O/0556/25

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. 4073543

IN THE NAME OF LAWRENCE HUNT & CO LIMITED

TO REGISTER THE FOLLOWING TRADE MARK:

Parcel+

IN CLASSES 9 & 35

AND

IN THE MATTER OF FAST TRACK OPPOSITION THERETO

UNDER NO. 600003439

BY

IVAN PAVLOV PTY LTD

Background and pleadings

1. LAWRENCE HUNT & CO LIMITED ("the applicant") applied to register the trade mark 'Parcel+' in the UK on 09 July 2024, application no. UK00004073543. It was accepted and published in the Trade Marks Journal on 26 July 2024 in respect of the following goods and services:

> Class 9 - Mobile apps
>
> Class 35 - Mail sorting, handling and receiving; Advertising, marketing and promotional services

2. On 09 September 2024, Ivan Pavlov Pty Ltd ("the opponent") filed an opposition opposing only the applicant's goods in class 9 under section 5(2)(b) of the Trade Marks Act 1994 ("the Act"). The opponent relies on the following mark: 'PARCEL' ("the earlier mark"), UK trade mark no. UK00003630675. Filing date 22 April 2021; registration date 03 September 2021. The following goods are relied upon in this opposition:

> Class 9 - Computer application software for mobile phones, computers, and tablets, namely, software that allows users to track postal and courier consignments, access delivery information and to see delivery location on map.

3. Under section 5(2)(b) of the Act, the opponent claims that there is a likelihood of confusion on the basis that the marks are similar, and the goods are either identical or highly similar leading to a likelihood of confusion, including a likelihood of association, and that the contested mark should be refused registration. The opponent states as follows:

> "The opponent's mark "Parcel+" is nearly identical to the applicant's mark "Parcel". The likelyhood of confusion is very high due to the small different [sic] between two marks.
>
> The opponent's goods and services "mobiles apps" is a very broad description that inherently includes the applicant's "Computer application software for mobile phones, computers, and tablets, namely, software that allows users to

track postal and courier consignments, access delivery information and to see delivery location on map."

We have reached out to the opponent asking to either change the mark or update the goods description to explicitly exclude software related to deliveries, however, the opponent did not respond to our request."

4. The applicant filed a counterstatement denying the claims made and stating as follows:

"The Opponent's mark 'Parcel' and the Applicant's mark 'Parcel+' are sufficiently distinct, mitigating the likelihood of confusion. The addition of the '+' symbol in the Applicant's mark creates a perceptible difference that consumers can readily identify. The '+' symbol implies added features or functionalities, setting 'Parcel+' apart from 'Parcel'.

Moreover, the term 'mobile apps' as used by the Applicant is a broad classification within class 9, encompassing a wide range of functionalities and purposes, including but not limited to delivery-related services. This broad classification does not inherently imply that the Applicant's "Parcel+" software will overlap with the opponent's existing usage.

Lastly, the lack of response from the Applicant regarding the request to amend the mark or goods description should not be construed negatively. It is the responsibility of the IPO to assess the likelihood of confusion based on objective criteria, not the correspondence between the parties".

5. 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.

6. Rule 6 of the Trade Marks (Fast Track Opposition (Amendment) Rules 2013, S.I. 2013 2235 disapplies paragraphs 1-3 of Rule 20 of the Trade Mark Rules 2008, but it provides that Rule 20(4) shall continue to apply. Rule 20(4) states that:

> "(4) The registrar may, at any time, give live to either party to file evidence upon such terms as the registrar thinks fit."

7. The effect of the above is to require parties to seek leave in order to file evidence in fast track oppositions. Further, Rule 62(5) (as amended) states that arguments in fast track proceedings shall be heard orally only if (i) the Office requests it, or (ii) either party to the proceedings requests it and the registrar considers that oral proceedings are necessary to deal with the case justly and at proportionate cost; otherwise, written arguments will be taken.

Representation

8. The applicant is represented by The Trademark Helpline. The opponent is represented by Trademark Eagle Limited. Neither side filed written submissions. No hearing was requested and so this decision is taken following a careful perusal of the papers.

Decision

Section 5(2)(b)

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

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

10. Section 5A of the Act states as follows:

"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

11. 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 C120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P.

The principles

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

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

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

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

permissible to make the comparison solely on the basis of the dominant elements;

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

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

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

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

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

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

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

Comparison of goods and services

12. The competing goods are shown in the table below:

The earlier mark	**The contested mark**
Class 9 - Computer application software for mobile phones, computers, and tablets, namely, software that allows users to track postal and courier	Class 9 - Mobile apps

consignments, access delivery information and to see delivery location on map.	

13. The opponent submits that ""mobile apps" is a very broad description that inherently includes… "Computer application software for mobile phones, computers, and tablets, namely, software that allows users to track postal and courier consignments, access delivery information and to see delivery location on a map."

