

O/0427/25

TRADE MARKS ACT 1994

**IN THE MATTER OF
TRADE MARK APPLICATION NO. 3906244
IN THE NAME OF GILCHRIST & SOAMES UK LIMITED
TO REGISTER AS A TRADE MARK**

Kairos

IN CLASSES 3 AND 35

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER NUMBER 442507
BY YVES SAINT LAURENT PARFUMS**

BACKGROUND AND PLEADINGS

1. On 28 April 2023, Gilchrist & Soames UK Limited (“the applicant”) applied to register the trade mark “**Kairos**” in the United Kingdom. The application was accepted and published for opposition purposes on 12 May 2023, in respect of goods and services in classes 3 and 35, as listed under paragraph 14 of this decision.

2. The application is opposed by Yves Saint Laurent Parfums (“the opponent”). The opposition was filed on 14 August 2023 and is based upon section 5(2)(b) of the Trade Marks Act 1994 (“the Act”).¹ The opposition is directed against all of the goods and services in the application. The opponent relies upon the following two marks:

KOUROS SILVER

UK trade mark registration number 912954186

Filing date: 10 June 2014

Registration date: 22 October 2014

Registered in Class 3

Relying on all goods as listed under paragraph 14 of this decision

(The ‘186 mark); and



International Registration No.: WO726218

International Registration date: 14 January 2000

Priority claimed from FR 99 807 035, with a priority date of 6 August 1999

UK Date of Designation: 14 January 2000

Date protection conferred in the UK: 16 November 2001

¹ As the opponent elected not to file evidence within the given period in relation to the section 5(3) grounds as originally filed, it was the preliminary view of the Registry that these grounds should be deemed withdrawn. The opponent did not respond to the preliminary view, and so it was confirmed in the official letter dated 23 February 2024 that the opposition would proceed under section 5(2)(b) only.

Protected for goods in class 3

Relying on all goods as listed under paragraph 14 of this decision

(The '218 mark).

3. Under Article 54 of the Withdrawal Agreement between the UK and the EU, the UK IPO created comparable UK trade marks for all right holders with an existing registered EUTM or International Registration designating the EU. As a result, the opponent's '186 mark was converted into a comparable UK trade mark. Comparable UK marks are now recorded in the UK trade mark register, have the same legal status as if they had been applied for and registered under UK law, and the original filing dates remain the same.²

4. The trade marks upon which the opponent relies each qualifies as an earlier trade mark under Section 6(1) of the Act. As the earlier marks were each registered/protected more than 5 years before the application date of the applicant's mark, they are, in principle, subject to the provisions on use under section 6A of the Act. I note that on its Form TM7 Notice of opposition and statement of grounds, the opponent made a statement of use in relation to all of the goods relied upon under each of the marks. Although the applicant could have required the opponent to provide proof of use of either or both of the earlier marks under section 6A, it did not do so.³ As a result, the opponent is able to rely on all the goods without having to provide evidence that it has used its marks in relation to any of those goods.

5. The opponent submits that the applicant's mark is similar to both the earlier marks and that the goods applied for are either identical or similar to those for which the earlier marks have registered protection, while the services applied for are similar. It submits that there is a likelihood of confusion on the part of the relevant public and that the application "must be refused registration in its entirety pursuant to section 5(2)(b)" of the Act.

² See also Tribunal Practice Notice ("TPN") 2/2020 End of Transition Period – impact on tribunal proceedings.

³ As per question 7 of the form TM8 where the applicant has ticked 'No' in answer to the question: 'Do you want the opponent to provide "proof of use"?'.

6. The applicant filed a counterstatement denying the claims and requests that the application of its mark be allowed to proceed to registration.

7. Neither party elected to file evidence or to file written submissions during the evidence rounds and neither party requested a hearing. Only the opponent filed written submissions in lieu of a hearing, which will be referred to as and where appropriate during this decision. This decision is taken following careful consideration of the papers on file.

8. In these proceedings, the opponent is represented by Baker & McKenzie LLP and the applicant is represented by GCS Europe Ltd.

DECISION

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) is relied on and 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”.

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 Office for Harmonisation in the Internal Market (Trade Marks and Designs) (“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 greater degree of similarity between the marks, and vice versa;

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

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

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

(k) if the association between the marks creates a risk that the public 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 and services

13. Pursuant to section 60A of the Act, goods and services are not to be automatically regarded as being similar to each other on the ground that they appear in the same

class, nor automatically regarded as dissimilar from each other on the ground that they appear in different classes.

