O/0434/24

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. 3762062

IN THE NAME OF
BACARDI MARTINI PATRON INTERNATIONAL GMBH

TO REGISTER THE FOLLOWING TRADE MARK:

IN CLASS 33

AND

IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 434226
BY CIELO E TERRA S.P.A

Background and pleadings

1. On 4 March 2022, Bacardi Martini Patron International GmbH ("the applicant") applied to register the trade mark shown on the cover of this decision in the UK under application number 3762062. The application was published for opposition purposes on 18 March 2022 and registration is sought for the following goods:

> *Class 33: Alcoholic beverages, except beers; alcoholic preparations for making beverages; none of the aforesaid to include wines or wine-based beverages.*

2. On 14 June 2022, CIELO E TERRA S.P.A. ("the opponent") filed a notice of opposition against the application. The opposition is brought under sections 5(2)(b) and 5(3) of the Trade Marks Act 1994 ("the Act") and is directed against all of the goods in the application.

3. Under both grounds, the opponent relies on the following mark:

> CIELO
> UK registration no: 903938594[1]
> Filing date 22 July 2004; registration date 15 March 2011
> Relying on all goods in class 33: Alcoholic beverages, namely, wine.

4. By virtue of its earlier filing date, the above registration constitutes an earlier mark within the meaning of section 6 of the Act. As the mark had completed its registration process more than five years before the filing date of the contested mark, it is subject to the proof of use provisions contained in section 6A of the Act.

[1] The opponent's mark is a comparable trade mark. It is based on the opponent's earlier EUTM, being registration number 003938594. On 1 January 2021, in accordance with Article 54 of the Withdrawal Agreement between the UK and the European Union, the UK IPO created comparable UK trade marks for all right holders with an existing EUTM.

5. Under its 5(2)(b) ground, the opponent submits that there is a likelihood of confusion because the applicant's mark contains the highly visible words "EL CIELO" which is visually and aurally highly similar to the earlier mark. In addition, it is claimed that the goods are identical with the goods covered by the earlier mark.

6. In respect of the 5(3) ground, the opponent claims that they have been using their "CIELO" mark for a considerable period of time and as a result of the longstanding use of the mark in the course of trade, it has become reputable and well known. They submit that the application wholly replicates the earlier mark which may lead to the relevant consumer mistakenly believing that the applicant and opponent are linked economically. Further, it is claimed that this would take unfair advantage of the opponent's efforts and lead to the detriment of the distinctive character of the earlier mark.

7. The applicant filed a counterstatement denying the grounds under sections 5(2)(b) and 5(3) and putting the opponent to proof of these claims. The applicant also put the opponent to proof of use of the earlier mark.

8. Both parties are professionally represented in these proceedings, the opponent by TLT LLP and the applicant by CAM Trade Marks & IP Services. Both parties filed evidence and the applicant filed submissions during the course of proceedings. Neither party requested a hearing nor did they file written submissions in lieu. I make this decision after careful consideration of the papers before me.

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.

EVIDENCE

10. The opponent's evidence was filed in the form of a witness statement dated 21 November 2022 from Luca Cielo, the co-owner and General Director of the opponent. The witness statement includes twenty-two exhibits. The purpose of the evidence is to speak to the use and reputation of the opponent's mark.

11. The applicant's evidence was filed in the form of a witness statement dated 3 April 2023 from Roman Cholij, a Chartered Trade mark Attorney and head of CAM Trade Marks & IP Services. The witness statement includes 13 exhibits.

12. I have taken the evidence into account in reaching this decision and will refer to it below, where necessary.

DECISION

Proof of use

13. The applicant has requested proof of use in these proceedings in respect of the opponent's earlier mark. I will begin by assessing whether and to what extent the evidence supports the opponent's statement that it has made genuine use of the earlier mark in relation to the goods relied upon. In accordance with section 6A(1A) of the Act, the relevant period for this purpose is the five years ending on the filing date of the contested application: 5 March 2017 to 4 March 2022.

Relevant statutory provision:

Section 6A:

"(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."

14. As the earlier mark is a comparable mark, paragraph 7 of Part 1, Schedule 2A of the Act is also relevant. It reads:

"7.— (1) Section 6A applies where an earlier trade mark is a comparable trade mark (EU), subject to the modifications set out below.