14. The applicant submits "the term 'mobile apps' as used by the applicant is a broad classification within class 9, encompassing a wide range of functionalities and purposes, including but not limited to delivery-related services. This broad classification does not inherently imply that the applicant's "Parcel+" software will overlap with the opponent's existing usage".

15. In *Gérard Meric v Office for Harmonisation in the Internal Market,* 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 fur Lernsysteme v OHIM- Educational Services (ELS)* [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark."

Class 9

Mobile apps

16. The applicant's goods are mobile software applications. This is a general category which encompasses the opponent's specification in full. I consider the applicant's term to be a broad one which encompasses all of the opponent's aforementioned goods on the principles outlined in *Meric*.

Average consumer and the purchasing act

17. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties' goods. I must then determine the manner in which the goods are likely to be selected by the average consumer. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

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

18. Neither party has made submissions regarding the average consumer, and I will therefore draw my own conclusions. The opponent's goods will be used by those who purchase items for home delivery, those working in businesses who ship goods to consumers, and those in the logistics sector who are sending the items purchased, whereas the applicant's goods are very broad, being *'mobile apps'*. I consider that in both instances, the average consumer of the respective goods will be the general public who use the products, and professionals.

19. The frequency and cost of these purchases will vary. For members of the general public, the apps are either likely to be free to download or will come with a one-off, or annual cost, whereas for professionals, purchases are likely to be recurrent to support ongoing business and professional demands, varying in price depending on the nature of the goods. Overall, the purchasing process will be more considered for professional users, however, for members of the general public it is not likely to be merely casual. When selecting the products, both sets of consumers will consider factors such as, the cost, quality, and specification of the goods, however, business and professional users will also have to consider the impact of the goods on their business or working environment. Taking the above factors into account, I find that, overall, business and

professional users will demonstrate between a medium and high level of care and consideration in respect of these goods, whereas members of the general public will display a medium level of attention. Mobile apps are a type of computer software which will likely be selected from specialist retailers or providers after either viewing their websites or brochures. In both circumstances, visual considerations would dominate, though I do not discount aural considerations entirely, as consumers may have conversations with sales assistants or receive word of mouth recommendations. As such, the purchasing process would be primarily visual in nature, though I do not discount aural considerations.

Comparison of marks

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

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

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

22. The respective trade marks are shown below:

Earlier trade mark	Contested trade mark
PARCEL	Parcel+

23. The opponent submits “The opponent’s mark “Parcel+” is nearly identical to the applicant’s mark “Parcel”. The likelyhood of confusion is very high due to the small different [sic] between two marks”.

24. The applicant submits “the opponent’s mark ‘Parcel’ and the applicant’s mark ‘Parcel+’ are sufficiently distinct, mitigating the likelihood of confusion. The addition of the ‘+’ symbol in the applicant’s mark creates a perceptible difference that consumers can readily identify”.

Overall impression

25. I note that both marks are presented in a plain typeface. The earlier mark is a word only mark consisting of the word ‘PARCEL’. There are no other elements contributing to the mark and so the overall impression lies in the entirety of the word. The contested mark comprises of a word and symbol, ‘Parcel+’. In my view, the Parcel element plays the greater role in the overall impression of the contested mark, with the ‘+’ element, whilst contributing, playing a lesser role.

Visual comparison

26. A word trade mark protects the notional use of the word itself irrespective of font capitalisation or otherwise and therefore the difference in casing will have little impact on the assessment. The competing marks are similar to the extent that they share the identical word PARCEL. The only difference in the marks is the use of a ‘+’ symbol at the end of the contested mark. As a general rule the beginning of a mark tends to have more impact, as per the matter of *El Corte Inglés, SA v OHIM*[1] and this element of the marks will be the consumer’s focus when considering the marks. Visually, the ‘+’ symbol has less impact with the word element being the dominant feature. Weighing up the differences as against the similarities, I consider there to be a high degree of visual similarity between the marks.

[1] Cases T-183/02 and T-184/02

Aural comparison

27. The earlier mark comprises of the word PARCEL, which is an ordinary English word and would be pronounced as such. The contested mark contains a word and symbol, 'Parcel+'. There are no submissions as to the aural impact of the '+' sign, however, I consider that will be pronounced as PLUS, and therefore the contested mark will be pronounced PARCEL PLUS. Whilst some consumers may overlook the '+' symbol, which will mean that it is not articulated, I believe that a greater proportion will articulate it. The point of aural overlap lies in the beginning of the mark, as PARCEL will be pronounced identically in both. The second word in the contested mark, PLUS, has one syllable. There is no comparator in the earlier mark, and this will be a point of difference between the marks, as the second word will not go unnoticed. Overall, I find the marks to be aurally similar to a medium degree.

Conceptual comparison

28. For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer, as highlighted in numerous judgments of the GC and the CJEU[2].