14. The goods and services to be compared are:

Opponent's goods
The '186 mark <u>Class 3</u> <i>Perfumes, eau de toilette, eau de Cologne, deodorants for personal use, after-shave preparations.</i>
The '218 mark <u>Class 3</u> <i>Perfumes, eau de parfum, eau de toilette, perfumed body milk, cream, lotion and powder; pre-shave and aftershave lotions and creams, perfumed soaps, bubble bath and shower gels, deodorant for personal use; hair lotions; cosmetics.</i>
Applicant's goods and services
<u>Class 3</u> <i>Shampoo; Shampoos; Dandruff shampoo; Waterless shampoo; Shampoo bars; Hair shampoo; Baby shampoo; Shampoo-conditioners; Hair shampoos; Body shampoos; Shampoos for babies; Non-medicated shampoos; Hair rinses [shampoo-conditioners]; Shampoos for human hair; Shampoos for personal use; Refill packs for shampoo dispensers; Dandruff shampoos, not for medical purposes; Hair conditioner; Hair conditioners; Hair conditioner bars; Hair conditioners for babies; Conditioners for treating the hair; Conditioners for use on the hair; Body wash; Body washes; Hair and body wash; Soap; Soaps; Cosmetic soap; Beauty soap; Skin soap; Bar soap; Soap products; Hand soap; Body soap; Aloe soap; Liquid soap; Perfumed soap; Shower soap; Bath soap; Handmade soap; Almond soap; Scented soaps; Facial soaps; Cosmetic soaps; Cream soaps; Bath soaps; Almond soaps; Aloe soaps; Liquid soaps; Perfumed soaps; Hand soaps; Body cream soap; Liquid bath soap; Liquid bath soaps; Soaps and gels; Soaps for body care; Soaps for household use; Soaps for personal use; Soaps in liquid form; Soaps in gel form; Hand washes; Hand lotions; Hand lotion (Non-medicated -); Body lotion; Hair lotion; Skin lotion; Bathing lotions; Body lotions; Beauty lotions; Skin lotions; Bath lotion; Hair lotions; Moisture body lotion; Scented body lotions; Moisturizing body lotions; Hair</i>

care lotions; Moisturising creams, lotions and gels; Scented body lotions and creams; Lotions for cosmetic purposes; Non-medicated skin lotions; Moisturising skin lotions [cosmetic]; Non-medicated hair lotions; Bath lotions (Non-medicated -); Lotions for the skin; Face and body lotions; Perfumed body lotions [toilet preparations]; Hair care lotions [for cosmetic use]; Cosmetics in the form of lotions; Body care cosmetics; Hair care creams; Hair care masks; Hair care creams [for cosmetic use]; Hair cosmetics; Cosmetic hair lotions; Cosmetic hand creams; Shower cream; Bath cream; Hand cream; Hair cream; Moisturizing creams; Body creams; Bath creams; Moisturising creams; Hair creams; Hand creams; Conditioning creams; Shower creams; Scented body creams; Bath creams (Non-medicated -); Cosmetic creams and lotions; Body creams [cosmetics]; Body cream for cosmetic use; Creams (Non-medicated -) for the body; Body cream; Toiletries;.

Class 35

Retail services in relation to toiletries; Wholesale services in relation to toiletries; Wholesale and retail services in relation to Shampoo, Shampoos, Dandruff shampoo, Waterless shampoo, Shampoo bars, Hair shampoo, Baby shampoo, Shampoo-conditioners, Hair shampoos, Body shampoos, Shampoos for babies, Non-medicated shampoos, Hair rinses [shampoo-conditioners], Shampoos for human hair, Shampoos for personal use, Refill packs for shampoo dispensers, Dandruff shampoos, not for medical purposes, Hair conditioner, Hair conditioners, Hair conditioner bars, Hair conditioners for babies, Conditioners for treating the hair, Conditioners for use on the hair, Body wash, Body washes, Hair and body wash, Soap, Soaps, Cosmetic soap, Beauty soap, Skin soap, Bar soap, Soap products, Hand soap, Body soap, Aloe soap, Liquid soap, Perfumed soap, Shower soap, Bath soap, Handmade soap, Almond soap, Scented soaps, Facial soaps, Cosmetic soaps, Cream soaps, Bath soaps, Almond soaps, Aloe soaps, Liquid soaps, Perfumed soaps, Hand soaps, Body cream soap, Liquid bath soap, Liquid bath soaps, Soaps and gels, Soaps for body care, Soaps for household use, Soaps for personal use, Soaps in liquid form, Soaps in gel form, Hand washes, Hand lotions, Hand lotion (Non-medicated -), Body lotion, Hair lotion, Skin lotion, Bathing lotions, Body lotions, Beauty lotions, Skin lotions, Bath lotion, Hair lotions, Moisture body lotion, Scented body lotions, Moisturizing body lotions, Hair care lotions, Moisturising creams, lotions and gels, Scented body lotions and creams, Lotions for cosmetic purposes, Non-medicated skin lotions, Moisturising skin lotions [cosmetic], Non-medicated hair lotions, Bath lotions (Non-medicated -), Lotions for the skin, Face and body lotions, Perfumed body lotions [toilet preparations], Hair care lotions [for cosmetic use], Cosmetics in the form of lotions, Body care cosmetics, Hair care creams, Hair care masks, Hair care creams [for cosmetic use],

Hair cosmetics, Cosmetic hair lotions, Cosmetic hand creams, Shower cream, Bath cream, Hand cream, Hair cream, Moisturizing creams, Body creams, Bath creams, Moisturising creams, Hair creams, Hand creams, Conditioning creams, Shower creams, Scented body creams, Bath creams (Non-medicated -), Cosmetic creams and lotions, Body creams [cosmetics], Body cream for cosmetic use, Creams (Non-medicated -) for the body, Body cream;

15. Where the goods (or services) in the specification of one party are included in a broader term from the other party's specification, those goods (or services) are considered to be identical: See *Gérard Meric v OHIM*, Case T-133/05 at [29].

16. In *Canon*, Case C-39/97, the Court of Justice of the European Union ("CJEU") stated that:

"23. In assessing the similarity of the goods or services concerned, ... 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".

17. Additionally, the factors for assessing similarity between goods and services identified in *British Sugar Plc v James Robertson & Sons Limited* ("Treat") [1996] R.P.C. 281 include an assessment of the users and the channels of trade of the respective goods or services.