(2) Where the relevant period referred to in section 6A(3)(a) (the "five-year period") has expired before IP completion day—

(a) the references in section 6A(3) and (6) to the earlier trade mark are to be treated as references to the corresponding EUTM; and

(b) the references in section 6A(3) and (4) to the United Kingdom include the European Union.

(3) Where [IP completion day] falls within the five-year period, in respect of that part of the five-year period which falls before IP completion day —

(a) the references in section 6A(3) and (6) to the earlier trade mark are to be treated as references to the corresponding EUTM ; and

(b) the references in section 6A to the United Kingdom include the European Union".

15. Section 100 is also relevant, which reads:

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

16. Consequently, the onus is upon the opponent to prove that genuine use of the registered trade mark was made within the relevant territory in the relevant period, and in respect of the goods as registered.

Relevant case law

17. 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]."

18. Proven use of a mark which fails to establish that "the commercial exploitation of the mark is real" because the use would not be "viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services protected by the mark" is not, therefore, genuine use.[2]

Use of the mark

19. The opponent is an Italian family-run business that was established in Veneto in 1908.[3] Since 1995, the opponent claims to have traded extensively in the UK and the EU with their family name *Cielo* in relation to wines.[4]

20. Annual turnover figures have been provided for the number of sales generated in the UK in relation to wine sold under the *Cielo* brand. The figures provided are as follows:

Year	**Turnover**	**Bottles**
2017	€ 616,242	504,801
2018	€ 587,774	404,394
2019	€ 567,368	428,586
2020	€ 198,717	150,906
2021	€ 358,220	270,642

[2] *Intermar Simanto Nahmias v Nike Innovate C.V.,* BL O/222/16
[3] See paragraph 4 of the witness statement of Luca Cielo
[4] See paragraph 15 of the witness statement of Luca Cielo

21. In support of these figures, a selection of invoices have been provided demonstrating sales made within the UK during the relevant period under the mark *Cielo.*[5]

22. Further turnover figures have been provided for sales in relation to wine under the *Cielo* brand in the EU. The figures (excluding those that fall after IP completion day) are as follows:

Year	**Turnover**	**Bottles**
2018	€ 4,088,693	2,435,125
2019	€ 5,110,609	3,065,861
2020	€ 5,503,197	3,272,011

23. Exhibit LC11 provides examples of invoices issued to Italy, Germany, The Czech Republic, Ireland and The Netherlands. The invoices display the *Cielo* mark next to various wines and are all dated within the relevant period (and before IP completion day).

24. The evidence also includes references to various awards that the opponent has received from the awards program "The Global Wine Masters".[6] The awards referred to are various bronze, silver and gold awards for competitions such as "The Prosecco Masters", "The Global Pinot Noir Masters" and "The Global Pinot Grigio Masters." The dates of these awards range from the years 2018 to 2022. I note that the awards are judged by a panel of masters of wine, master sommeliers and senior buyers only. In my view, such awards (being those not voted on by actual customers) are not particularly helpful in determining an actual level of use, especially without anything further to suggest the reach of these awards. Having said that, I am of the view that

[5] Exhibit LC9
[6] Exhibit LC12

they may still be of assistance when contributing to the overall evidential picture so do not dismiss them outright.

25. Exhibits LC16 and LC17 show printouts of advertising leaflets from Eurospesa, a supermarket with outlets in Northern Italy. The leaflets display bottles of *Cielo* wines that are available for sale and are dated within the relevant period and before IP completion day. No further information is provided as to the circulation of these leaflets or the number of sales generated as a result.

26. The opponent also supplies a private train company, Italo- Nuovo Trasporti Viaggiatori S.p.A (Italo) with their wines to be sold to passengers on their trains. It is stated that the wines have been available to passengers since 2019 and print outs have been provided in exhibit LC21 of the opponent's wine appearing in menus available to passengers. It is further stated that Italo transported approximately 17.5 million passengers in Italy in 2018.[7]

27. In relation to advertising, the opponent states that they do not hold records for advertising that is specific for *Cielo* branded wines. However, figures have been provided for various fairs and competitions for the promotion of the opponent's wines including the *Cielo* brand. The figures that are dated within the relevant period (and before IP completion day) are set out below:

	Prowein (Germany) Participation fee and ancillary costs	**Vinitaly (Italy) Participation fee and ancillary costs**
2017	€ 7,784	€ 43,557
2018	€ 10,904	€ 42,487
2019	€ 1,643	€ 44,066
2020	Fair cancelled due to Covid	Fair cancelled due to Covid

