

O/0467/25

TRADE MARKS ACT 1994

IN THE MATTER OF INTERNATIONAL REGISTRATION NUMBER

WO0000001610230

BY KINNEVIK AB

TO REGISTER THE FOLLOWING TRADE MARK:

LUMA

IN CLASSES 35 AND 41

AND

AN OPPOSITION THERETO UNDER NUMBER OP000433016

BY LL GLOBAL, INC.

BACKGROUND AND PLEADINGS

1. Kinnevik AB (“the holder”) is the holder of the international registration (“the IR”) shown on the cover page of this decision (“the contested mark”). The IR was registered on 21 May 2021. With effect from the same date, the holder designated the UK as a territory in which it seeks to protect the IR under the terms of the Protocol of the Madrid Agreement.
2. The holder seeks protection of the IR in relation to the following services:

Class 35 Provision of information and advisory services relating to e-commerce; arranging of commercial and business contacts; advertising and promotion services and related consulting; business intermediary and advisory services in the field of selling products and rendering services; advisory services relating to market research; advisory services relating to business analysis; assistance, advisory services and consultancy with regard to business analysis; business intermediary services relating to the matching of potential private investors with entrepreneurs needing funding; business advice relating to financial re-organisation; providing business information, also via internet, the cable network or other forms of data transfer; business analysis; business research; business management; business planning services; business investigation; business appraisal; business acquisitions; business information; business consulting; business administration; business strategy services; business management; corporate management assistance; business planning services; management advice; advisory services for business management; business consultancy to firms; business management consulting; business management consulting; business inquiries; business appraisal; retail services in relation to jewellery; retail services in relation to luggage; retail services in relation to toiletries; retail services in relation to foodstuffs; retail services in relation to furnishings; retail services in relation to furniture; retail services in relation to games; retail services in relation to toys; retail services in relation to printed matter; retail services in relation to time instruments; retail services in relation to stationery supplies; retail services in relation to recorded content; retail services in relation to computer hardware; retail

services in relation to computer software; retail services in relation to information technology equipment; retail services in relation to audio-visual equipment; retail services in relation to downloadable electronic publications; online retail store services relating to cosmetic and beauty products; none of the aforementioned being for or in relation to producing audio- and visual effects for live action, animated motion pictures, music entertainment, computer software and -hardware for use in producing visual effects, live action or animated motion pictures, nor for or in relation to wall art, art prints, pictures or photos.

Class 41 Know-how transfer [training]; training; practical training [demonstration]; training and instruction; training services relating to finance; business training services; coaching in economic and management matters; none of the aforementioned being for or in relation to producing audio- and visual effects for live action, animated motion pictures, music entertainment, computer software and -hardware for use in producing visual effects, live action or animated motion pictures, nor for or in relation to wall art, art prints, pictures or photos.

3. The IR was published for opposition purposes on 28 January 2022.
4. LL Global, Inc (“the opponent”) opposes the IR in full, on the basis of section 5(2)(b) of the Trade Marks Act 1994 (“the Act”).
5. The opponent relies upon the mark detailed below:

UK00916685901, filed on 4 May 2017, registered on 1 September 2017.

LOMA

6. For the purpose of these proceedings, the opponent is reliant upon all the services for which the earlier mark is registered:

Class 35 Business services, namely, providing business management consulting services to the financial services industry; management services, namely, providing management consulting services to the insurance industry.

Class 41 Educational services, namely, providing training and conducting courses and conferences in financial services and financial services management; educational services, namely conducting courses in insurance and insurance management.

7. Given the filing date, the opponent's mark is an earlier mark, in accordance with section 6 of the Act. However, as it had not been registered for five years or more at the filing date of the application, it is not subject to the proof of use requirements specified within section 6A of the Act. As a consequence, the opponent may rely upon all of the services for which the earlier mark is registered without having to establish genuine use.
8. Under section 5(2)(b), the opponent claims that the holder's mark is similar to the earlier mark and that the services in the holder's mark are identical or similar to the services in the earlier mark. And on this basis, there exists a likelihood of confusion on the part of the relevant public, which includes the likelihood of association with the earlier mark.
9. The holder filed a defence and counterclaim denying all the grounds of the opposition.
10. The holder is represented by Abion UK Limited and the opponent is represented by Trademark Tonic Limited. During the evidence rounds, both parties filed written submissions. Neither party requested a hearing nor did they file written submissions in lieu.
11. 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.