18. 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 General Court ("GC") stated that "complementary" means:

"82. ...there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers

may think that the responsibility for those goods lies with the same undertaking”.

19. For the purposes of considering the issue of similarity of the goods and/or services, it is permissible to consider groups of terms collectively where appropriate: *Separode Trade Mark*, BL O-399-10.⁴

20. While making my comparison, I bear in mind the comments of Floyd J. (as he then was) in *YouView TV Ltd v Total Ltd* [2012] EWHC 3158 (Ch):

"12. ... Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise. ... Nevertheless the principle should not be taken too far. ... Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question."

21. In the case of services, the correct approach in considering the specification is to confine terms which are not clear or precise to the substance or core of their possible meanings.⁵

22. In its written submissions in lieu of a hearing, the opponent has provided a comparison table of the respective goods and services on a class-by-class basis, highlighting the major points of similarity/identity. It submits that there is identity between all goods covered by class 3, however, should the applicant's goods not be deemed to be strictly identical, "they are clearly highly similar". While I note that the earlier marks share goods in common, the specification of the '218 mark is broader in scope than the '186 mark. I take the opponent's submissions into consideration in the comparisons which follow.

⁴ Paragraph 5

⁵ *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1)* [2024] UKSC 36, at [365].

The contested goods in Class 3

Hair lotion; Hair lotions; Hair care lotions; Non-medicated hair lotions; Hair care lotions [for cosmetic use]; Cosmetic hair lotions;

23. The applicant's above goods are self-evidently identical to the opponent's "hair lotions" as protected under the earlier '218 mark.

24. The opponent's goods registered under the '186 mark are perfumery products and deodorants. None of the earlier goods are specifically hair products. The goods at issue are therefore different in nature, purpose and method of use, although there is likely to be an overlap in end users. However, the goods are distributed through the same channels of trade and may be found in relatively close proximity in a supermarket or retail outlet, although in my view they are likely to be found in different aisles. The respective goods are neither in competition nor complementary in a trade mark sense. Although I accept that hair lotions may be fragranced, to my mind they are not usually fragranced with branded perfumes in the way a body lotion may be fragranced and I do not consider that the average consumer would automatically expect the goods in question to originate from the same provider. Given that the essential purpose of the applicant's goods is specific to use on hair, which cannot be said of the opponent's goods, overall if there is any similarity, then I consider the goods to be similar to only a low degree.

Shampoo; Shampoos; Dandruff shampoo; Waterless shampoo; Shampoo bars; Hair shampoo; Baby shampoo; Shampoo-conditioners; Hair shampoos; Shampoos for babies; Non-medicated shampoos; Hair rinses [shampoo-conditioners]; Shampoos for human hair; Shampoos for personal use; Refill packs for shampoo dispensers; Dandruff shampoos, not for medical purposes; Hair conditioner; Hair conditioners; Hair conditioner bars; Hair conditioners for babies; Conditioners for treating the hair; Conditioners for use on the hair; Hair ... wash; Hair care creams; Hair care masks; Hair care creams [for cosmetic use]; Hair cosmetics; Hair cream; Hair creams.

25. I consider the applicant's above goods would all be encompassed by the broad term "*hair lotions*" as protected under the earlier '218 mark. The goods are therefore identical as per the principles outlined in *Meric*.

26. For the same reasons given earlier under paragraph 24, I consider there to be a low degree of similarity at best between the above listed goods and the goods registered under the opponent's '186 mark.

Body shampoos; Body wash; Body washes; ... body wash; Soap; Soaps; Cosmetic soap; Beauty soap; Skin soap; Bar soap; Soap products; Hand soap; Body soap; Aloe soap; Liquid soap; Perfumed soap; Shower soap; Bath soap; Handmade soap; Almond soap; Scented soaps; Facial soaps; Cosmetic soaps; Cream soaps; Bath soaps; Almond soaps; Aloe soaps; Liquid soaps; Perfumed soaps; Hand soaps; Body cream soap; Liquid bath soap; Liquid bath soaps; Soaps and gels; Soaps for body care; Soaps for household use; Soaps for personal use; Soaps in liquid form; Soaps in gel form; Hand washes; Hand lotions; Hand lotion (Non-medicated -); Body lotion; Skin lotion; Bathing lotions; Body lotions; Beauty lotions; Skin lotions; Bath lotion; Moisture body lotion; Scented body lotions; Moisturizing body lotions; Moisturising creams, lotions and gels; Scented body lotions and creams; Lotions for cosmetic purposes; Non-medicated skin lotions; Moisturising skin lotions [cosmetic]; Bath lotions (Non-medicated -); Lotions for the skin; Face and body lotions; Perfumed body lotions [toilet preparations]; Cosmetics in the form of lotions; Body care cosmetics; Cosmetic hand creams; Shower cream; Bath cream; Hand cream; Moisturizing creams; Body creams; Bath creams; Moisturising creams; Hand creams; Conditioning creams; Shower creams; Scented body creams; Bath creams (Non-medicated -); Cosmetic creams and lotions; Body creams [cosmetics]; Body cream for cosmetic use; Creams (Non-medicated -) for the body; Body cream; Toiletries.

