O/0535/24

TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK APPLICATION NO. 3817859
IN THE NAME OF MUHAMMAD IMRAN

TO REGISTER AS A TRADE MARK

Victoro

IN CLASSES 18 AND 25

AND

IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 438026
BY CALZADOS NUEVO MILENIO, S.L.

BACKGROUND AND PLEADINGS

1. On 8 August 2022, Muhammad Imran[1] ("the applicant") applied to register "**Victoro"** as a trade mark in the United Kingdom. The application was accepted and published for opposition purposes on 16 September 2022, in respect of the following goods in classes 18 and 25:

Class 18: *Leather and imitations of leather; animal skins, hides; travelling bags; umbrellas, parasols and walking sticks; whips, harness and saddlery.*

Class 25: *Clothing, footwear and headgear*.

2. The application is opposed by Calzados Nuevo Milenio, S.L. ("the opponent"). The opposition was filed on 14 December 2022 and is based upon Section 5(2)(b) of the Trade Marks Act 1994 ("the Act"). The opposition is directed against all of the goods in the application. The opponent relies upon the following two comparable UK marks:

Victoria
UK trade mark registration number 914711246
Filing date: 23 October 2015
Registration date: 23 February 2016
Registered in classes 18, 25 and 35
Relying on all goods in class 25 only, namely *Footwear*.
(The '246 mark); and

UK trade mark registration number 918074377
Filing date: 30 May 2019
Registration date: 8 October 2019

[1] I note that the applicants are recorded under the names of Muhammad Imran and Muhammad Imran, separately under two different addresses, one in the United Kingdom and the other in Pakistan. However, it appears to be the case that the applicants are one and the same person.

Registered in class 25

Relying on all goods, namely, *Clothing; Footwear; Headgear*.

(The ‘377 mark).

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

4. The opponent submits that taking into account that the respective marks are visually, aurally and conceptually highly similar and that the respective goods are identical/highly similar in nature, there is a high likelihood of both direct and indirect confusion. It submits that the registration of the application would be contrary to section 5(2)(b) of the Act and should be refused in its entirety, and it requests an award of costs be made in its favour.

5. The applicant filed a counterstatement denying the claims and putting the opponent to proof of use of its earlier ‘246 mark. It requests that the application be allowed to proceed to registration, and an award of costs made in its favour.

6. Only the opponent filed evidence and written submissions.[3] Neither party requested a hearing, therefore this decision is taken following careful consideration of the papers.

7. In these proceedings, the opponent is represented by Maguire Boss and the applicant is unrepresented.

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

[3] I note that although the applicant initially filed evidence, it was not submitted in an appropriate format or accompanied by a witness statement. Accordingly, in an official letter dated 28 August 2023, the Tribunal invited the applicant to resubmit the evidence in the correct manner. However, as it did not elect to do so, I am unable to take the evidence into account in my considerations.

EVIDENCE AND SUBMISSIONS

8. The opponent filed evidence by way of a witness statement dated 2 June 2023 in the name of Javier Garrido Veci, alongside thirteen exhibits, labelled **Exhibit JGV1** to **Exhibit JGV13** accordingly. Mr Garrido is the CEO of the opponent, a position he has held since May 2018.

9. The main purpose of the evidence is to provide background information and to show use of the earlier '246 mark in the relevant territory during the relevant period in relation to the goods relied upon in the opposition.

10. I have taken the evidence into account in reaching my decision and will refer to it below to the extent I consider necessary.

11. The opponent also filed written submissions dated 5 June 2023 in support of the opposition, which will be referred to as and where appropriate during this decision

DECISION

12. 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.

13. Each of the two trade marks upon which the opponent relies qualifies as an earlier trade mark as defined in Section 6(1) of the Act. As the earlier '377 mark had not been registered for more than five years before the filing date of the applicant's mark, it is not subject to the use provisions contained in section 6A of the Act. The opponent is, therefore, entitled to rely upon it in relation to all of the goods indicated without having to prove that genuine use has been made of it.

14. The opponent's '246 mark had completed the registration process more than 5 years before the application was filed, and as a result, it is, in principle, subject to use provisions. The opponent made a statement of use in relation to all of the goods relied upon. I note that on filing its Form TM8 Notice of Defence and Counterstatement, the applicant required the opponent to provide proof of use of the mark for all the goods on which it relies, as listed under paragraph 2 of this decision.