Preliminary Issue

12. I note the various statements that have been made by the holder in its counterstatement and written submissions, in relation to passing off. The s5(4)(a) grounds were struck out due to no evidence of fact being filed by the opponent. Therefore, the proceedings before me are solely in relation to an opposition based on s5(2)(b) and not s5(4)(a). Therefore, these comments will not be considered in my assessment.

SUBMISSIONS

13. The opponent filed written submissions dated 8 April 2024.

14. The holder filed amended written submissions dated 7 August 2024, accompanied by Annex 1.

DECISION

Section 5(2)(b)

15. Sections 5(2)(b) and 5A of the Act state:

“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.

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.”

Relevant Law

16. The following principles are gleaned from the decisions of the Court of Justice of the European Union (“CJEU”) 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 services

17. In comparing the respective specifications, all relevant factors should be considered, as per *Canon*, where the 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.”

18. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, for assessing similarity were:

- (a) The respective uses of the respective goods or services;
- (b) The respective users of the respective goods or services;
- (c) The physical nature of the goods or acts of service;
- (d) The respective trade channels through which the goods or services reach the market;
- (e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be, found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;
- (f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

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

“29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 *Institut für Lernsysteme*

v OHIM – Educational Services (ELS) [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark.”

20. Further, in *Kurt Hesse v OHIM*,¹ 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*,² the General Court (“GC”) stated that “complementary” means:

“...there is 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.”

21. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market* (Trade Marks and Designs) (OHIM), Case T-325/06, the General Court stated that “complementary” means:

“[...] there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking.”

22. In *YouView TV Ltd v Total Ltd* [2012] EWHC 3158 (Ch), Floyd J. (as he then was) stated that:

“[...] Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys* (Trademarks) (IP TRANSLATOR) [2012] ETMR 42 at [47]- [49]. Nevertheless the principle should not be taken too far. Treat was decided the way it was because the ordinary

¹ Case C-50/15 P

² Case T-325/06

and natural, or core, meaning of 'dessert sauce' did not include jam, or because the ordinary and natural description of jam was not 'a dessert sauce'. Each involved a straining of the relevant language, which is incorrect. 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."

23. In *Sky v Skykick* [2020] EWHC 990 (Ch), Lord Justice Arnold considered the validity of trade marks registered for, amongst many other things, the general term 'computer software'. In the course of his judgment he set out the following summary of the correct approach to interpreting broad and/or vague terms:

"...the applicable principles of interpretation are as follows: (1) General terms are to be interpreted as covering the goods or services clearly covered by the literal meaning of the terms, and not other goods or services. (2) In the case of services, the terms used should not be interpreted widely, but confined to the core of the possible meanings attributable to the terms. (3) An unclear or imprecise term should be narrowly interpreted as extending only to such goods or services as it clearly covers. (4) A term which cannot be interpreted is to be disregarded."

24. In *Avnet Incorporated v Isoact Limited* [1998] FSR 16, Jacob J (as he then was) said at [19]:

"[...] definitions of services ... are inherently less precise than specifications of goods. [...] In my view, specifications for services should be scrutinised carefully and they should not be given a wide construction covering a vast range of activities. They should be confined to the substance, as it were, the core of the possible meanings attributable to the rather general phrase."

25. I bear in mind that it is permissible to group goods together for the purposes of assessment: *Separode Trade Mark*:³

“The determination must be made with reference to each of the different species of goods listed in the opposed application for registration; if and to the extent that the list includes goods which are sufficiently comparable to be assessable for registration in essentially the same way for essentially the same reasons, the decision taker may address them collectively in his or her decision.”