27. In my view, the average consumer would construe the term "cosmetics" as being beauty preparations or make-up and would include the likes of face and body creams, as well as soap and washes, all of which may be used to cleanse, protect or enhance the appearance of the face and/or body. I consider that all of the applicant's above

goods (some of which are already qualified as being cosmetic/s), would be encompassed by the broad term “cosmetics” as protected under the earlier ‘218 mark and as such the goods are identical as per *Merix*. If I have given too much weight as to what would be encompassed by the broad term “cosmetics”, then in the alternative I consider there to be an overlap in users, as well as in the nature and purpose of the goods at hand (being to cleanse, protect or enhance) and the method of use (being applied directly to the face or body). The goods will share channels of trade and in my view the average consumer could realistically perceive them as emanating from the same undertaking. The goods are highly similar.

28. With regard to the earlier ‘186 mark, while the opponent’s “*Perfumes, eau de toilette, eau de Cologne, and after-shave preparations*” are different in their essential nature to the above-listed goods, there will be an overlap in users. Some, but not all, of the applicant’s goods are qualified as being perfumed and those perfumed goods will overlap in purpose as they will also perform the additional function of fragancing the body, although the primary function of many goods will be to moisturise or cleanse. Unlike the previously considered hair products, I do not consider it unusual for the above goods to be perfumed, even if they have not been expressly qualified as such. It is not uncommon for the manufacturers of perfumes to bring out a complimentary range of face and body creams or bath and shower products which include the same fragrance as the perfume itself. It would therefore not be unreasonable for the average consumer to mistakenly assume that the competing goods derive from the same undertaking. I therefore consider the applicant’s goods to be similar to a medium degree to the “*Perfumes, eau de toilette, eau de Cologne, and after-shave preparations*” of the earlier ‘186 mark.

The contested services in Class 35

29. In *Oakley, Inc v OHIM*, Case T-116/06, at paragraphs 46-57, the GC held that although retail services are different in nature, purpose and method of use to goods, retail services for particular goods may be complementary to those goods, and distributed through the same trade channels, and therefore similar to a degree.

30. In *Tony Van Gulck v Wasabi Frog Ltd*, Case BL O/391/14, Mr Geoffrey Hobbs Q.C. (as he then was) as the Appointed Person reviewed the law concerning retail services v goods. On the basis of the European courts' judgments in *Sanco SA v OHIM*⁶, and *Assembled Investments (Proprietary) Ltd v. OHIM*⁷, upheld on appeal in *Waterford Wedgwood Plc v. Assembled Investments (Proprietary) Ltd*⁸, Mr Hobbs concluded that:

i) Goods and services are not similar on the basis that they are complementary if the complementarity between them is insufficiently pronounced that, from the consumer's point of view, they are unlikely to be offered by one and the same undertaking;

ii) In making a comparison involving a mark registered for goods and a mark proposed to be registered for retail services (or vice versa), it is necessary to envisage the retail services normally associated with the opponent's goods and then to compare the opponent's goods with the retail services covered by the applicant's trade mark;

iii) It is not permissible to treat a mark registered for 'retail services for goods X' as though the mark was registered for goods X;

iv) The General Court's findings in *Oakley* did not mean that goods could only be regarded as similar to retail services where the retail services related to exactly the same goods as those for which the other party's trade mark was registered (or proposed to be registered).

31. It is clear from the case law that where the applicant's retail-related services are to be compared with the opponent's goods, those services will be different in nature, purpose and method of use to those goods. However, I am able to find similarity in respect of the goods and the services at issue, providing that there is some complementarity and/or shared trade channels.

⁶ Case C-411/13 P

⁷ Case T-105/05, at paragraphs [30] to [35] of the judgment.

⁸ Case C-398/07 P

The '218 mark

32. All of the applicant's retail and wholesale services are in relation to the same variety of goods for which it also seeks protection in class 3 (as listed in the table under paragraph 14 of this decision). Earlier in this decision (see paragraphs 23, 25 and 27), I found each of the goods for which the applicant seeks registration to be either identical/Merit identical or highly similar to the opponent's "hair lotions" or "cosmetics" under the earlier '218 mark. The users of the goods and services are for the most part identical, although it is possible to consume retail services while purchasing goods for someone else to use. The applicant's services cannot be supplied without the goods, and so they will share trade channels. As the goods are indispensable to the services, I find them to be complementary to the extent that the average consumer will assume that they are offered by the same undertaking. Taking all factors into account, I find that there is a medium degree of similarity between the applicant's retail/wholesale services and the opponent's goods as registered under the '218 mark.

The '186 mark

Retail services in relation to toiletries; Wholesale services in relation to toiletries; Wholesale and retail services in relation to Body shampoos, Body wash, Body washes, ... body wash, Soap, Soaps, Cosmetic soap, Beauty soap, Skin soap, Bar soap, Soap products, Hand soap, Body soap, Aloe soap, Liquid soap, Perfumed soap, Shower soap, Bath soap, Handmade soap, Almond soap, Scented soaps, Facial soaps, Cosmetic soaps, Cream soaps, Bath soaps, Almond soaps, Aloe soaps, Liquid soaps, Perfumed soaps, Hand soaps, Body cream soap, Liquid bath soap, Liquid bath soaps, Soaps and gels, Soaps for body care, Soaps for household use, Soaps for personal use, Soaps in liquid form, Soaps in gel form, Hand washes, Hand lotions, Hand lotion (Non-medicated -), Body lotion, Skin lotion, Bathing lotions, Body lotions, Beauty lotions, Skin lotions, Bath lotion, Moisture body lotion, Scented body lotions, Moisturizing body lotions, Moisturising creams, lotions and gels, Scented body lotions and creams, Lotions for cosmetic purposes, Non-medicated skin lotions,

Moisturising skin lotions [cosmetic], Bath lotions (Non-medicated -), Lotions for the skin, Face and body lotions, Perfumed body lotions [toilet preparations], Cosmetics in the form of lotions, Body care cosmetics, Cosmetic hand creams, Shower cream, Bath cream, Hand cream, Moisturizing creams, Body creams, Bath creams, Moisturising creams, Hand creams, Conditioning creams, Shower creams, Scented body creams, Bath creams (Non-medicated -), Cosmetic creams and lotions, Body creams [cosmetics], Body cream for cosmetic use, Creams (Non-medicated -) for the body, Body cream.