[7] See paragraphs 38-39 of the witness statement of Luca Cielo

	Prowein and Vinitaly stand set up
2017	€ 22,356
2018	€ 56,703
2019	€ 59,110
2020	€ 12,027

	Drinks Business Global Masters	**Berliner Wein Trophy**
2017	€ 560	€ 2,220
2018	-	€ 2,690
2019	€ 3,840	€ 3,265
2020	€ 4,155	€ 1,450

28. I note that the articles in exhibit LC18 state that the *Vinitaly* trade shows attracted 128,000 visitors in 2017 and 125,000 visitors in 2019. Whilst it would be reasonable to accept that a proportion of these figures relate to the promotion of wines bearing the *Cielo* mark, without any further information from the opponent, I am unable to extrapolate exact figures in relation to marketing and advertising expenditure.

Genuine Use

29. Bearing in mind the evidence as a whole, and in particular that which I have summarised above, I am satisfied that there is genuine use in respect of the opponent's mark. The opponent's use has been on such a scale and with such frequency within the relevant territory, as to create and preserve a market share for '*alcoholic beverages, namely, wine'* in the relevant sector. The opponent is therefore entitled to rely upon '*alcoholic beverages, namely, wine'* for the purposes of this opposition.

Section 5(2)(b)

30. 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".

31. Section 5A states:

> "5A 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."

32. The following principles 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

33. In C*anon*, the Court of Justice of the European Union ("CJEU") stated at paragraph 23 of its judgment:

> "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".

34. Guidance on this issue has also 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 users of the respective goods or services;

b) The physical nature of the goods or acts of services;

c) The respective trade channels through which the goods or services reach the market;

d) 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;

e) 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.

35. In light of my findings above, the competing goods are as follows:

Opponent's Goods	Opposed Goods
Class 33: Alcoholic beverages, namely, wine.	Class 33: Alcoholic beverages, except beers; alcoholic preparations for making beverages; none of the aforesaid to include wines or wine-based beverages.

36. I first note that the use of "namely" in a specification is restrictive and therefore the opponent's goods should be construed as "wine" only, rather than "alcoholic beverages" at large. The goods cannot be identical due to the restriction applied to the applicant's specification. The competing goods are similar to the extent that they are alcoholic beverages, consumed in order to obtain the effects of alcohol so there is therefore an overlap in purpose. There is also some overlap in terms of nature, both parties' goods being alcoholic drinks. However, the opposed goods exclude wine or wine-based beverages from their specification and as such, the competing goods are likely to be made from different ingredients. I consider that both parties' specifications

include goods that are likely to be drunk in longer measures so there therefore would be an overlap in the method of use. There would be an overlap in users, being adult members of the general public. There would also be an overlap in trade channels as the respective goods are sold in supermarkets and off-licences for consumption at home, and bars, restaurants, clubs and public houses for consumption on the premises. There is some degree of competition between the goods as some of the applicant's goods (such as cider and perry) may be regarded by the consumer as an alternative to a glass of wine. However, spirits (such as whisky and brandy) are less likely to be viewed this way. I acknowledge that wine and other alcoholic beverages are sometimes used together, for example in cocktails. However, I do not consider that this relationship between wine and other alcoholic beverages is important or indispensable to the extent that consumers would believe that the goods originate from the same undertaking and as such, I do not consider there to be a complementary relationship.[8] Overall, I consider these goods to be similar to a medium degree.

The average consumer and the nature of the purchasing act

37. 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

[8] See *Boston Scientific Ltd v OHIM,* Case T-325/06

"average" denotes that the person is typical. The term "average" does not denote some form of numerical mean, mode or median."

38. The applicant provides a narrative in its evidence and submissions that their tequila goods are premium goods sold at premium prices and accordingly, the average consumer would have a "well above average attention in purchasing such goods."[9]

39. First, I note that some of the evidence provided by the applicant is after the relevant date and is in relation to tequila only. Secondly, the assessment I must undertake under section 5(2)(b) is a notional one; the provisions of the Act are not merely a reflection of what is happening in the market.[10] The way in which goods are marketed may vary in time and depending on the wishes of the proprietors of the opposing marks, so it is inappropriate to take those circumstances into account in the prospective analysis of the likelihood of confusion between those marks.[11] As such, I reject this line of argument from the applicant.