26. The services to be compared are shown in the table below:

The opponent's services	The holder's services
Class 35: Business services, namely, providing business management consulting services to the financial services industry; management services, namely, providing management consulting services to the insurance industry.	Class 35: Provision of information and advisory services relating to e-commerce; arranging of commercial and business contacts; advertising and promotion services and related consulting; business intermediary and advisory services in the field of selling products and rendering services; advisory services relating to market research; advisory services relating to business analysis; assistance, advisory services and consultancy with regard to business analysis; business intermediary services relating to the matching of potential private investors with entrepreneurs needing funding; business advice relating to financial re-organisation; providing business information, also via internet, the cable

³ BL O/399/10

	network or other forms of data transfer; business analysis; business research; business management; business planning services; business investigation; business appraisal; business acquisitions; business information; business consulting; business administration; business strategy services; business management; corporate management assistance; business-planning services; management advice; advisory services for business management; business consultancy to firms; business management consulting; business-management consulting; business inquiries; business-appraisal; retail services in relation to jewellery; retail services in relation to luggage; retail services in relation to toiletries; retail services in relation to foodstuffs; retail services in relation to furnishings; retail services in relation to furniture; retail services in relation to games; retail services in relation to toys; retail services in relation to printed matter; retail services in relation to time instruments; retail services in relation to stationery supplies; retail services in relation to recorded content; retail services in relation to computer hardware; retail services in relation to
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	computer software; retail services in relation to information technology equipment; retail services in relation to audio-visual equipment; retail services in relation to downloadable electronic publications; online retail store services relating to cosmetic and beauty products; none of the aforementioned being for or in relation to producing audio- and visual effects for live action, animated motion pictures, music entertainment, computer software and -hardware for use in producing visual effects, live action or animated motion pictures, nor for or in relation to wall art, art prints, pictures or photos.
Class 41: Educational services, namely, providing training and conducting courses and conferences in financial services and financial services management; educational services, namely conducting courses in insurance and insurance management.	Class 41: Know-how transfer [training]; training; practical training [demonstration]; training and instruction; training services relating to finance; business training services; coaching in economic and management matters; none of the aforementioned being for or in relation to producing audio- and visual effects for live action, animated motion pictures, music entertainment, computer software and -hardware for use in producing visual effects, live action or animated motion pictures, nor for or in relation to wall art, art prints, pictures or photos.

27. In relation to the above comparison, the holder made the following written submissions⁴:

“The Applicant does not agree that the terms contained in class 35 and 41 of their mark’s specification are identical or similar to the services of the Opponent’s Mark. Consumers would not perceive the services to be similar or related to the Opponents. We refer to our previous claims [made earlier in the holder’s submissions] that the marks are dissimilar overall and so the assessment of similarity on the classes is not valid.”

28. In relation to the above comparison, the opponent made the following written submissions⁵, in relation to class 35:

“The services in Class 35 of the Applicant’s specification, are either business or business management consulting services related or for services related to business/business management consulting services e.g. e-commerce services, advertising services, promotion services, retails services.

The Opponent’s specification also covers business and business management consulting type services in Class 35. Because the uses of the services of the Applicant will be identical or similar to the services of the Opponent (and the nature of the services of the Applicant will be identical or similar to the services of the Opponent), the respective users and trade channels are likely to be the same. Also, the respective Class 35 services are both competitive and complementary e.g. business/business management consulting type services (of the Opponent) versus business/business management consulting type services (of the Applicant) and also business services and business management consulting services (of the Opponent) versus e-commerce services, advertising services, promotion services, retail services (of the Applicant), (above relevant similarity assessment factors

⁴ Holder’s amended written submissions filed 7 August 2024, page 3.

⁵ Opponent’s written submissions filed 8 April 2024, page 6, paragraph 7.1

identified by Jacob J. (as he then was) in the Treat case, [1996] R.P.C. 281). Note also that 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 (which should in this case extend to services).

The services of the Applicant's Mark in Class 35 specifically target the fields of business and business management consulting, which overlaps with the Opponent's fields of interest under Class 35 in these specific areas."

29. I note that the holder's class 35 and 41 specifications contain the limitation '*none of the aforementioned being for or in relation to producing audio- and visual effects for live action, animated motion pictures, music entertainment, computer software and -hardware for use in producing visual effects, live action or animated motion pictures, nor for or in relation to wall art, art prints, pictures or photos.*' I will keep this limitation in mind but only refer to it if necessary.