33. At paragraph 28 of this decision I found the opponent's "*Perfumes, eau de toilette, eau de Cologne, and after-shave preparations*" under the '186 mark and the applicant's goods as listed to be similar to a medium degree. In relation to the applicant's above-listed services for the retail/wholesale of those same goods and the opponent's goods, there is likely to be an overlap in users and trade channels and it would not be unreasonable for the consumer to assume that the goods and services are provided by the same undertaking. Overall, I consider the opponent's "*Perfumes, eau de toilette, eau de Cologne, and after-shave preparations*" and the applicant's services to be similar to at least a low degree.

Wholesale and retail services in relation to Shampoo, Shampoos, Dandruff shampoo, Waterless shampoo, Shampoo bars, Hair shampoo, Baby shampoo, Shampoo-conditioners, Hair shampoos, Shampoos for babies, Non-medicated shampoos, Hair rinses [shampoo-conditioners], Shampoos for human hair, Shampoos for personal use, Refill packs for shampoo dispensers, Dandruff shampoos, not for medical purposes, Hair conditioner, Hair conditioners, Hair conditioner bars, Hair conditioners for babies, Conditioners for treating the hair, Conditioners for use on the hair, Hair ... wash, Hair lotion, Hair lotions, Hair care lotions, Non-medicated hair lotions, Hair care lotions [for cosmetic use], Hair care creams, Hair care masks, Hair care creams [for cosmetic use], Hair cosmetics, Cosmetic hair lotions, Hair cream, Hair creams.

34. Earlier in this decision, at paragraphs 24 and 26, I found the opponent's goods relied upon under the '186 mark, being "*Perfumes, eau de toilette, eau de Cologne, deodorants for personal use, after-shave preparations*", and the applicant's goods to

be, at best, similar to only a low degree. I consider the retail and wholesale of those same goods to be one step removed from the goods themselves. While there will be an overlap in trade channels, considered overall I find the opponent's goods and the applicant's services to be dissimilar.

35. Under section 5(2)(b), a degree of similarity between the goods and/or services is essential for there to be a finding of likelihood of confusion: see paragraph 49 of *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA.

36. In relation to the services which I have found to be dissimilar, as there can be no likelihood of confusion under section 5(2)(b), I will take no further account of such services, with the opposition failing to that extent. I note that this will impact on the earlier '186 mark only.

The average consumer and the nature of the purchasing act

37. The average consumer is a legal construct, deemed to be reasonably well informed and reasonably circumspect: see *Hearst Holdings Inc & Anor v A.V.E.L.A. Inc & Ors*, [2014] EWHC 439 (Ch), paragraph 60. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97, at [26].

38. In the counterstatement, the applicant submits that the average consumer for the competing goods and services will most likely be a member of the general public who will pay an average degree of attention to what they submit will be a predominantly visual purchase. I agree that the average consumer of the overlapping goods and services will be the general public, although I also consider that the average consumer of haircare and cosmetic products and the wholesale services for such goods could be a professional such as a hairdresser or a beautician.

39. The goods are sold through a range of channels including supermarkets, chemists/drugstores and online. In physical outlets, the goods will be displayed on shelves where they will be viewed and self-selected by the consumer. A similar

process will apply to websites, where the consumer will select the goods having viewed an image displayed on a web page. In these circumstances, visual considerations will dominate the process, however I do not discount the aural element as the consumer may seek advice from sales staff. Although the price of the goods can vary, on balance it seems to me that the cost of the purchase is likely to be relatively low and the goods will be purchased reasonably frequently. The consumer will want to ensure that the products and their ingredients are suitable for them and meet their specific personal needs. Consequently, I find that the level of attention of the general public when selecting the goods will be average, while the professional consumer, whose own reputation will be paramount, is likely to pay a higher than average degree of attention to the selection process of the goods.

40. When using the retail/wholesale services at issue, the average consumer will make their choice based on the range of goods available and the prices charged, the customer services offered, in addition to, for example in the case of physical stores, the location of the retailer/wholesaler. The visual element will be important as the mark will be displayed on signage and advertising, as well as on the web pages of online providers. However, I do not discount the aural element, as word-of-mouth recommendations may play a part in the choice of supplier. Overall, it is my view that both sets of consumers will pay an average degree of attention when choosing the retail/wholesale services at issue.

Comparison of marks

41. 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 CJEU stated in *Bimbo SA v OHIM* Case C-591/12P, that:

“34.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.”

42. 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.

43. The respective trade marks are shown below:

Opponent’s trade marks	Applicant’s trade mark
<u>The ‘186 mark</u> KOUROS SILVER <u>The ‘218 mark</u> BODY KOUROS	Kairos

Overall impression

44. The applicant’s mark consists of the single word “Kairos”, presented in a standard black typeface in Title case. As the mark contains no other elements, the overall impression therefore rests in the word itself.