40. It is my view that the average consumer for the contested goods will primarily comprise of adult members of the general public. The goods are likely to be self-selected by the consumer from shelves or chilled cabinets in shops. In these circumstances visual considerations are likely to dominate. I also consider that the goods would also be available in bars, public houses and cafes. In these circumstances, there may be an aural aspect to the selection process, such as requesting the goods from a member of staff. However, visual considerations would still likely dominate as the goods would likely be displayed behind bars or on a menu.[12]

[9] See paragraph 11 of the applicant's submissions and exhibits RC1-5
[10] *Compass Publishing BV v Compass Logistics Ltd* [2004] RPC 41
[11] *Devinlec Développement Innovation Leclerc SA v OHIM,* Case C-171/06P paragraph 59
[12] *Simonds Farsons Cisk plc v OHIM*, Case T-3/04

41. Notwithstanding that there may be variations in the price of the goods, overall, they are consumable goods, drunk on a fairly frequent basis. Considerations such as personal taste, alcoholic strength and cost will play a part in the selection process leading to a medium level of attention being paid.

Comparison of marks

42. 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 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 relevant 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."

43. 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 trade 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.

44. The marks to be compared are as follows:

Opponent's Mark	Applicant's Mark
CIELO	

45. The opponent's mark consists of the word "CIELO". In the absence of any additional components, the mark's overall impression resides solely in the word itself. The applicant's mark consists of the word PATRÓN presented in a gold, stylised, upper-case typeface. Beneath the word PATRÓN are the words EL and CIELO presented in a slightly smaller, black, standard upper-case typeface. There is a gold horizontal line positioned below the wording. Above the wording is a gold figurative bee device. The wording and device are presented on a square beige background. In my view, the overall impression of the mark lies in the combination of these elements, however, the eye is naturally drawn to the elements of the mark that can be read so the word PATRÓN given its size and colour will play a greater role in the overall impression. The wording EL and CIELO play a secondary role. The bee device also plays a significant although lesser role in the overall impression.

Visual comparison

46. Visually, the respective marks overlap in that they both contain the word CIELO. The additional wording, the bee device and other elements in the applicant's mark act as points of visual difference. Balancing the points of similarity and difference, together

with my assessment of the overall impression of the marks, I am of the view that the marks are similar to a low to medium degree.

Aural comparison

47. The shared element CIELO is not an ordinary dictionary word and it could be pronounced in a number of ways such as SEE-EH-LOW or CHEL-OHH. Whichever way this element is pronounced, it will be identical in both marks. A point of difference is created in the first three syllables of the applicant's mark which have no counterpart in the opponent's mark. I consider that the additional wording in the applicant's mark will be articulated as PAT-RON EL. The bee device in the applicant's mark will not be articulated. Weighing up these factors, I consider the marks to be aurally similar to a medium degree.

Conceptual comparison

48. For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer. This is highlighted in numerous judgments of the General Court and the CJEU including *Ruiz Picasso v OHIM* [2006] ECR I-643; [2006] E.T.M.R 29. The assessment must, therefore, be made from the point of view of the average consumer.

49. The opponent states that their mark CIELO is their family name.[13]

50. The applicant defines the word CIELO as "sky" or "heaven" in "Latin languages".[14] However, in their counterstatement, they state that "there is no meaning attached to either sign for an average English consumer of alcoholic beverages." In their submissions, the applicant elaborates further on the conceptual meaning by stating:

[13] See paragraph 5 of the of the witness statement of Luca Cielo
[14] See paragraph 3 of the witness statement of Roman Cholij

> "Even if the average consumer of alcoholic drinks in the UK may not appreciate the linguistic meaning of CIELO, at the very least, it is submitted, the definite article EL would be understood by most to be a definite article that precedes a noun but which would not precede a family name. In other words, in addition to its Spanish flavour, the word EL adds to the semantic difference between the mark: CIELO as a family name brand and EL CIELO as something different, i.e., a sub-brand of PATRÓN."

51. Whilst I appreciate that there are some consumers in the UK who will speak Spanish or Italian, I have no evidence before me as to whether this would represent a significant proportion of average consumers for the relevant goods. Even if consumers do appreciate that EL would be a definite article in a non-English language, I do not think that this understanding would change any conceptual meaning of the marks in the eyes of the average consumer. Therefore, I do not consider that this argument is of any assistance to the applicant.