Proof of Use

15. The relevant statutory provisions under Section 6A of the Act are as follows:

> (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.

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

“(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".

17. Section 100 of the Act states that:

"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".

18. The relevant period during which genuine use must be shown is the five years ending with the filing date of the contested application, which was 8 August 2022. The relevant period is therefore 9 August 2017 to 8 August 2022. As the opponent's mark is a comparable mark, the territory in which use must be shown is the EU (including the United Kingdom) between 9 August 2017 to 31 December 2020 ("the first relevant period"), and the United Kingdom only from 1 January 2021 to 8 August 2022 ("the second relevant period").

19. 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]; *Leno* at [29]; *Centrotherm* at [71]; *Reber* at [29].
>
> (3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Centrotherm* at [71]; *Leno* at [29]; *Gözze* at [37], [40]; *Ferrari* at [32].

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

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

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: *Ansul* at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34]; *Leno* at [29]-[30], [56]; *Ferrari* at [33].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is

genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no *de minimis* rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72]; *Leno* at [55].

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

Evidence of use

20. Under the section 5(2)(b) grounds, the opponent has claimed that use has been made of all of the goods on which it relies under the earlier '246 mark. I must consider whether, or the extent to which, the evidence shows genuine use of the earlier mark in relation to those goods, being *footwear*.

21. The opponent has filed a large volume of evidence in these proceedings. Although I do not intend to summarise the content of each and every exhibit, I acknowledge that in his witness statement, Mr Garrido has provided his own brief explanation of the included exhibits, which I will factor in to my assessment accordingly. I note the following from the opponent's evidence:

- Mr Garrido states that the opponent company has been selling footwear under the VICTORIA brand since the company was founded in 1915.
- Mr Garrido states that footwear is currently sold under the VICTORIA brand in more than 63 countries, including Spain, France Italy, Germany and the United Kingdom.
- EU sales of the goods during the first relevant period totalled over 83 million euros, and totalled nearly 3 million euros from sales in the UK from 8 August 2017 to 8 August 2022.[4]
- The opponent spent over 1 million euros on advertising and promotion of the VICTORIA branded goods in the EU during the first relevant period. This is supported by the copies of invoices relating to various promotional expenses

[4] See Mr Garrido's witness statement, paragraphs 8-9.

shown in exhibit JGV5.[5] Mr Garrido states that the opponent also promotes and advertises the goods via its own website, as well its promotional blog, through its displays in physical stores, on social media platforms, and that the goods have appeared on television in the EU.[6]

- The VICTORIA branded goods have been sold via numerous UK retailers/wholesalers, including those listed under paragraph 14 of Mr Garrido's witness statement, and is supported by exhibit JGV6.
- Mr Garrido also states that the goods have been worn and endorsed by a wide selection of well-known celebrities in the UK and internationally, including Kate Middleton.[7]

Form of the mark

22. Section 46(2) of the Act states that:

> "… 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 is registered…"

23. As outlined in *Colloseum Holdings AG v Levi Strauss & Co.*, Case C-12/12,[8] the use of the mark encompasses both its independent use and its use as part of another mark taken as a whole or in conjunction with that other mark.

24. The mark is registered as a word mark "**Victoria".** I note that the evidence shows use of the mark on its own (which is written mainly in lower case), as well as alongside a figurative element, being the letter "v" encased in a circle, situated in various positions in relation to the word itself, although the mark is predominantly shown with the "v" device preceding the word (example 1), and in variations thereof, as presented on the goods at hand (examples 2-4):

[5] Ibid., at paragraphs12 -13.
[6] Ibid., at [15].
[7] Ibid., at [15(g)].
[8] At [31 – 35].

Example 1

[9]

Example 2

Example 3

Example 4

25. Despite the differences in presentation of the mark, with the additional "v" device element and non-distinctive elements shown above, it is my view that the variances make no material difference to the distinctiveness of the mark, with the word "victoria" playing an independent role which continues to indicate origin and may be relied upon by the opponent.

Assessment on genuine use

26. Whether the use shown is sufficient to constitute genuine use will depend on whether there has been real commercial exploitation of the mark, in the course of trade, sufficient to create or maintain a market for the goods at issue in the EU and UK during the relevant five-year period. In making my assessment, I must consider all relevant factors, including:

[9] As shown, inter alia, on the top of the invoices included at exhibit JGV3; on the goods themselves within the exhibits, particularly exhibit JGV2; and on the opponent's website (exhibit JGV4).

