EU law

9. 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.

Section 5(2)(b)

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

> "5(2) A trade mark shall not be registered if because-
>
> (b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark".

11. Section 5A states: […] "Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only."

12. I am guided by the following principles which are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG,* Case C-251/95, *Canon Kabushiki Kaisha v Metro-*

Goldwyn-Mayer Inc, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV,* Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH,* Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM,* Case C-334/05P and *Bimbo SA v OHIM,* Case C-591/12P.

The principles

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

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

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

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;

(f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

(g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;

(h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;

(i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;

(j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;

(k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically linked undertakings, there is a likelihood of confusion.

Comparison of goods

13. In *Gérard Meric v OHIM* (Case T-33/05) the General Court ("GC") confirmed that even if goods are not worded identically, they can still be considered identical if one term falls within the scope of another (or vice versa):

"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 fur 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."

14. The goods to be compared are shown in the table below:

The applicant's goods	The opponent's goods
Class 33: Alcoholic beverages; wines; sparkling wines; prosecco; spirits; liqueurs; cider, cocktails; perry; vodka; rum; tequila; whisky; whiskey; gin; brandy	*Class 33: Alcoholic beverages (except beers); wines; sparkling wines.*

15. The opponent argues that all of the applicant's goods are identical to the opponent's term "alcoholic beverages", and also highlights that the applicant's terms "wines" and "sparkling wines" are also included in the opponent's goods. I agree with the opponent. The terms "alcoholic beverages", "wines" and "sparkling wines" appear in both parties' specifications and are plainly identical. The remaining terms in the applicant's specification are all particular examples of alcoholic beverages, which would fall within the scope of the opponent's "alcoholic beverages (except beers)". Therefore, I find that these goods are identical under the principle in *Meric*.

Average consumer and the purchasing act

16. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods in question: *Lloyd Schuhfabrik Meyer,* Case C-342/97.

17. 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 (as he then was) described the average consumer in these terms:

> "60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The words "average" denotes that the person is typical. The term "average" does not denote some form of numerical mean, mode or median."

18. The goods are alcoholic beverages and the average consumer will be members of the general public who are over the age of 18. The cost of purchase will vary depending on the type of the alcoholic beverage. The alcoholic beverages in general may be reasonably inexpensive, although I acknowledge that some of the more high-end and high-strength beverages such spirits or wines may be much higher in price than some of lower-end goods such as cider or pre-mixed small cans of low strength cocktails. The goods are likely to be brought on a regular basis. Several factors may

influence the average consumer when purchasing the goods, such as the flavour, strength, and quality of the alcoholic beverage. Taking into account all of these factors, it is my view that the average consumer will pay a medium amount of attention when purchasing the goods. The goods will be purchased from general retail outlets, specialist stores such as wine merchants or cellars, and their online equivalents. The customer will self-select the goods from the display shelves, or by selecting the image of their desired product if purchasing online. There will also be an aural component to the purchasing process, such as ordering alcoholic beverages in bars and restaurants or when word-of-mouth recommendations are made. However, I also bear in mind the comments of the GC in *Simonds Farsons Cisk plc v OHIM*, Case T-3/04, who said:

> "58. In that respect, as OHIM quite rightly observes, it must be noted that, even if bars and restaurants are not negligible distribution channels for the applicant's goods, the bottles are generally displayed on shelves behind the counter in such a way that consumers are also able to inspect them visually. That is why, even if it is possible that the goods in question may also be sold by ordering them orally, that method cannot be regarded as their usual marketing channel. In addition, even though consumers can order a beverage without having examined those shelves in advance they are, in any event, in a position to make a visual inspection of the bottle which is served to them."

19. I therefore bear in mind that the aural component will play a part in the purchasing process, but that the visual component is still likely to dominate.

Comparison of marks

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

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

of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion."

21. It would be wrong, therefore, to dissect the trade marks artificially, 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.

22. The respective trade marks are shown below:

The opponent's mark	**The applicant's mark**
BRILLA	BRILLARE

23. The opponent's mark is a plain word mark written in uppercase. As a word-only mark with no other elements, the overall impression lies in the word "BRILLA". The applicant's mark is also a plain word mark written in uppercase. As a word-only mark with no other elements, the overall impression lies in the word "BRILLARE".