52. I am of the view that to a significant proportion of consumers, CIELO will either be seen as a foreign language word or an invented word with no obvious meaning. I consider that a similar finding will apply to the applicant's mark and the wording PATRÓN EL CIELO will also be perceived as wording of a foreign origin and consumers will attribute no meaning to it.

53. I accept that some consumers will overlook the accent over the letter O in PATRÓN and will perceive the word as PATRON which has several meanings in the English language such as a customer of a shop or a patron saint.

54. When the wording in both marks is seen as either invented or wording of foreign origin, no conceptual comparison is possible rendering the marks conceptually neutral. If the word PATRÓN is seen as PATRON, this will give rise to a conceptual difference. However, the conceptual comparison between the common CIELO element remains neutral.

Distinctive character of the earlier mark

55. 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 the way it is perceived by the relevant public – *Rewe Zentral AG v OHIM (LITE)* [2002] ETMR 91. In determining the distinctive character of a trade mark it is necessary to make an overall assessment of the greater or lesser capacity of the trade mark to identify the goods for which it has been registered as coming from a particular undertaking and thus to distinguish those goods from those of other undertakings - *Windsurfing Chiemsee v Huber and Attenberger* Joined Cases C-108/97 and C-109/97 [1999] ETMR 585. In *Lloyd Schuhfabrik*, 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)."

56. 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, 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.

57. A point relied upon by the applicant is that the opponent's mark *Cielo* has a reduced level of distinctiveness due to the presence of other wines in the market that include the word *Cielo.* In support of this, the applicant has provided printouts of various websites displaying wines that include the wording *Cielo.*[15] I have given consideration to this evidence however, it is not clear if all the examples provided were available at the relevant date. Further, the extent of use is unclear in relation to these wines at the relevant date and it is also not clear if all the wines mentioned were used in the UK. I also note that the wines provided in the evidence have names such as *Viandante Del Cielo, Santo Cielo* and *Cielo D'or.* Although they contain the wording *Cielo,* these are not the marks at issue in these proceedings. As a result, I do not consider that this evidence supports the applicant and I will assess the earlier mark's distinctiveness in the usual way.

58. I will begin by initially assessing the inherent distinctiveness of the opponent's mark.

59. As previously outlined in the conceptual comparison, the earlier mark will not convey any meaning to a significant proportion of average consumers and the mark does not describe or allude to the goods which are relied upon in the opposition. I find the opponent's mark to be inherently distinctive to a high degree.

60. I will now consider whether the evidence filed by the opponent demonstrates that the distinctiveness of the earlier mark has been enhanced through use. I rely on

[15] Exhibits RC6-9

the summary of the opponent's evidence that I provided in paragraphs 19 to 28 above. The relevant date for this assessment is the filing date of the contested application, 4 March 2022 and the relevant market for assessing enhanced distinctiveness is the UK market.

61. I note from the opponent's evidence that it exports wine to the UK. UK sales figures have been provided in paragraph 20 of this decision which amount to a UK turnover of £2,328,323 from 2017 to 2021 and 1,759,329 bottles sold in the UK during this period. Invoices have been provided in relation to a variety of wines sold in the UK from 2017 to 2021. I note that the opponent sells their wine to a distributor and the goods are available at several wine merchants. The majority of the invoices are addressed to a wine merchants based in Pulborough. However, there are also invoices addressed to outlets based in Essex, Shropshire, Birmingham, Warton Canforth, London, Lancashire, Cornwall, Glasgow and Devon.

62. In terms of advertising expenditure, the only figures provided by the opponent are in relation to fees paid to promote their wines at various fairs and competitions. I note that none of the fairs or competitions are solely UK based and I have no evidence as to how wide the reach of these events would have been amongst the UK relevant public.

63. The opponent has won several awards from The Drink Business in the years 2018, 2020, 2021 and 2022. I note that The Drinks Business is described as a global leading drinks trade publication with an international audience of 685,000 monthly readers. However, no further information is given as to what proportion of this figure relates to UK readers.

64. Clearly, the opponent has made sales in the UK market. However, they are not particularly extensive when considering the size of the UK market in relation to wines. I have no information about the advertising expenditure in the UK or any activities taken to promote the opponent's goods in this jurisdiction. Whilst I found the opponent's evidence sufficient to show genuine use, I remind myself that the bar for

proving enhanced distinctiveness is considerably higher. I am not satisfied that the distinctiveness of the earlier mark has been enhanced through use.