45. The opponent’s ‘186 mark consists of two words, “KOUROS” and “SILVER”, presented side by side in capital letters a standard black typeface. I note the opponent’s submissions that the word “SILVER” conveys a laudatory message, however, given that a silver medal would ordinarily denote second place, I do not

consider that the average consumer would instantly see any such laudatory message in their overall impression of the mark. To my mind, neither word dominates. As the marks contain no other elements, the overall impression therefore rests in the words themselves.

46. The opponent's '218 mark consists of the word "BODY" presented in capital letters in a grey, slightly stylised typeface. Centrally positioned directly below the word BODY is the word "KOUROS", also presented in capitals, but in a bolder, slightly squatter, navy typeface. To my mind, the average consumer will recognise that the word "BODY" is non-distinctive for goods which are intended to be applied either directly to the body, such as the opponent's *Perfumes, eau de parfum, eau de toilette, perfumed body milk, cream, lotion and powder; pre-shave and aftershave lotions and creams, perfumed soaps, shower gels, deodorant for personal use; cosmetics*, or, in the case of *bubble bath*, through indirect contact (i.e. diluted by water). For these goods, although the word "BODY" will not be overlooked, it is the word "KOUROS" which dominates and plays the greater role in the overall impression, and to which the eye is drawn due to the bolder typeface. For the remaining "*hair lotions*", given the stronger presentation of the word KOUROS within the mark as a whole, it is this element which makes a slightly greater contribution to the overall impression of the mark, while the word "BODY" will make a lesser, but still significant, contribution overall.

47. In *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02, the GC noted that the beginning of words tend to have more visual and aural impact than the ends, although I accept that this is not always the case. I also note that the difference in capitalisation/title case is not relevant to the visual impact, as the registration of a word mark gives protection irrespective of capitalisation: see *Bentley Motors Limited v Bentley 1962 Limited*, BL O/158/17.

Visual comparison

48. The applicant's mark consists of a single word of six letters, "Kairos". The opponent's '186 mark comprises two words, each consisting of six letters, being "KOUROS" and "SILVER". This results in the opponent's mark being double the length of the contested mark which creates a visual disparity between the marks. In *dm-*

drogerie markt GmbH & Co. KG v OHIM, Case T-304/10, the GC noted that in the case of word signs which are relatively short, the differences between marks of different lengths will be more easily grasped by the average consumer.⁹ I note that the first word of the opponent's mark and the applicant's mark share the same first letter "K" as well as the last three letters "ROS". However, the second and third letters are different, creating a visual difference between the words which further reduces the overall visual similarity between the contested marks. Taking into account the position of the word KOUROS at the beginning of the opponent's mark, overall I consider the marks to be visually similar to a medium degree.

49. Earlier, I considered the stylisation of the opponent's '218 mark, whereby the bold blue font of the word "KOUROS" stands out more than the grey font of the word "BODY". Overall, I do not consider the stylisation to be particularly remarkable or to deviate greatly from a standard font. I also noted earlier that the word "BODY" would be considered non-distinctive in relation to the majority of the goods at hand. However, I consider that the "BODY" element will still be noticed by the average consumer, and it therefore serves to reduce the visual similarities between the contested marks. The considerations in respect of the words "KOUROS" and "Kairos" are the same as outlined above under the '186 mark. Considering the marks as a whole, I find there to be a medium degree of visual similarity between them.

Aural comparison

50. I consider that the two words which make up each of the opponent's marks would be voiced in their entirety by a significant proportion of consumers. As such, the marks will both be articulated as four syllables, the '186 mark as KOO-ROSS-SILL-VER and the '218 mark as BOD-EE-KOO-ROSS. The applicant's mark would be voiced as two syllables, KAI-ROSS. The aural commonality between the marks is therefore the syllable "ROSS" which is found at the end of both the applicant's mark and the opponent's '218 mark, and is subsumed in the body of the opponent's '186 mark. Considering the marks as a whole, I find there to be a low to medium degree of aural similarity between them.

⁹ At [42].

Conceptual comparison

51. For a conceptual message to be relevant, it must be capable of immediate grasp by the average consumer - Case C-361/04 P *Ruiz-Picasso and others v OHIM* [2006]¹⁰.

52. The opponent submits that the KOUROS element of the earlier marks is an ancient Greek word referring to “a statue of a young man” and that the applicant’s mark is also a Greek word referring to “a time when conditions are right for the accomplishment of a crucial action; the opportune and decisive moment”. However, the opponent further submits that for the average consumer of the goods and services in common in the UK, these meanings are not likely to be known and will instead be each seen as invented words.

53. The applicant submits that the public is likely to identify the meaning of the opponent’s registered marks as “an Ancient Greek statue of a young man”, or “a sculpted representation of a youth”, as defined in the Collins dictionary and the Oxford dictionary, respectively. The applicant continues that the contested sign “Kairos” can be presumed as meaningless or could potentially mean “fullness of time; the propitious moment for the performance of an action or the coming into being of a new state” (Oxford Dictionary). To that extent, the applicant submits that it cannot be argued that the marks share any conceptual similarity.

54. While I acknowledge the dictionary definitions provided by each of the parties, I must assess the perception of each of the marks on the part of the average UK consumer. I take into account that although there will be a proportion of consumers in the UK who understand Greek, to the best of my knowledge, Greek does not feature amongst the top ten foreign languages currently spoken and understood in the United Kingdom. I further consider that the goods to which the respective marks are related are every day goods which will be consumed by the public at large, rather than niche goods which would be targeted towards the Greek-speaking enclave within the UK.