- the scale and frequency of the use shown;
- the nature of the use shown;
- the goods for which use has been shown;
- the nature of those goods and the market(s) for them; and
- the geographical extent of the use shown.

27. In its written submissions dated 5 June 2023, the opponent submits that the evidence clearly demonstrates scale and frequency of use, with use of the mark shown on the goods in question as well as on packaging, catalogues, advertising material and invoices, and that extensive use within the relevant period is evident in at least Spain, France, Italy, Portugal, Belgium, Germany and the UK.

28. I note that many of the supporting exhibits are undated, although the mark is clearly shown on numerous examples of the goods, being different styles of footwear, and on the packaging, such as in exhibit JGV2. Exhibit JGV6 comprises printouts from websites of third parties offering the goods for sales in the UK, including schuh, Gemini Woman, Amazon UK, La Redoute, rubbersole, MASTERSHOE, The White Company UK, Simply Be, Crew Clothing Company, JD Williams, OLIVER BONAS and Jones Bootmaker. The goods are all priced in pounds sterling, and many have .co.uk domain names, and/or offer free UK delivery. However, while the date the pages were accessed in this exhibit is shown as 1 June 2023, it does not evidence the goods for sale during the relevant periods. I further note that while exhibit JGV5 and pages 1 - 4 of exhibit JGV12 are in Spanish, I accept the explanation given with regards to these exhibits by Mr Garrido in his witness statement. The description of the goods within the invoices included at exhibit JGV3 are also in Spanish, although the invoices themselves are headed with the mark as shown under example 1 under paragraph 24 of this decision. These invoices show sales within Spain, Italy, Portugal, France, Belgium, Germany and the UK, the majority of which (but not all) are dated within the relevant periods. Exhibit JGV7, being the Victoria Blog, clearly states “Victoria, shoe brand Made in Spain since 1915” and I note that some of the pages are dated 12 November 2017, July 1, 2018, and 5 November 2019, and thus fall within the first relevant period.

29. An assessment of genuine use is a global assessment, which includes looking at the evidential picture as a whole, not whether each individual piece of evidence shows use by itself. It is possible for an accumulation of evidence to show use, even if individual items of evidence would on their own be insufficient proof: see *New Yorker SHK Jeans GmbH & Co. KG v OHIM*, Case T- 415/09, paragraph 53.

30. I acknowledge that, as per the principles outlined under paragraph 16 of this decision, use of the mark must be more than token, although that use need not always be quantitatively significant for it to be deemed genuine.[10] I also bear in mind that it is not for me to assess economic success or large-scale commercial use, and that there is no *de minimis* rule - even minimal use may qualify as genuine use if it is use warranted, in the economic sector concerned, to maintain or create market shares for the relevant goods.[11] Conversely, even proven commercial use may not be sufficient for a finding of genuine use.[12]

31. Although I have no evidence relating to the size of the EU and UK footwear markets, I would expect them to be substantial. Neither have I been provided with details of the percentage market share enjoyed by the opponent. That being said, the given sales figures within the relevant periods cannot be said to be token, and the evidence clearly shows use of the mark on the goods at hand, albeit that much of the evidence provided in relation to genuine use of the mark is undated. Mr Garrido further confirms advertising spend of over 1 million euros in the EU during the first relevant period, with a selection of invoices provided to support these figures. Even though both sets of invoices showing sales of the goods (exhibit JGV3) and advertising spend (JGV5) are in Spanish, I have no reason to question the veracity of Mr Garrido's witness statement in relation to the figures provided.

32. To my mind, the sales figures and advertising expenditure provided in the witness statement, coupled with the extensive number of supporting invoices, indicate that there has been commercial use of the mark "Victoria" on the goods at hand, and that the evidence in combination, the undated exhibits notwithstanding, establishes

[10] *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72] and [76]-[77]; *Leno* at [55].
[11] *Naazneen Investments Ltd v OHIM*, Case T-250/13 at [49].
[12] At [115(8)].

genuine use. Therefore, it is my view that the opponent has done enough to demonstrate real commercial exploitation of the earlier mark, sufficient to allow me to find that there has been genuine use of footwear under the mark on which the opponent relies, within the relevant period and within the relevant territories.