Likelihood of confusion

65. There is no simple formula for determining whether there is a likelihood of confusion. I must make a global assessment of the competing factors (*Sabel* at [22]), keeping in mind the interdependency between them (*Canon* at [17]) and considering the various factors from the perspective of the average consumer. In making my assessment, I must bear 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]).

66. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one trade mark for the other, while indirect confusion is where the average consumer realises the trade marks are not the same but puts the similarity that exists between the trade marks and goods down to the responsible undertakings being the same or related.

67. Earlier in this decision I concluded that:

- The competing goods are similar to a medium degree;
- The average consumer will consist of adult members of the general public who will demonstrate a medium level of attention during the selection process;
- The purchasing process will be predominantly visual in nature, though aural considerations will not be discounted;

- The opponent's mark holds a high degree of distinctive character. This has not been enhanced through the use made of it;

- The opponent's mark is visually similar to the applicant's mark to a low to medium degree;

- The opponent's mark is aurally similar to the applicant's mark to a medium degree;

- My primary finding is that the marks are conceptually neutral for a significant proportion of average consumers. However, if the word PATRÓN is seen as PATRON, this will give rise to a conceptual difference.

68. I have taken all of the relevant factors into consideration in reaching my decision and considering the marks as a whole, there are clear differences between them visually and aurally. I find that these differences will not go unnoticed by the average consumer when paying a medium degree of attention and purchasing goods that are similar to a medium degree. I do not find that the applicant's mark will be mistaken for the opponent's and as such, I do not consider there to be a likelihood of direct confusion.

69. I now go on to consider indirect confusion.

70. In *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, Mr Iain Purvis Q.C., as the Appointed Person, explained that:

> "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.)

71. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCACiv 1207, Arnold LJ referred to the comments of James Mellor K.C 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”.

72. In *Kurt Geiger v A-List Corporate Limited*, BL O-075-13, Mr Iain Purvis Q.C. as the Appointed Person pointed out that the level of ‘distinctive character’ is only likely

to increase the likelihood of confusion to the extent that it resides in the element(s) of the marks that are identical or similar. He said:

> "38. The Hearing Officer cited *Sabel v Puma* at paragraph 50 of her decision for the proposition that 'the more distinctive it is, either by inherent nature or by use, the greater the likelihood of confusion'. This is indeed what was said in *Sabel*. However, it is a far from complete statement which can lead to error if applied simplistically.
>
> 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."

73. Whilst I accept that a shared common element alone does not necessarily lead to a likelihood of confusion,[16] it is important for me to note the aspects of the other elements within the respective marks and the part they play. I bear in mind not only the level of distinctiveness of the earlier mark but also the distinctiveness of the common element. I also accept that the examples as set out in in *L.A.Sugar* (above) are not exhaustive and that they are only intended to be illustrative of the general approach.

74. I have identified a significant proportion of average consumers who would view the word CIELO as invented with no clear meaning. I will undertake my comparison from their perspective. I first note that I found the common word CIELO, which is the sole element of the opponent's mark to be highly distinctive. I acknowledge that the later mark includes an additional dominant word element that is not present in the opponent's mark however, the element CIELO retains an independent distinctive role

[16] See *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17

within the applicant's mark and will not be seen in combination with the words PATRÓN and EL as a unit having a different meaning in combination as compared to its meaning taken separately. As such, I consider that the common use of 'CIELO' will be viewed as indicating alternative marks used by the same or economically linked undertaking. This is because the common element is so strikingly distinctive that the average consumer would assume that no one else would be using it. I find that the additional wording/device elements in the applicant's mark are logical and consistent with a brand extension or sub-brand. Whether the consumer is confused as to believe that the opponent's mark is a brand extension or sub-brand of the applicant's mark or vice versa, it is not relevant to the present assessment.[17] Consequently, I consider that there exists a likelihood of indirect confusion. This finding also extends to consumers who may overlook the accent in PATRÓN and view the word as PATRON. This is because conceptual comparison between the common CIELO element will remain neutral.

75. The opposition under section 5(2)(b) of the Act succeeds. For the sake of completeness, I will proceed to consider the 5(3) ground.

Section 5(3)

76. Section 5(3) states:

> "(3) A trade mark which-

[17] See *Colloseum Holdings AG v Levi Strauss & Co.,* Case C-12/12, regarding "wrong way round confusion", referring to *Comic Enterprises* (cited above) at paragraphs 75-84. 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.