Visual comparison

24. In the counterstatement, the applicant submits that the marks are visually different due to the additional letters 'RE' in the applicant's mark. In its written submissions, the opponent contends that the marks are highly visually similar as the opponent's mark is "identically reproduced" in the first six letters of the applicant's eight-letter word. It also argues that consumers will be particularly drawn to the first five letters 'BRILL' within the two marks.

25. The competing marks are visually similar on the basis that they both have the same six letters 'BRILLA'. The marks differ in that the applicant's mark contains an additional two letters 'RE'. However, this difference appears at the end of the marks and I bear in mind that the beginnings of words tend to have more visual and aural impact than the ends (see paragraph 81 of *El Corte Inglés, SA v OHIM*, Cases T-

183/02 and T-184/02). I am therefore of the view that the marks are visually similar to a medium to high degree.

Aural comparison

26. In the counterstatement, the applicant argues that the marks are not similar, and states that 'BRILLA' (i.e., the opponent's mark) is likely to be pronounced as 'BRILL-U" (phonetical U)" and the other mark[1] as 'BRILLAIR'. He also cites the difference in Italian pronunciation, stating that 'BRILLA' is pronounced as 'BREELA' and 'BRILLARE' as 'BRIL-LÀ-RE'. He also argues that more emphasis is likely to be placed on the end of the applicant's mark.

27. The opponent submits that the marks will have two syllables, with an identical first syllable 'BRILL'. It argues that the second syllable is a "short letter/sound, rather than a word" and the emphasis is strongly on the first syllable. As such, it argues that the marks are highly similar.

28. In the counterstatement, the applicant claims that 'BRILLA' and 'BRILLARE' are Italian words, which is not disputed by the opponent. However, whilst I accept that there will be a number of individuals in the UK who speak/understand Italian, these speakers will not constitute a significant proportion of average consumers within the UK. Moreover, whilst Italian is considered one of the more commonly understood European languages, the words BRILLA and BRILLARE are unlikely to be words that UK consumers would be familiar with, such as 'pizza' or 'ciao'. As I am unaware of the words' meanings, and neither party has offered a translation of either 'BRILLA' or 'BRILLARE', it is not clear if the words are cognates of their English counterparts. Furthermore, the goods are also not aimed at a specific section of the public (e.g. Italian speakers). On this basis, I am of the view that the vast majority of consumers will not adopt the Italian pronunciation of the words. Instead, I agree with the applicant that that the average consumer is likely to pronounce 'BRILLARE' as two syllables with a silent 'E' as 'brill-air'. I believe this on the basis that words ending in '-are' are often pronounced in this way (such as 'glare', 'care', and 'dare'). It is my view that the

[1] I note that the counterstatement states "the opponent's mark" will be pronounced as BRILLAIR, which appears to be an error. I presume from the context that this was intended to refer to "the applicant's mark".

opponent's mark is likely to be pronounced with two syllables as 'brill-ah' with a short A sound (such as in 'apple').

29. The marks are aurally similar due to having two syllables. They also share the same first syllable (i.e., 'brill'), and their second syllable begins with an A. The marks differ aurally in their last syllable, with the opponent's mark ending with 'ah' and the applicant's mark ending with 'air'.

30. I note that the opponent argues that the emphasis will be on the first syllable of the marks, whereas the applicant argues that the emphasis will be on the end of the words. As stated in paragraph 25 above, the beginnings of words tend to have more impact that the ends of words. Furthermore, the applicant has not explained why the emphasis would be on the end of the words. It is therefore my view that consumers will pronounce the marks with the emphasis on the first syllable of the words (i.e., 'BRILL-ah' and 'BRILL-air') rather than the last syllable.

31. Taking into account these considerations, I find that there is a medium to high degree of aural similarity between the two marks.

Conceptual comparison

32. In the statement of grounds, the opponent argues that the marks will either be conceptually neutral, or alternatively that consumers may recognise that the opponent's undertaking is Italian and make a conceptual link with the applicant's mark on the basis that 'BRILLARE' appears Italian. In the counterstatement, the applicant argues against this submission, and submits that consumers are unlikely to be aware of the opponent's Italian origin and instead agrees that the marks are conceptually neutral. In the submissions in lieu, the opponent reiterates its arguments that the marks are conceptually neutral but also submits in the alternative that if consumers perceive the word 'BRILL' within the marks, then "they are conceptually identical".