29. The word PARCEL is an English dictionary word which is generally understood to mean an object which is wrapped and sent by post. This concept is shared between both marks as the word PARCEL appears in both and it alludes to the goods on offer in respect of the earlier mark. The use of the '+' symbol in the contested mark will be read as PLUS, as above, and indicates the addition of something. The applicant submits that "the '+' symbol implies added features or functionalities, setting 'Parcel+' apart from 'Parcel'". The symbol '+' in the contested mark would be understood to refer to an enhanced version or to additional features, but overall, I do not consider that it creates a significant conceptual difference over and above the word PARCEL/Parcel. I consider that conceptually the marks are similar to a high degree.

Distinctive character of the earlier trade mark

[2] *Ruiz Picasso v OHIM* [2006] e.c.r.-I-643; [2006] E.T.M.R 29

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

> "22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *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)."

31. 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 opponent has not made submissions regarding the distinctiveness of their mark, and as no evidence has been filed in support of this, I only have the inherent position to consider.

32. The earlier mark comprises of the English dictionary word, PARCEL. The goods are software / applications that allow users to track postal and courier consignments, access delivery information and to see a delivery location on a map. The word therefore alludes to the purpose of the goods, which are used to track parcels.

Consequently, as a result of this, the mark has a low degree of inherent distinctive character.

Conclusions on Likelihood of Confusion

33. 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 services down to the responsible undertakings being the same or related.

34. 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.

35. I have found as follows:

- That the goods at issue are identical upon the principles in *Meric*;
- I have identified that the average consumer will be members of the general public and professionals. They will select the goods primarily by visual means, although I do not discount an aural component;
- I have concluded that a medium degree of attention will be paid by members of the general public, and between a medium and high degree of attention will be paid by professionals;
- The contested mark is visually similar to the earlier mark to a high degree;
- The contested mark is aurally similar to the earlier mark to a medium degree;

- I have found the contested mark and the earlier mark to be conceptually similar to a high degree;

- I have found the earlier mark overall to be inherently distinctive to a low degree;

36. I begin by considering a likelihood of direct confusion. The competing marks share the word PARCEL; however, the contested mark includes a '+' symbol at the end of the mark. In this instance, although I find PARCEL to be the dominant element of the mark, I do not consider that the plus sign is likely to be overlooked. Taking the above into account, it is my view that the differences between the competing marks are likely to be sufficient for consumers – paying a medium, or between a medium and high level of attention – to distinguish between them and avoid mistaking them for one another. Accordingly, notwithstanding the principles of imperfect recollection and interdependency, it follows that there will be no direct confusion.

37. I will now move on to consider indirect confusion. In *L.A. Sugar Limited v By Back Beat Inc*, BL O/375/10, Mr Iain Purvis Q.C., as the Appointed Person, explained that:

> "16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: 'The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark'.
>
> 17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:

(a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right ('26 RED TESCO' would no doubt be such a case).

(b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as 'LITE', 'EXPRESS', 'WORLDWIDE', 'MINI' etc.).

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

38. These three categories are not exhaustive; rather, they were intended to be illustrative of the general approach, as has been confirmed by the Court of Appeal[3]. I recognise that a finding of indirect confusion should not be made merely because the competing marks share a common element. The Court of Appeal has also emphasised that, where there is no direct confusion, there must be a "proper basis" for finding indirect confusion.

39. When assessing indirect confusion, I find that as a result of the common word, PARCEL, consumers will be confused between the two entities as this appears identically in each mark. When considering the differences within the marks, namely the '+' in the contested mark, I note the applicant's submission that the average consumer is likely to interpret this symbol as one which represents added features or functionalities, to which I agree. Therefore, whilst I have found that the '+' symbol has less impact, I find that it will be interpreted to mean that 'Parcel+' is a sub-brand or indicative of an enhanced version of the goods provided by the same, or a linked undertaking. Therefore, when considering the contested mark, and taking account of the common element in the context of the mark as a whole, the consumer is likely to conclude that it is another brand of the owner of the earlier mark. As a result of this, I find a likelihood of indirect confusion.

[3] *Liverpool Gin Distillery and others v Sazerac Brands, LLC and others* [2021] EWCA Civ 1207

Conclusion

40. The opposition against the Class 9 goods is successful. Therefore, subject to appeal, the application will be refused in relation to the following services:

Class 9 Mobile apps

However, it will proceed to registration in relation to the following services:

Class 35 Mail sorting, handling and receiving; Advertising, marketing and promotional services

Costs

41. As the opponent has been successful in their application, they are entitled to a contribution towards their costs, based upon the scale published in Tribunal Practice Notice 1/2023 which governs costs in Fast Track proceedings issued after 1 February 2023. In the circumstances, I award the opponent the sum of £350.00 as a contribution towards the costs of proceedings. The sum is calculated as follows:

Filing a notice of opposition and considering the Applicant's counterstatement:	£250.00
Official fee:	£100.00
Total:	**£350.00**

42. I therefore order LAWRENCE HUNT & CO LIMITED to pay Ivan Pavlov Pty Ltd the sum of £350.00. The above 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 conclusion of the appeal proceedings.

Dated this 20th day of June 2025

L Bailey

For the Registrar