Section 5(2)(b)

33. Section 5(2)(b) is relied upon, which reads as follows:

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

34. I am guided by the following principles which are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs) ("OHIM")*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P:

> (a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;
>
> (b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed

and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

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

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

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

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

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

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

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

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

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

Comparison of goods

35. Pursuant to section 60A of the Act, goods are not to be automatically regarded as being similar to each other on the ground that they appear in the same class, nor automatically regarded as dissimilar from each other on the ground that they appear in different classes.

36. The goods to be compared are:

Opponent's goods	**Applicant's goods**
The '246 mark Class 25 *Footwear.*	Class 18 *Leather and imitations of leather; animal skins, hides; travelling bags; umbrellas, parasols and walking sticks; whips, harness and saddlery.* Class 25 *Clothing, footwear and headgear.*
The '377 mark Class 25 *Clothing; Footwear; Headgear.*	

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

"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".[13]

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

"In assessing the similarity of the goods or services concerned, … all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary".[14]

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

40. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v OHIM*, Case T-325/06, the GC stated that "complementary" means:

"...there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking".[15]

41 For the purposes of considering the issue of similarity of goods, it is permissible to consider groups of terms collectively where appropriate: *Separode Trade Mark*, BL O-399-10.[16]

[13] Paragraph 29
[14] Paragraph 23
[15] Paragraph 82
[16] Paragraph 5

Contested goods in class 18

42. The opponent submits that the applicant's goods in class 18 are highly similar to its own goods in class 25.[17] While I take into consideration the opponent's reasoning, I make my own comparisons and draw my own conclusions, as outlined in the following paragraphs.

43. In *El Corte Ingles SA v OHIM*, Case T- 443/05, the GC stated:

> "42 First, the goods in class 25 and those in class 18 are often made of the same raw material, namely leather or imitation leather. That fact may be taken into account when assessing the similarity between the goods. However, given the wide variety of goods which can be made of leather or imitation leather, that factor alone is not sufficient to establish that the goods are similar (see, to that effect, Case T-169/03 Sergio Rossi v OHIM - Sissi Rossi (SISSI ROSSI) [2005] ECR II-685, paragraph 55).
>
> 43 Second, it is apparent that the distribution channels of some of the goods at issue are identical. However, a distinction must be made according to whether the goods in class 25 are compared to one or other of the groups of goods in class 18 identified by OHIM.
>
> 44 On the one hand, as regards the second group of goods in class 18 (**leather and imitations of leather, animal skins, hides**; trunks and **travelling bags; umbrellas, parasols and walking sticks; whips, harness and saddlery**), the Board of Appeal rightly held that the distribution channels were different from those used for the distribution of goods in class 25. The fact that those two categories of goods may be sold in the same commercial establishments, such as department stores or supermarkets, is not particularly significant since very different kinds of goods may be found in such shops, without consumers

[17] Opponent's written submissions dated 5 June 2023, page 7.

> automatically believing that they have the same origin (see, to that effect, Case T-8/03 El Corte Ingles v OHIM - Pucci (EMILIO PUCCI) [2004] ECR II-4297, paragraph 43)”. (**My emphasis**)

Travelling bags; umbrellas, parasols and walking sticks.

44. In spite of an overlap in users, the applicant’s “*Travelling bags; umbrellas, parasols and walking sticks”* are different in physical nature, purpose and method of use to the opponent’s goods in Class 25. They are not in competition, and as per *Boston Scientific*, they are not complementary in a trade mark sense to the extent that the consumer would automatically expect that the responsibility for the goods lies with the same undertaking. As outlined above in *El Corte Ingles*, the distribution channels for the applicant’s goods are also different from those used for the distribution of goods in class 25. I therefore consider the applicant’s goods to be dissimilar to the opponent’s “*footwear*” (the ‘246 mark) or to its “*clothing; footwear; headgear*” ” (the ‘377 mark) in class 25.

Leather and imitations of leather; animal skins, hides.

45. I acknowledge that the above goods may be used in the manufacture of both the opponent’s “*footwear*” (the ‘246 mark) and its “*clothing; footwear; headgear*” (the ‘377 mark). However, while the opponent’s finished products may be reliant on the applicant’s goods, that in itself does not make them similar in nature. In *Les Éditions Albert René v OHIM*, Case T-336/03, the GC found that:

> “61... The mere fact that a particular good is used as a part, element or component of another does not suffice in itself to show that the finished goods containing those components are similar since, in particular, their nature, intended purpose and the customers for those goods may be completely different.”