30. The opponent has not specified its best case from their specification against the holder's specification and has provided very broad submissions comparing class against class. Therefore, I have had to determine what I consider to be the best case in each comparison.

Class 35:

Business consulting; business consultancy to firms; business management consulting;

31. The above contested terms relate to the practice of providing independent and expert advice to business organisations. I compare the above terms to the opponent's term, '*Business services, namely, providing business management consulting services to the financial services industry*', which I have defined above at paragraph [31], as the provision of expert advice to people working in a professional or technical field, to improve performance and assist in achieving

organisational targets. For this reason, I find that these services are identical in line with the principle set out in *Meric*.

Business management.

32. The above service relates to the day-to-day process of planning, organising, directing and controlling the activities of a business to achieve its goals and objectives. The opponent's '*Business services, namely, providing business management consulting services to the financial services industry*' will fall within the scope of this service and is therefore identical in line with the principle in *Meric*.

Business [...] advisory services in the field of selling products and rendering services; advisory services relating to business analysis; assistance, advisory services and consultancy with regard to business analysis; business advice relating to financial re-organisation; corporate management assistance; management advice; advisory services for business management.

33. The above services relate to the provision of advice related to a wide range of business activities. I compare these to the opponent's '*Business services, namely, providing business management consulting services to the financial services industry*'. As the respective services are concerned with the provision of expert advice to enable a business to achieve its goals, I find the respective services are identical in line with the principle set out in *Meric*. However, if I am wrong in my assessment, I find a high degree of similarity in the parties' services as they will overlap in both nature and purpose. They may also be an overlap in uses and users. I am also in agreement with the opponent, that these services are competitive and complementary.

Business analysis; business research; business planning services; business investigation; business appraisal; business acquisitions; business information; business strategy services; business inquiries.

34. To my knowledge, the above services are all business-related activities and can be compared to the opponent's '*Business services, namely, providing business management consulting services to the financial services industry*'. A management consultant, as described in paragraph [31], provides expert advice to businesses to improve their performance and revenue and assist in achieving organisational objectives. This can include, but is not limited to, collation of data, analysis, research and planning. The holder's services are provided by specialists to improve performance and resolve business related issues, whether in the area of business planning or in the context of analysis of data. As such, the respective services overlap in nature, share the same purpose and target the same public. They are likely to share the same trade channels and be complementary. Therefore, I find these services to be similar to a high degree.

Business intermediary services relating to the matching of potential private investors with entrepreneurs needing funding; business intermediary [...] services in the field of selling products and rendering services;

35. My understanding of business intermediary services is that they help and support companies to do business or to make improvements. They are a go between to assist one company broker a deal with another company. I consider that they overlap in user, purpose and trade channels with the opponent's consultancy services. However, I do not consider that they overlap in method of use, nor are they complimentary. Overall, I consider the services to be similar to a medium degree.

Business administration.

36. From my understanding, business administration refers to the management of a company's resources and operations to achieve effective operation and growth, within the organisation. It includes functions such as human resources, marketing, finance and project management, rather than advising or consulting on them. However, the users are likely to be the same and there may be some overlap in purpose. There may be an overlap in competition where a business could choose to outsource specific administrative functions or receive

consultancy on how to perform these functions more effectively inhouse. Taking these factors into account, I find a medium degree of similarity between the respective services.

Providing business information, also via internet, the cable network or other forms of data transfer.

37. I understand the above service involves using online platforms or other means of transferring data to share details about a company, its products or services and how to interact with it, for business or advertising purposes. To my mind, the provision of business information is intrinsic to the service of business management and '*business management consultancy*'. I consider these services to overlap in nature, method of use and purpose. I find that these services are similar to a medium degree.

Arranging of commercial and business contacts.

38. From my understanding, the above service involves facilitating introductions between a business or organisation, where the facilitator will act as an intermediary, connecting businesses with potential clients. They will focus on building relationships, finding opportunities and driving sales. I consider that the holder's service will overlap in user, purpose and trade channels with the opponent's consultancy services. However, I do not consider that they overlap in method of use, nor are they complimentary. Overall, I consider the services to be similar to a medium degree.