¹⁰ Paragraph 56.

As such, I do not consider that a significant proportion of the target consumer would understand Greek. I accept that some consumers may assume that either one or both of the words KOUROS/KAIROS are derived from the Greek language without understanding the actual meanings of the words, as the words bear no resemblance to any English counterpart, and no English translation immediately springs to mind.¹¹ As such, the respective “KOUROS” and “Kairos” elements in each of the marks do not have any clear and identifiable semantic content.

55. As mentioned earlier, for many of the goods, the word “BODY” in the opponent’s ‘218 mark will be seen as non-distinctive, relating to the type of goods which may be used on the body. Meanwhile, in the opponent’s ‘186 mark, to my mind, the words “KOUROS” and “SILVER” do not naturally fit together. I consider that to a significant proportion of consumers, the “KOUROS” element will be perceived as having an independent, distinctive significance: see *Whyte and Mackay Ltd v Origin Wine UK Ltd*,¹² where Arnold J. (as he was then) considered the impact of the CJEU’s judgment in *Bimbo*, Case C-591/12P, on the court’s earlier judgment in *Medion v Thomson* in relation to such composite marks.

56. I consider that the words “SILVER” and “BODY” contained in the opponent’s earlier marks will each have an easily recognisable concept when viewed in isolation, and as such they serve to create a point of conceptual disparity between the marks overall. However, it is my view that the “KOUROS” element of the opponent’s mark and the applicant’s mark “Kairos” will most likely be seen by a significant proportion of the average consumer as wholly invented words with no such recognisable conceptual content and as such these distinctive elements of the marks are conceptually neutral.

Distinctive character of the earlier marks

57. The distinctive character of a trade mark can be appraised only, first, by reference to the goods in respect of which registration is sought and, secondly, by reference to

¹¹ I note that the applicant submits that visually and aurally, its mark resembles the word “Cairo” (being the capital and largest city of Egypt), however it has made no such submissions in relation to a conceptual link between the mark and the city.

¹² *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271 (Ch).

the way it is perceived by the relevant public – *Rewe Zentral AG v OHIM (LITE)* [2002] ETMR 91. The factors I must take into account in assessing the level of distinctive character were set out by the CJEU in *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97:

“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).”

58. Registered trade marks possess varying degrees of inherent distinctive character, being lower where they are allusive or suggestive of a characteristic of the goods and services, ranging up 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 made of it. The opponent has not claimed that its marks have enhanced distinctiveness and no evidence of use has been filed. Therefore, I only have the inherent characteristics of the mark to consider.

59. I take into account that the assessment of the distinctive character of trade marks for the purposes of assessing whether there is a likelihood of confusion between them must be assessed from the perspective of the average consumer in the relevant territory.¹³ It is the distinctiveness of the common element that is important here. In *Kurt Geiger v A-List Corporate Limited*, BL O/075/13, Mr Iain Purvis Q.C. (as he then was), sitting as the Appointed Person, said:

¹³ *Matratzen Concord AG v OHIM*, Case T-6/01 at [27].

“39. It is always important to bear in mind what it is about the earlier mark which gives it distinctive character. In particular, if distinctiveness is provided by an aspect of the mark which has no counterpart in the mark alleged to be confusingly similar, then the distinctiveness will not increase the likelihood of confusion at all. If anything it will reduce it.

60. The ‘186 mark comprises the words “KOUROS SILVER”. Earlier in this decision, I considered that the word “KOUROS” played an independent role within the mark as a whole. While the word “SILVER” is dictionary defined, I do not consider the combined words to be descriptive or laudatory in relation to the goods themselves. Overall, I consider the mark to be inherently distinctive to at least a medium degree, with the “KOUROS” element inherently high in distinctive character when taken solus.

61. The ‘218 mark comprises the words “BODY KOUROS”. Given the non-distinctive nature of the word “BODY” which alludes to the nature of the goods as being for use specifically on the body, I consider the mark as a whole to be inherently distinctive to a medium degree, and, as for the ‘186 mark, I consider the word “KOUROS” to be inherently high in distinctive character when taken solus.

Likelihood of confusion

62. There is no simple formula for determining whether there is a likelihood of confusion. It is clear that I must make a global assessment of the competing factors (*Sabel* at [22]), keeping in mind the interdependency between them i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa (*Canon* at [17]). I must consider the various factors from the perspective of the average consumer, bearing in mind 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 he has retained in his mind (*Lloyd Schuhfabrik* at [26]).

63. There are two types of possible confusion: direct, where the average consumer mistakes one mark for the other, or indirect, where the average consumer recognises that the marks are different, but assumes that the goods and/or services are the

responsibility of the same or connected undertakings. The distinction between these was explained by Mr Iain Purvis Q.C. (as he then was), sitting as the Appointed Person, in *L.A. Sugar Limited v Back Beat Inc*, Case BL-O/375/10. He said:

“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).”

64. The above are examples only which are intended to be illustrative of the general approach. These examples are not exhaustive but provide helpful focus.

65. Earlier in this decision, I found that the contested goods and services ranged between medium to dissimilar to the opponent's goods relied upon under the '186 mark, and between identical to medium to the opponent's goods relied upon under the '218 mark. I identified two types of average consumer of the overlapping goods and services, being both the general public as well as professional consumers such as hairdressers or beauticians. I found that visual considerations would dominate the selection of the goods and services, however I did not discount that an aural element would also play a part during the purchasing process. In relation to the selection of the goods, I considered that the general public would pay an average level of attention while the professional consumer would be likely to pay a higher than average degree of attention; I found that both types of consumer would pay an average degree of attention when choosing the retail/wholesale services at issue.