I find this to be true of the goods before me. Neither do I consider the goods at hand to be either in competition, or complementary in a trade mark sense. Taking all of

these factors into account, as well as the findings of the GC in *El Corte Ingles SA v OHIM,* cited above under paragraph 43, I find the respective goods to be dissimilar.

Whips, harness and saddlery.

46. The above listed goods are likely to be used by equestrians and do not share the same purpose, physical nature or method of use as the opponent's "*footwear"* under class 25 of the '246 mark, or its "*clothing; footwear; headgear*" under the '377 mark. The goods are neither complementary nor in competition, and any overlap in trade channels or users is considered coincidental, and insufficient for me to find similarity between the goods. I therefore find "*Whips, harness and saddlery"* to be dissimilar to either the opponent's "*footwear*" or to its "*clothing; footwear; headgear*".

<u>Contested goods in class 25</u>

Clothing, footwear and headgear.

47. In its written submissions, the opponent submits that its "*clothing; footwear; headgear*" are self-evidently identical to the applicant's same goods in class 25. I agree that this is the case for the earlier '377 mark.

48. However, the opponent is only relying on "*footwear"* under the earlier '246 mark, which is again identical to the applicant's "*footwear"*. I must, therefore, consider the similarity between the applicant's "*clothing"* and "*headgear"* in relation to the opponent's "*footwear"* under the '246 mark. Clothing may be worn to cover any part of the body, footwear is worn on the feet and headgear is worn specifically on the head. As such, the applicant's "*headgear"* and the opponent's "*footwear"* are clearly different, each being worn on very distinct parts of the body. I acknowledge that for some consumers, the broad term "*clothing*" may be considered to also encompass "*footwear*", which would render the competing goods identical as per the principles outlined in *Meric*. In my view, the term "*clothing"* is open to interpretation, and other consumers may not consider it to include "*footwear"*. Nonetheless, the applicant's "*clothing"* and "*headgear"* share a similar purpose, nature and method of use to "*footwear"* in that they all serve to adorn, cover and protect various (different) parts of

the body, and there would be an overlap in users. The goods will often be sold through the same channels of trade and are likely to be found in close proximity within such retail outlets. It would not be unreasonable for the average consumer to expect the goods at issue to originate from the same or economically-linked undertakings. Overall, I consider the applicant's "*clothing*" and "*headgear*" to be similar to the opponent's "*footwear*" to at least a medium degree.

49. Under section 5(2)(b), a degree of similarity between the goods is essential for there to be a finding of likelihood of confusion: see paragraph 49 of *eSure Insurance v Direct Line Insurance,* [2008] ETMR 77 CA. In relation to the goods which I have found to be dissimilar, as there can be no likelihood of confusion, I will take no further account of such goods, with the opposition failing to that extent.

The average consumer and the nature of the purchasing act

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

51. In its written submissions, the opponent submits that the goods at issue are "mass market goods directed at the public at large and include/relate to goods of relatively low cost. The degree of attention of the relevant public is therefore likely to be low".

52. I agree with the opponent's submissions that the general public will most likely be the average consumer of the overlapping goods, being *Clothing, footwear and headgear*.

53. During the selection of the goods, considerations such as quality, material and the fit of the goods will all play a part, as well as the "look" of the goods, the cost, and the suitability according to the occasion for which they are being purchased. The goods may be purchased from physical stores, by predominantly visual means, although I do

not discount aural considerations, and from catalogues and via the internet, where they will be viewed and self-selected by the consumer. In *New Look Limited v OHIM,* joined cases T-117/03 to T-119/03 and T-171/03, the GC stated that:

> "50......... Generally in clothes shops customers can themselves either choose the clothes they wish to buy or be assisted by the sales staff. Whilst oral communication in respect of the product and the trade mark is not excluded, the choice of the item of clothing is generally made visually. Therefore, the visual perception of the marks in question will generally take place prior to purchase. Accordingly the visual aspect plays a greater role in the global assessment of the likelihood of confusion."

54. In my view, the level of attention during the selection of the goods will vary, from medium for everyday wear to slightly higher for luxury and special occasion items of clothing, footwear and headgear.