33. As stated in paragraph 28 above, the vast majority of consumers will not recognise the Italian origin of the words or know the English translation of them. I agree that the average consumer will not perceive the later mark as Italian and that the majority of consumers will be unaware of the Italian origin of the opponent's undertaking. I therefore do not accept the opponent's argument because it should not be assumed

that the average consumer will be aware of the corporate undertaking responsible for the mark or the country in which they are based. I therefore do not agree that consumers will make a conceptual connection between the marks on this basis.

34. For the average consumer in the UK, both marks will present as invented words with no recognised meanings. However, notwithstanding the established principle that consumers normally perceive a trade mark as a whole, consumers will break down the mark into verbal elements which suggest a concrete meaning or resemble words known to them (*Usinor SA v OHIM*, Case T-189/05). In this connection, it is my view that the presence of 'BRILL' at the beginning of each mark may be recognised by a significant proportion of consumers as the shortened form of the word 'brilliant', meaning very good. Insofar as the marks as wholes convey any concept, they are identical.

Distinctive character of the earlier trade mark

35. In *Lloyd Schuhfabrik Meyer & Co. GmbH* v *Klijsen Handel BV,* Case C-342/97, the CJEU stated that:

> "22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee* v *Huber and Attenberger* [1999] ECR I-0000, paragraph 49).
>
> 23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of

commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51)."

36. Registered trade marks possess various degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods, to those with high inherent distinctive character, such as invented words which have no allusive qualities.

37. In the submissions in lieu, the opponent argues that the mark is highly distinctive. The opponent has filed the witness statement from Daniela Paull, along with exhibits DP1, DP2, and DP3 which it has filed in support of the statement that 'BRILLA' is unique on the trade mark register in respect of class 33 goods. The three exhibits show screenshots of the results of searches on the UKIPO register. DP1 shows that an exact search for the word 'BRILLA' in class 33 only brings back the opponent's mark. DP2 shows that a search for word marks starting with 'BRILLA' in class 33 yields four results, namely the opponent's mark 'BRILLA', the applicant's mark 'BRILLARE', and two results for 'BRILLAT-SAVARIN' which are shown to be geographical indications. DP3 shows a search in class 33 for word marks starting with 'BRILL', which yields eight results, namely the opponent's mark 'BRILLA', the applicant's mark 'BRILLARE', the two PGIs 'Brillat-Savarin' (PS070017153 and PS230001382), plus a withdrawn mark 'Brill Gin' (UK00003713754), a refused mark 'BRILLIANT GIN' (UK00003773577), and two other marks 'BRILLIANT SYMPHONY OF BANANAS' (UK00912007936) and 'BRILLIANT SYMPHONY OF COCONUTS' (UK00912007951). In the submissions in lieu, the opponent refers to the witness statement and highlights that the mark is unique on the trade mark register in respect of class 33 goods.

38. On 17 May 2024 the applicant filed submissions in response to the witness statement and evidence. He suggests that DP1 is not relevant given the narrow nature of the search. He also states that the opponent has overlooked the two PGIs for Brillat-Savarin in DP2, which he submits are relevant to the case. The applicant also questions why the opponent has overlooked the two PGIs in DP3. He also questions the relevance of the withdrawn mark 'Brill Gin' and the refused mark 'BRILLIANT GIN and suggests that these were not refused/withdrawn due to action from the opponent. On 4 July 2024, the opponent emailed a response to clarify to the applicant that the

UKIPO website shows that the mark ‘BRILLIANT GIN’ was refused at examination stage and that ‘Brill Gin’ was withdrawn by the applicant.

39. The distinctiveness of a mark can be enhanced by virtue of the use made of it. However, the evidence has been filed in support of inherent distinctiveness rather than enhanced distinctiveness, given that it does not address how the opponent’s mark has been used or whether the average consumer in the UK has been educated to recognise it. As such, I have only the inherent position to consider.

40. I acknowledge that the applicant has raised the relevance of the two PGIs ‘Brillat-Savarin’ (PS070017153 and PS230001382). However, there are no further comments to explain why he feels this is the case, and it is not clear why the PGIs would be relevant to an assessment of the inherent distinctiveness of the opponent’s mark.

41. Whilst the opponent has filed the printouts of the UKIPO website to highlight the “unique” nature of ‘BRILLA’, it is my view that this is not evidence per se of the distinctiveness of the mark, notwithstanding the fact that ‘BRILLA’ is the only such mark on the register within class 33.

42. As stated in paragraph 34 above, it is my view that the average consumer will view “BRILLA” as a neologism which is not descriptive but may be seen as being loosely evocative of the word ‘BRILL’. It therefore has a medium to high level of inherent distinctiveness.