Provision of information and advisory services relating to e-commerce.

39. From my understanding, 'e-commerce' is the electronic buying and selling of goods and services, usually conducted via the internet and, as such, the above service relates to the provision of information and advice in this field. The opponent's term, '*Business services, namely, providing business management consulting services to the financial services industry*', is the provision of consulting services to people in the financial services industry on the day-to-day

process of planning, organising, directing and controlling the activities of a business to achieve its goals and objectives. While both these services involve advisory/consultancy services, the nature of the services is the only thing that they have in common. They differ in that they involve different specialisms - e-commerce v business management and the opponent's services target the financial services industry whereas the holder's services target industry at large. As such, I do not consider the respective services to be in competition, nor do I consider them to be complementary. I therefore find a low degree of similarity in the respective services.

Advertising and promotion services and related consulting; advisory services relating to market research.

40. While these services and that of the opponent all involve advisory/consultancy services and therefore overlap in nature, they differ in their specialisms, the holder's being advertising and market research in industry at large and the opponent's being business management in the financial services industry. As such, I do not consider the respective services to be in competition, nor do I consider them to be complementary. I therefore find a low degree of similarity in the respective services.

41. The opponent made the following written submissions in relation to class 41:

"The services in Class 41 of the Applicant's specification, all relate to training or coaching type services e.g. Know-how transfer [training]; training; practical training [demonstration]; training and instruction; training services relating to finance; business training services; coaching in economic and management matters.

The Opponent's Class 41 specification also covers training services and similar/related educational and conducting courses/conferences type services. Because the uses of the services of the Applicant will be identical or similar to the services of the Opponent (and the nature of the services of the Applicant

will be identical or similar to the services of the Opponent), the respective users and trade channels are likely to be the same. Also, the respective Class 41 services are both competitive and complementary e.g. training type services (of the Opponent) versus training/coaching services (of the Applicant) and also educational and conducting courses/conference type services (of the Opponent) training/coaching type services (of the Applicant), (same cases apply as mentioned above for Class 35). “

Class 41

Training services relating to finance; business training services; coaching in economic and management matters;

42. I consider that the above services are encompassed by the opponent's 'Educational services, namely, providing training and conducting courses and conferences in financial services and financial services management'. Therefore, I find that these services to be identical in line with the principle set out in *Meric*.

Know-how transfer [training]; training; practical training [demonstration]; training and instruction;

43. The above services in the holder's specification cover a broad range of training services that I consider will encompass the opponent's 'Educational services, namely, providing training and conducting courses and conferences in financial services and financial services management'. Consequently, I find that these services are identical in line with the principle set out in *Meric*.

Retail services in relation to jewellery; retail services in relation to luggage; retail services in relation to toiletries; retail services in relation to foodstuffs; retail services in relation to furnishings; retail services in relation to furniture; retail services in relation to games; retail services in relation to toys; retail services in relation to printed matter; retail services in relation to time instruments; retail services in relation to stationery supplies; retail services in relation to recorded content; retail services in relation to computer hardware; retail services in relation to computer software; retail services in relation to information technology

equipment; retail services in relation to audio-visual equipment; retail services in relation to downloadable electronic publications; online retail store services relating to cosmetic and beauty products.

44. Contrary to the opponent's submissions⁶, I fail to find any degree of similarity between the opponent's services and the holder's retail services. The services do not overlap with the opponent's management consulting services in trade channels, purpose or nature. They are unlikely to overlap in users and are not competitive or complimentary. Therefore, I find these services dissimilar.

The average consumer and the purchasing act

45. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties' services. I must then determine the manner in which the services 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 word “average” denotes that the person is typical. The term “average” does not denote some form of numerical mean, mode or median.”

46. The average consumer for the services at issue is likely to be a professional but I do not discount that members of the general public could also have an interest in those services. I consider the costs will be fairly high and that the services will be purchased fairly infrequently. In the case of the class 41 services, purchase may

⁶ Opponent's written submissions filed 8 April 2024, page 6, paragraph 7.1

be made on a recurring basis. The services will either be selected online, from brochures, over the phone or through word of mouth recommendations, therefore both visual and aural considerations will apply.