66. I considered the competing trade marks as a whole to be visually similar to a medium degree and aurally similar to a low to medium degree. I noted the parties' submissions relating to the concept of the marks, and I acknowledged that the consumer would understand the meaning of the words "SILVER" and "BODY" contained within the opponent's respective earlier marks when viewed in isolation, the addition of which create a conceptual disparity between the marks as a whole. However, I considered the word "BODY" to be non-distinctive for the majority of the goods and I further considered the "KOUROS" element of the opponent's composite '186 mark to have an independent, distinctive significance within the mark as a whole, as per *Medion*. I found that the applicant's mark "Kairos" and the distinctive "KOUROS" element of the opponent's marks would most likely be seen by a significant proportion of the average consumer as wholly invented words with no such recognisable conceptual content. That being said, I acknowledged that some consumers may perceive either or both words to be of Greek origin without attributing any actual meaning in English to either word.

67. I found the earlier '186 mark "KOUROS SILVER" as a whole to be inherently distinctive to at least a medium degree; I found the earlier '218 mark "BODY KOUROS"

as a whole to be inherently distinctive to a medium degree. Taking into account the guidance from the previously cited case law in *Kurt Geiger*, for both earlier marks, I considered the word “KOUROS” to be inherently high in distinctive character when viewed solus.

68. I have weighed up each of the competing factors in my decision, including the differences as well as the similarities between the competing marks. The average consumer is unlikely to see the marks side-by-side and will therefore be reliant on the imperfect picture of them they have kept in their mind. In spite of the higher degree of attention paid by the professional consumer during the selection of the goods, I bear in mind that in relation to the assessment of the likelihood of confusion, it is the section of the public with the lowest level of attention which must be taken into consideration.¹⁴

69. In *Aveda Corporation v Dabur India Limited*, Case No: CH/2012/0498¹⁵, Mr Justice Arnold stated that:

“44. Although the decision in *Medion v Thomson* does not in terms extend to cases in which the composite sign incorporates a sign which is similar to, rather than identical with, the trade mark and some of the Court of Justice's reasoning would not apply to such a case, I consider that the underlying logic is equally applicable.

45. I entirely accept the basic proposition which the Court of Justice has repeated many times, namely that the assessment of likelihood of confusion must be made by considering and comparing each of the signs as a whole. As the Court of Justice recognised in *Medion v Thomson*, however, there are situations in which the average consumer, while perceiving a composite sign as a whole, will recognise that it consists of two signs one or both of which has a significance which is independent of the significance of the composite whole.

¹⁴ Case T-247/12, *Argo Group International Holdings Ltd. v OHIM*.

¹⁵ Case No: CH/2012/0498, High Court of Justice Chancery Division [2013] EWHC 589 (Ch), 2013 WL 617628

[...]

48. On that basis, I consider that the hearing officer failed correctly to apply *Medion v Thomson*. He failed to ask himself whether the average consumer would perceive UVEDA to have significance independently of DABUR UVEDA as a whole and whether that would lead to a likelihood of confusion. ... In my judgment it makes little difference that the second word in the composite mark is UVEDA rather than AVEDA. As the hearing officer rightly accepted, UVEDA is both visually and aurally very close to AVEDA. The human eye has a well-known tendency to see what it expects to see and the human ear to hear what it expects to hear. Thus it is likely that some consumers would misread or mishear UVEDA as AVEDA. ... “.

I consider the above findings to be analogous to the case before me. Given the high degree of inherent distinctive character of the “KOUROS” element found in each of the earlier marks, as well as, in particular, the visual and aural similarity between the “KOUROS” element of the earlier marks with the applicant’s sign “Kairos”, in my view, the similarities between the marks are such that the applicant’s mark is likely to be mistakenly recalled as either of the opponent’s earlier marks, or vice versa. I do not consider the additional “BODY” and “SILVER” elements contained within the opponent’s respective earlier marks to be enough to overcome the marks being imperfectly recalled as each other. Consequently, I consider there to be a likelihood of direct confusion in relation to all the opposed goods and services for which a degree of similarity was found.

CONCLUSION

70. As I found similarity between all of the applicant’s goods and services and those relied upon by the opponent under the ‘218 mark, the opposition under section 5(2)(b) succeeds in its entirety. Subject to any successful appeal, the application by Gilchrist & Soames UK Limited is refused registration.

COSTS

71. The opponent has been successful, and is therefore entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice (“TPN”) 1/2023. Applying the guidance in that TPN, I consider the following to be fair:

Official fee:	£100 ¹⁶
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Preparing a notice of opposition, and considering the counterstatement:	£300
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Filing written submissions in lieu of a hearing:	£500
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Total:	£900
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72. I therefore order Gilchrist & Soames UK Limited to pay Yves Saint Laurent Parfums the sum of £900. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 15th day of May 2025

Suzanne Hitchings
For the Registrar,
the Comptroller-General

¹⁶ I note that the opponent paid an official fee of £200 to take into account the initial opposition under Section 5(2)(b) and Section 5(3). As the opposition under Section 5(3) was later deemed withdrawn, I award the official fee of £100 to reflect the grounds of the opposition under Section 5(2)(b) only.