Global assessment – conclusions on likelihood of confusion

43. 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 set formula for establishing a likelihood of confusion between marks; it is a global assessment where a number of factors need to be borne in mind.

44. One such factor is the interdependency principle, i.e. a lesser degree of similarity between the competing marks may be offset by a greater degree of similarity between

the respective goods, and vice versa. As mentioned above, it is necessary for me to keep in mind the distinctive character of the opponent's mark, the average consumer for the goods and the nature of the purchasing process. In doing so, I must be mindful 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 they have retained in their mind.

45. In the counterstatement, the applicant claims that there is no similarity between the marks and that his mark does not cover identical and/or highly similar goods, and on this basis there is no likelihood of confusion including no likelihood of association with the opponent's mark. The counterstatement also states "[w]hen considering whether confusion could arise, one should also consider how the marks are presented to the purchasing public" and provides images of how the marks are being used. The applicant's submissions also refer to the difference in the parties' labelling and that the mark is being used as 'BRILLA!'. In its written submissions, the opponent argues that a likelihood of confusion exists between the competing marks especially for identical goods.

46. I disagree with the applicant that the assessment of the likelihood of confusion should take into account the current use of the mark and the labelling. The marks referred to by the applicant are not at issue in these proceedings. The competing marks are both word-only marks, and as such they are (or would be) protected in whatever case, colour, or typeface (as per *LA Superquimica v European Union Intellectual Property Office (EUIPO)*, Case T-24/17, at [39]). The current use with a stylised typeface does not preclude the opponent from using its mark in a different manner to what is shown in the images in the counterstatement; the opponent's protection is not limited by its current use. As previously explained in paragraph 3 above, the mark relied upon by the opponent had not been registered for five years at the priority date of the application. Consequently, opponent's trade mark is entitled to protection against a likelihood of confusion with the applicant's mark based on its 'notional' use for all the goods listed in the register. Moreover, when assessing the likelihood of confusion in the context of registering a new trade mark (such as the applicant's mark), it is necessary to consider all the circumstances in which the mark might be used if it were registered (*O2 Holdings Limited, O2 (UK) Limited v Hutchison*

3G UK Limited, Case C-533/06). As a result, even though the applicant has suggested the ways in which the mark is or will be used, my assessment must not be limited to that. As it would be inappropriate to factor in how the current use of the word marks in combination with additional components when assessing the likelihood of confusion, I have disregarded this point.

47. Earlier in this decision I found that the goods are identical. The average consumer will pay a medium degree of attention when purchasing the goods. The average consumer will be the members of the general public who are over the age of 18. The purchasing act may have an aural component, but the goods will be selected primarily through visual means. I have found the marks to be visually similar to a medium to high degree, aurally similar to a medium to high degree, and that the marks as wholes convey an identical concept. The opponent's mark is a word-only mark and its overall impression lies in the word "BRILLA". The applicant's mark is also a word-only mark and its overall impression lies in the word "BRILLARE". The opponent's mark has a medium to high level of inherent distinctiveness.

48. Taking all these factors into account and being mindful of the role that imperfect recollection may play, I consider that the marks are likely to be misremembered or inaccurately recalled for one another. It is my view that the average consumer, when playing a medium amount of attention, may overlook the points of difference between the marks, which would lead to direct confusion. It is considered that the marks' visual and aural similarities, the level of distinctiveness of the opponent's mark, and the identical nature of the goods are factors which support this finding. It is my view therefore that, notwithstanding the minor visual differences arising from the addition of 'RE' at the end of the applicant's mark, there exists a likelihood of confusion.

Final remarks

49. The opposition under section 5(2)(b) has been successful in its entirety. Subject to any successful appeal, the application will be refused registration.

Costs

50. 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 £1050 as a contribution towards the cost of the proceedings. As evidence was filed by the opponent, I have awarded some costs towards its preparation. However, as it was of limited assistance in establishing the likelihood of confusion, very brief and formed of information freely available on the UKIPO website, I have awarded a below-scale figure for this activity.

The sum is calculated as follows:

Preparing a statement and considering the other side's statement: £250

Preparing evidence £300

Preparing submissions-in-lieu: £400

Official fees: £100

51. I therefore order MAXWELL BRIERLEY to pay BOTTER S.P.A. the sum of £1050. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 27th day of March 2025

K SERRAVALLE

For the Registrar