(a) is identical with or similar to an earlier trade mark, shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark".

77. Section 5(3A) of the Act states:

> "Subsection (3) applies irrespective of whether the goods and services for which the trade mark is to be registered are identical with, similar to or not similar to those for which the earlier trade mark is protected."

78. The relevant case law can be found in the following judgments of the CJEU: Case C-375/97, *General Motors,* Case C-252/07, *Intel,* Case C-408/01, *Adidas-Salomon,* Case C-487/07, *L'Oreal v Bellure* and Case C-323/09, *Marks and Spencer v Interflora* and Case C-383/12P, *Environmental Manufacturing LLP v OHIM.* The law appears to be as follows:

(a) The reputation of a trade mark must be established in relation to the relevant section of the public as regards the goods or services for which the mark is registered; *General Motors*, paragraph 24.

(b) The trade mark for which protection is sought must be known by a significant part of that relevant public; G*eneral Motors*, paragraph 26.

(c) It is necessary for the public when confronted with the later mark to make a link with the earlier reputed mark, which is the case where the public calls the earlier mark to mind; *Adidas Saloman*, paragraph 29 and *Intel*, paragraph 63.

(d) Whether such a link exists must be assessed globally taking account of all relevant factors, including the degree of similarity between the respective marks

and between the goods/services, the extent of the overlap between the relevant consumers for those goods/services, and the strength of the earlier mark's reputation and distinctiveness; *Intel*, paragraph 42.

(e) Where a link is established, the owner of the earlier mark must also establish the existence of one or more of the types of injury set out in the section, or there is a serious likelihood that such an injury will occur in the future; *Intel*, paragraph 68*;* whether this is the case must also be assessed globally, taking account of all relevant factors; *Intel*, paragraph 79.

(f) the more immediately and strongly the earlier mark is brought to mind by the later mark, the greater the likelihood that use of the latter will take unfair advantage of, or will be detrimental to, the distinctive character or the repute of the earlier mark; *L'Oreal v Bellure NV*, paragraph 44.

(g) Detriment to the distinctive character of the earlier mark occurs when the mark's ability to identify the goods/services for which it is registered is weakened as a result of the use of the later mark, and requires evidence of a change in the economic behaviour of the average consumer of the goods/services for which the earlier mark is registered, or a serious risk that this will happen in future; *Intel,* paragraphs 76 and 77 and *Environmental Manufacturing*, paragraph 34.

(h) The more unique the earlier mark appears, the greater the likelihood that the use of a later identical or similar mark will be detrimental to its distinctive character; *Intel*, paragraph 74.

(i) Detriment to the reputation of the earlier mark is caused when goods or services for which the later mark is used may be perceived by the public in such a way that the power of attraction of the earlier mark is reduced, and occurs particularly where the goods or services offered under the later mark have a

characteristic or quality which is liable to have a negative impact of the earlier mark; *L'Oreal v Bellure NV,* paragraph 40. The stronger the reputation of the earlier mark, the easier it will be to prove that detriment has been caused to it; *L'Oreal v Bellure NV*, paragraph 44.

(j) The advantage arising from the use by a third party of a sign similar to a mark with a reputation is an unfair advantage where it seeks to ride on the coat-tails of the senior mark in order to benefit from the power of attraction, the reputation and the prestige of that mark and to exploit, without paying any financial compensation, the marketing effort expended by the proprietor of the mark in order to create and maintain the mark's image. This covers, in particular, cases where, by reason of a transfer of the image of the mark or of the characteristics which it projects to the goods identified by the identical or similar sign, there is clear exploitation on the coat-tails of the mark with a reputation (*Marks and Spencer v Interflora*, paragraph 74 and the court's answer to question 1 in *L'Oreal v Bellure).*

79. The conditions of section 5(3) are cumulative. Firstly, the opponent must show that the marks are identical or similar. Secondly, the opponent must show that its earlier mark has achieved a level of knowledge, or reputation, amongst a significant part of the public. Thirdly, the opponent must establish that the public will make a link between the marks, in the sense of the earlier mark being brought to mind by the later mark. Finally, assuming the first three conditions have been met, section 5(3) requires that one or more of three types of damage claimed by the opponent will occur. It is not necessary for the purposes of section 5(3) that the goods or services are similar, although the relative distance between them is one of the factors which must be assessed in deciding whether the public will make a link between the marks.