Comparison of marks

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

> ".....it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion."[18]

[18] Paragraph 34

56. It would be wrong, therefore, to artificially dissect the trade marks, although, it is necessary to take into account the distinctive and dominant components of the marks and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

57. The respective trade marks are shown as follows:

Opponent's trade marks	Applicant's trade mark
The '246 mark **Victoria** The '377 mark victoria Dear World:	**Victoro**

Overall impression

58. The applicant's mark consists of the single word "Victoro", presented in title case in a standard typeface without any other elements to contribute to the overall impression. The overall impression therefore rests in the word itself.

59. The opponent's '246 mark consists of the single word "Victoria", presented in title case in a standard typeface without any other elements to contribute to the overall impression. The overall impression therefore rests in the word itself.

60. The opponent's '377 mark consists of a number of elements. The word "victoria" is presented in lower case in a bold black standard typeface with the words Dear World followed by a colon ("Dear World:"), centrally positioned directly below. This element is written in title case in a different, but still standard (but not bold) typeface. Positioned

centrally to the left of the words is a device element consisting of a faint outline of a heart which contains a basic outline of a portion of a world map. Given the bold typeface and its position within the mark as a whole, to my mind it is the word "victoria" to which the eye is drawn and therefore makes the greatest contribution to the overall impression. The additional words "Dear World:" and the heart device element play a lesser role in the overall impression, although I do not consider that either element would go unnoticed.

Visual comparison

61. The contested mark and the opponent's '246 mark comprise the same initial six letters "Victor", which appear in the same order in both marks, which is followed by the letter "o" in the applicant's mark, and by the letters "ia" in the opponent's mark. In *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02, the GC noted that the beginning of words tend to have more visual and aural impact than the ends, although I accept that this is not always the case. Considering the position of the identical letters "Victor", I consider the marks to be visually similar to a medium to high degree.

62. The opponent's '377 mark shares the same word "victoria" as its '246 mark, alongside the additional elements as previously described, making a noticeable difference between it and the contested mark. While these elements will not be overlooked, as already noted, I consider it to be the "victoria" element of the mark which stands out. Overall, I consider the opposing marks to be visually similar to a medium degree.

Aural comparison

63. All three marks share the first two syllables VIC-TOR, which would be pronounced identically in each. This is followed by the letters "ia" in the opponent's marks which will also be pronounced. Consequently, the opponent's '246 mark will be articulated as four syllables, VIC-TOR-EE-AH, while the applicant's mark will be pronounced as three syllables, "VIC-TOR-OH". I find the marks to be aurally similar to a medium to high degree.

64. The additional device element contained within the '377 mark would not be articulated. I consider that a significant proportion of consumers would, however, pronounce all of the words within the mark, voicing it as seven syllables, VIC-TOR-EE-AH-DEE-UH-WURLD, rendering it aurally similar to the applicant's mark to only a low degree. I also acknowledge that there will be some consumers who will only articulate the "Victoria" element of the '377 mark, and to those consumers, as for its '246 mark, I find it aurally similar to the applicant's mark to a medium to high degree.

Conceptual comparison

65. For a conceptual message to be relevant, it must be capable of immediate grasp by the average consumer - Case C-361/04 P *Ruiz-Picasso and others v OHIM* [2006][19].

66. In *GEORGINE* case BL O/1212/23, Mr Philip Harris, sitting as Appointed Person, found as follows:

> "34. …, consumers do notice common or similar concepts in names, themes, or roots and these might influence them in the context of the names' use as trade marks for goods and services even if, when encountering them as personal names, they apply them to different people.
>
> …
>
> 38. …. The marks are self-evidently conceptually similar to at least a low degree by reason of their male/female equivalence. I consider the similarity to be low because relatively small differences in otherwise commonly rooted forenames names are usually sufficient to dilute that similarity, but conceptual similarity is still clearly present."

[19] Paragraph 56.

67. I also note the findings of Ms Emma Himsworth QC (as she then was) on the conceptual similarity between different versions of names,[20] and the findings of the GC on the conceptual similarity of male and female versions of the same forename.[21]

68. Although in the UK the name Victor without the letter "o" on the end would be more common than the name Victoro, I consider that a significant proportion of the UK consumer will recognise Victoro as a foreign equivalent or alternative of the name, which they will perceive to be a male version of the female forename Victoria. Consequently, in accordance with the findings of Mr Harris in *GEORGINE*, I consider the applicant's mark to be conceptually similar to the opponent's '246 mark to at least a low degree.