47. Considering the nature and purpose of the respective services, the average consumer, whether professional or members of the general public with an interest in those services, will want to make sure that the services suit their specific needs and requirements. Therefore, it is likely that the average consumer will apply a reasonably high degree of attention during the purchasing process.

Comparison of trade marks

48. It is clear from *Sabel* that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the trade marks must be assessed by reference to the overall impressions created by the trade marks, bearing in mind their distinctive and dominant components. The CJEU states at paragraph 34 of its judgment in *Bimbo*, 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.”

49. 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.

50. The marks to be compared are as follows:

The opponent's earlier mark	The holder's contested mark
LOMA	LUMA

Overall impression

51. Both marks are word-only marks, therefore, the overall impression of the marks lies solely in those words.

Visual comparison

52. The competing marks comprise of four letters. They share the identical first letter 'L' and the identical third and fourth letters, 'MA'. The point of difference lies in the second letter, being 'O' in the opponent's mark and 'U' in the holder's mark.

53. I consider the marks to be visually similar to a medium to high degree on the basis of the identical first letter 'L' and the identical 'MA' ending.

Aural comparison

54. Aurally, the opponent's mark is likely to be pronounced as the two syllables 'LOW-MAH', whereas the holder's mark will likely be pronounced as the two syllable word 'LOO-MAH'.

55. Given the presence of the sound of the letter 'O' and the letter 'U', I consider the marks to be aurally similar to a medium to high degree.

Conceptual comparison

56. 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 GC and the CJEU including Ruiz Picasso v OHIM [2006] e.c.r.-I-643; [2006] E.T.M.R 29. The assessment must, therefore, be made from the point of view of the average consumer.

57. I refer to Annex 1⁷ of the holder's written submissions, where the holder has provided a copy of the Collins online dictionary definition of the word 'lumen'. In their written submissions⁸, the holder claims that the word 'LUMA' is derived from the well-known Latin word 'lumen', meaning light, evidenced by the dictionary definition. The holder also claims that consumers will recognise and retain the association with ease. On reviewing Annex 1, I fail to see a direct reference to the word 'LUMA' and consider it unlikely that a significant proportion of average consumers will be aware of the meaning.

58. The opponent says that LOMA is an acronym for the Life Office Management Association, but concedes that "for the majority of consumers/users, they would view LOMA as an invented/made-up word, with no particular meaning (neutral from a conceptual stand-point)."⁹

59. I also do not consider that consumers at large will assign 'LOMA' any particular concept or meaning.

60. It is my view that neither mark will create a particular concept in the mind of the consumer. At the very least, a significant proportion of average consumers will view the terms as invented or foreign words. As such, I find the marks to be conceptually neutral.

Distinctive character of the earlier mark

61. In *Lloyd Schuhfabrik Meyer* 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

⁷ Annex 1 of Holder's written submissions filed on 7 August 2024

⁸ Holder's written submissions filed on 7 August 2024

⁹ Paragraph 12 of the opponent's written submissions dated 8 April 2024

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)."

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

63. Although the distinctiveness of a mark can be enhanced by virtue of the use that has been made of it, the opponent has not filed any evidence of use in relation to its mark. Consequently, I have only the inherent position to consider.

64. The earlier mark consists of the word 'LOMA' and has no obvious connection with the services for which the opponent's mark is registered. Accordingly, on this basis, I find the earlier mark to have a high degree of inherent distinctive character.

Likelihood of confusion

65. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the

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

66. Earlier in the decision, I concluded that the competing marks were visually and aurally similar to a medium to high degree and conceptually neutral. I found the earlier mark to be inherently distinctive to a high degree. Furthermore, the holder's services were found to be similar to the opponent's services to a low to high degree or were identical and that both visual and aural considerations would apply during the selection and purchasing process. I have identified the average consumer to be a professional but I do not discount that members of the general public could also have an interest in those services and that a reasonably high degree of attention will be applied during the purchasing process.