80. The relevant date for the assessment under section 5(3) is the filing date of the contested application, namely, 4 March 2022.

Reputation

81. In *General Motors*, Case C-375/97, the CJEU held that:

> "25. It cannot be inferred from either the letter or the spirit of Article 5(2) of the Directive that the trade mark must be known by a given percentage of the public so defined.
>
> 26. The degree of knowledge required must be considered to be reached when the earlier mark is known by a significant part of the public concerned by the products or services covered by that trade mark.
>
> 27. In examining whether this condition is fulfilled, the national court must take into consideration all the relevant facts of the case, in particular the market share held by the trade mark, the intensity, geographical extent and duration of its use, and the size of the investment made by the undertaking in promoting it.
>
> 28. Territorially, the condition is fulfilled when, in the terms of Article 5(2) of the Directive, the trade mark has a reputation 'in the Member State'. In the absence of any definition of the Community provision in this respect, a trade mark cannot be required to have a reputation 'throughout' the territory of the Member State. It is sufficient for it to exist in a substantial part of it."

82. I remind myself that under the present ground, the opponent relies on the same mark and same set of goods as it did under its 5(2)(b) ground. Before proceeding, it is necessary to point out that as the opponent's mark is a comparable mark based on a pre-existing EUTM, use of the same in the EU prior to IP Completion Day (being 31 December 2020) is relevant to the assessment of the existence of a reputation. As a result, I bear in mind the case of *Pago International GmbH v Tirolmilch registrierte GmbH*, Case C-301/07, which set out that an EU trade mark may be considered to have a reputation if it is known by a substantial part of the territory of the European Community and that the territory of a single Member State alone may be considered

as satisfying that requirement. Further, I note the case of *Whirlpool Corporations and others v Kenwood Limited* [2009] ETMR 5 (HC), wherein Geoffrey Hobbs Q.C. confirmed that when assessing reputation in the EU, the UK is a substantial part of the same. While these cases were determined prior to the UK's departure from the EU, they remain relevant insofar as use in the EU is a relevant factor.

83. I have produced a summary of the opponent's evidence at paragraphs 19 to 28 and 61 to 64 above. I do not intend to reproduce the evidence summary here but remind myself of particular points that are relevant to the overall assessment of reputation.

84. I note that no evidence of market share has been provided, however, an article provided by the opponent in exhibit LC7 gives some indication as to the size of the market for wines. The article concerns the 115 largest wineries in Italy with over 55% of the turnover of the entire market. In 2021 the 115 wineries recorded a turnover of just over 8 billion euros. I am of the view that a UK turnover of approximately €2,000,000 between 2017 and 2021 and an EU turnover of approximately €14,000,000 between 2018 to 2020 is not insignificant but given the size of the market at issue, I deem this to only be a small percentage of the market share. Further, the evidence provided in respect of advertising expenditure is unclear as the figures provided are not specific to *Cielo* branded wines only.

85. While I appreciate that the issue of reputation must be based on the evidence as whole, I find that there is a lack of compelling evidence to demonstrate that the mark had established a reputation amongst a significant part of the relevant UK or EU public at the relevant date.

86. Even if the opponent's evidence, which admittedly is more compelling in respect of the EU as a whole, could establish the requisite reputation, I would still need to be satisfied that there would be a link in the mind of the UK relevant public. No explanation has been put forward by the opponent as to why a link would be made

in the minds of the UK relevant public, in the absence of any significant reputation here. Consequently, I do not consider that a link would be made or that damage would occur.

87. The opposition based upon section 5(3) is dismissed.

CONCLUSION

88. The opposition succeeds in its entirety and the application is hereby refused.

COSTS

89. The opponent has been successful and is entitled to a contribution towards its costs. Awards of costs in proceedings commenced on or after 1 July 2016 and before 1 February 2023 are governed by Annex A of Tribunal Practice Notice ('TPN') 2 of 2016. Taking account of that scale, I award the opponent the sum of **£1200.** The sum is calculated as follows:

Preparing the notice of opposition:	£300
Preparing and filing evidence:	£700
Official fees:	£200
Total:	**£1200**

90. I therefore order Bacardi Martini Patron International GmbH to pay the sum of £1200 to CIELO E TERRA S.P.A. 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 2024

Catrin Williams
For the Registrar