69. The opponent's '377 mark comprises the word "victoria", with the additional heart device containing an outline of a world map within, which to me suggests the territorial extent to which the mark is used, and the added words "Dear World:" reinforcing this aspect. As these additional elements are not present in the opponent's mark, overall, again given the shared root "Victor", being the common element between the marks, for the same reasons as for the earlier '246 mark, I consider the marks to be conceptually similar to at least a low degree.

Distinctive character of the earlier marks

70. 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.

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

[20] Case O-276-18 *SANDRO*, at [34].
[21] Case T-204/14 *VICTOR/VICTORIA,* at [131].

“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 *WindsurfingChiemsee* 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).”

72. Registered trade marks possess varying degrees of inherent distinctive character, being lower where they are allusive or suggestive of a characteristic of the goods and services, ranging up to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use made of it. The opponent submits that the marks have at least an average level of distinctive character and that the evidence filed in relation to the genuine use of its ‘246 mark serves to reinforce the inherent distinctive character of the mark in relation to footwear, creating an enhanced level of distinctiveness.[22]

73. I will begin by considering the inherent distinctive character of the marks. It is the distinctiveness of the common element that is important here. In *Kurt Geiger v A-List*

[22] See page 8 of the opponent’s written submissions dated 5 June 2023.

Corporate Limited, BL O/075/13, Mr Iain Purvis Q.C., sitting as the Appointed Person, said:

> "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." [23]

74. The earlier '246 mark comprises solely of the female forename "Victoria", which I consider to be neither particularly common nor an especially unusual name currently in the UK. Forenames will, according to Registry practice, normally be accepted as having distinctive character.[24] While the mark is neither descriptive nor allusive of the opponent's goods, it is not highly unusual as an invented word would be. Therefore, I find the '246 mark to be inherently distinctive to a medium degree for the goods covered by the mark, being "footwear".

75. Earlier in this decision I found that it was the word "victoria" which made the greatest contribution to the overall impression of the '377 mark, with the additional words "Dear World:" and the heart device element playing a lesser role, and that the world map within the heart element serves to suggest the territorial extent to which the mark is used, with the words "Dear World:" reinforcing this aspect. While the additional elements do not significantly add to the distinctiveness of the mark, none of the elements which make up the mark are either allusive or descriptive of the goods themselves. Overall, I consider the additional elements elevate the '377 mark to a slightly higher than average degree of distinctiveness.

76. I now turn to consider whether the distinctive character of the '246 mark has been enhanced through use. While the evidence was considered sufficient to find genuine use of the mark in the relevant territories during the relevant periods, I must consider the evidence of enhanced distinctiveness in relation to the UK only. In *Matratzen*

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[23] Paragraph 39.
[24] See guidance under "Single forenames on goods" in Part B of the examination guide of the Manual of trade marks practice.

Concord AG v Hukla Germany SA, Case C-421/04, in the context of the assessment of distinctiveness for the purposes of registration, the CJEU held that the distinctive character of a trade mark must be assessed from the perspective of the relevant public in the territory in which registration is sought. The same must apply to the assessment of the distinctive character of trade marks for the purposes of assessing whether there is a likelihood of confusion between them.[25]

77. UK sales figures have been provided as being nearly 3 million euros between 2017 and August 2022 and I note that some of the invoices provided in the evidence relate to sales to the UK. Exhibit JGV6 provides extracts from the websites of various UK retailers offering the goods for sale in the UK, although I note that they are undated. The exhibits showing the promotional activities for the mark do not specifically target the UK market, neither have the given figures in relation to advertising spend in the EU been broken down to distinguish spend solely in relation to the UK. Overall, I do not consider the evidence sufficient to establish enhanced distinctiveness in the UK. If I am wrong in this and I have given insufficient weight to the overall sales figures provided for the UK, then I consider that the ‘246 mark has been enhanced by no more than a modest degree.

Likelihood of confusion

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

[25] See *Matratzen Concord AG v OHIM*, Case T-6/01.