67. I have found that the competing marks are both four letter words, sharing the first letter and sharing the identical two letter ending. They differ in the second letter being 'U' in one and 'O' in the other. There is no special test that applies to the comparison of short marks, but I bear in mind that the differences between marks that are shorter in length may have a greater impact¹⁰. However, while it was also generally accepted from the GC in *El Corte Inglés*¹¹, that the first part of a word mark is the part which is likely to retain the attention of the consumer, it was also

¹⁰ *Robert Bosch GmbH v Bosco Brands UK Limited*, BL O/301/20, paragraph 38

¹¹ *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02.

held that identical endings can reinforce visual similarity¹². The earlier mark is also highly distinctive and it is a particularly significant point that neither mark has a concept to assist the average consumer in differentiating between the marks. Considering the principles of imperfect recollection and interdependency, along with the factors above, I find that the difference created by the second letters 'U' and 'O' in the respective marks, will not be sufficient to distinguish the parties' services and that even where the average consumer pays a reasonably high degree of attention when purchasing the services at issue, they will not differentiate between the marks with sufficient accuracy. Consequently, I find that there is a likelihood of direct confusion, even on those services that are similar to a low degree.

CONCLUSION

68. The opposition under section 5(2)(b) has been partially successful, and as such the IR may not become protected in the UK for the following services:

Class 35: Provision of information and advisory services relating to e-commerce; arranging of commercial and business contacts; advertising and promotion services and related consulting; business intermediary and advisory services in the field of selling products and rendering services; advisory services relating to market research; advisory services relating to business analysis; assistance, advisory services and consultancy with regard to business analysis; business intermediary services relating to the matching of potential private investors with entrepreneurs needing funding; business advice relating to financial re-organisation; providing business information, also via internet, the cable network or other forms of data transfer; business analysis; business research; business management; business planning services; business investigation; business appraisal; business acquisitions; business information; business consulting; business administration; business strategy services; business management; corporate management assistance; business planning services; management advice; advisory services for business management; business consultancy to

¹² *El Corte Inglés*, [81] to [83].

firms; business management consulting; business management consulting; business inquiries; business appraisal; none of the aforementioned being for or in relation to producing audio- and visual effects for live action, animated motion pictures, music entertainment, computer software and -hardware for use in producing visual effects, live action or animated motion pictures, nor for or in relation to wall art, art prints, pictures or photos.

Class 41: Know-how transfer [training]; training; practical training [demonstration]; training and instruction; training services relating to finance; business training services; coaching in economic and management matters; none of the aforementioned being for or in relation to producing audio- and visual effects for live action, animated motion pictures, music entertainment, computer software and -hardware for use in producing visual effects, live action or animated motion pictures, nor for or in relation to wall art, art prints, pictures or photos.

69. However, the opposition fails in respect to the following services, for which, subject to any successful appeal, the IR may become protected in the UK:

Class 35: Retail services in relation to jewellery; retail services in relation to luggage; retail services in relation to toiletries; retail services in relation to foodstuffs; retail services in relation to furnishings; retail services in relation to furniture; retail services in relation to games; retail services in relation to toys; retail services in relation to printed matter; retail services in relation to time instruments; retail services in relation to stationery supplies; retail services in relation to recorded content; retail services in relation to computer hardware; retail services in relation to computer software; retail services in relation to information technology equipment; retail services in relation to audio-visual equipment; retail services in relation to downloadable electronic publications; online retail store services relating to cosmetic and beauty products; none of the aforementioned being for or in relation to producing audio- and visual effects for live action, animated motion pictures, music entertainment, computer software and -hardware for use in producing visual effects, live action or animated motion pictures, nor for or in relation to wall art, art prints, pictures or photos;

COSTS

70. The opponent has been partially successful and is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice 2/2016. I award the opponent the sum of £600, calculated as follows:

Preparing a statement and considering the other side's statement	£200
Official fee	£100
Preparing written submissions	£300
Total	£600

71. I therefore order Kinnevik AB to pay LL Global, Inc, the sum of £600. This sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the final determination of the appeal proceedings.

Dated this 28th day of May 2025

Mrs Joanne Roberts

For the Registrar