79. There are two types of possible confusion: direct, where the average consumer mistakes one mark for the other, or indirect, where the average consumer recognises that the marks are different, but assumes that the goods and/or services are the responsibility of the same or connected undertakings. The distinction between these was explained by Mr Iain Purvis Q.C. (as he then was), sitting as the Appointed Person, in *L.A. Sugar Limited v Back Beat Inc*, Case BL-O/375/10. He said:

> "16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning
> – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: "The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark."
>
> 17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:
>
> (a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right ("26 RED TESCO" would no doubt be such a case).
>
> (b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as "LITE", "EXPRESS", "WORLDWIDE", "MINI" etc.).

(c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension ("FAT FACE" to "BRAT FACE" for example)."

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

81. Earlier in this decision, I found:

- All the contested goods in class 18 to be dissimilar, however, I considered the applicant's class 25 goods to be either identical or similar to at least a medium degree to the opponent's goods;

- The level of attention of the average consumer, being the general public, would vary from medium for everyday wear, to slightly higher for luxury and special occasion items of clothing, footwear and headgear;

- The goods would be selected by predominantly visual means, although I did not discount aural considerations;

- The applicant's mark and the opponent's '246 mark to be visually and aurally similar to a medium to high degree;

- The applicant's mark and the opponent's '377 mark to be visually similar to a medium degree, aurally similar to only a low degree where all of the word elements of the earlier mark are voiced, but aurally similar to a medium to high degree where only the "victoria" element is articulated;

- For both earlier marks, given the shared root "Victor", being the common element of all three marks, and that at least for the part of the relevant public that would understand the marks as being the male and female versions of the same forename, the marks to be conceptually similar to at least a low degree;

- The earlier ' 246 mark to be inherently distinctive to a medium degree with no degree of enhanced distinctiveness, with the proviso that if I were wrong in this assessment, then it had been enhanced by no more than a modest degree; and the earlier '377 mark to be inherently distinctive to a slightly higher than average degree.

82. While allowing that the average consumer is unlikely to see the marks side-by-side and will therefore be reliant on the imperfect picture of them they have kept in their mind, I consider it unlikely that they would mistake one mark for the other, particularly given the additional elements which make up the earlier '377 mark. I also find direct confusion unlikely in relation to the opponent's '246 mark. In my view, the average consumer will notice and recall the differences between each of the marks, and will further recognise the marks "Victoro" and "Victoria" as different versions of names which are derived from the same root. As such, I do not consider there to be a likelihood of direct confusion. I find this even where the respective goods are held to be identical, which offsets a lesser degree of similarity between the marks.

83. Taking into account the previously outlined guidance of Mr Iain Purvis Q.C. (as he then was), in *L.A. Sugar*, I will now consider whether there might be a likelihood of indirect confusion. In *Duebros Limited v Heirler Cenovis GmbH,* BL O/547/17, Mr James Mellor Q.C. (as he then was), as the Appointed Person, stressed that a finding of indirect confusion should not be made merely because the two marks share a common element. In this connection, he pointed out that it is not sufficient that a mark merely calls to mind another mark. This is mere association not indirect confusion.

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

85. I bear in mind the various factors in my decision and the principle of interdependency between them. I note the common element within each of the competing marks is the shared root "victor" within the respective names "Victoro" and "Victoria", which leads to a conceptual similarity between the marks. I have taken into account the previously outlined guidance of Mr Iain Purvis Q.C. (as he then was), in *L.A. Sugar*. As per paragraph 17(c) of that decision, I consider it reasonable that the average consumer would perceive the sign "Victoro" as logical and consistent with a brand extension or a sub-brand of the owner of the two earlier marks, or that they would assume that there is an economic connection between the undertakings. It is my view that a significant number of average consumers will conclude that "Victoro" is indicative of a male variant of the "Victoria" brand or is aimed at male consumers. Consequently, I consider there to be a likelihood of indirect confusion in relation to all the contested goods for which I found similarity.

86. As I have found a likelihood of confusion between the applicant's mark and each of the earlier marks, the opposition under section 5(2)(b) succeeds in respect of class 25 in its entirety.

87. The opposition fails in respect of the remaining goods, being class 18 in its entirety.

CONCLUSION

88. The opposition has been partially successful. Subject to any successful appeal, the application by Muhammad Imran may proceed to registration in respect of all of the goods in class 18 only.

COSTS

89. Both parties have enjoyed a share of success. Considering the balance of success is roughly equal, adopting a "rough and ready" approach to the matter, I have concluded that both parties should bear their own costs.

Dated this 10th day of June 2024

Suzanne Hitchings
For the Registrar,
the Comptroller-General