

BL O/0629/26

TRADE MARKS ACT 1994

CONSOLIDATED PROCEEDINGS

IN THE MATTER OF TRADE MARK APPLICATION NOS.

UK4214919 AND UK4214924

BY JAMES HASKELL ELITE MANAGEMENT LIMITED

TO REGISTER THE TRADE MARKS:



AND

ROGUE UNIT RECORDS

IN CLASSES 9, 25, 35 AND 41

AND

IN THE MATTER OF CONSOLIDATED OPPOSITIONS THERETO

UNDER NOS. 456901 AND 457100

BY COULTER VENTURES, LLC

BACKGROUND AND PLEADINGS

1. These consolidated proceedings involve oppositions against two trade marks that James Haskell Elite Management Limited (“the applicant”) seeks to register in the UK. The details for those trade marks are set out below:



UK application no. 4214919
Filing date: 6 June 2025
Publication date: 20 June 2025
 (“the First Application”)

ii) **ROGUE UNIT RECORDS**

UK application no. 4214924
Filing date: 6 June 2025
Publication date: 20 June 2025
 (“the Second Application”)

2. The above applications are in respect of identical goods and services in classes 9, 25, 35 and 41, as set out in the Annex to this decision.

3. On 22 September 2025, the applications were partially opposed by Coulter Ventures, LLC (“the opponent”). Initially the oppositions were based upon sections 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994 (“the Act”),¹ however in an email dated 29 December 2025, the opponent withdrew the sections 5(3) and 5(4)(a) grounds leaving section 5(2)(b) only. The oppositions are directed at all goods in class 25 only.²

¹ 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. See also Tribunal Practice Notice (“TPN”) 2/2020 End of Transition Period – impact on tribunal proceedings.

² See goods comparison at paragraph 14.

4. The opponent relies upon its earlier UK trade mark no. 3612498, 'ROGUE' ("the earlier mark"). The earlier mark, filed on 18 March 2021, has a priority date of 29 September 2020,³ and became registered on 6 August 2021. The opponent relies upon all goods for which the mark is registered, as set out in paragraph 14 of this decision.

5. The opponent's mark qualifies as an earlier mark under section 6(1) of the Act. As it had not completed its registration procedure more than five years before the application date for the contested marks, it is not subject to the use provisions contained in section 6A of the Act. Consequently, the opponent may rely upon all of the goods for which the earlier mark is registered without having to establish genuine use.

6. The opponent claims⁴ that the marks at issue are similar and that the respective goods are identical, resulting in a likelihood of confusion and association on the part of the consumer.

7. The applicant filed counterstatements denying the ground of opposition.

8. Neither party filed evidence in these proceedings. Neither party requested a hearing and only the opponent filed written submissions in lieu of the same. This decision is taken following a careful consideration of the papers before me.

9. The opponent is represented by Bird & Bird LLP; the applicant is represented by Cordelia Payne t/a CMP Legal.

PRELIMINARY ISSUES

10. The opponent has raised a point in their submissions⁵ that I intend to address as a preliminary issue. Before going any further into the merits of this opposition it is

³ UNITED STATES OF AMERICA (US) 90220600.

⁴ Written submissions in lieu of a hearing, dated 13 February 2026.

⁵ Written submissions in lieu of a hearing, dated 13 February 2026.

necessary to explain why, as a matter of law, this point will have no bearing on the outcome of this opposition.

Previous UK IPO opposition decisions

- The opponent submits:

“Relevant decisions where the UKIPO has found similarity between trade marks on a similar basis as the comparison between the Earlier Mark and Contested Mark 1 have been enclosed at Annex 1, including Decision No. O-528-15 (PERCIPIO v PERCIPIO BY SKILLSOFT), Decision No. BLO/332/20 (C3 v C3 Ex Machina) and Decision No. BL O/043/19 (HASCO v HASCO Smart Firing).”

11. Whilst I note that the UK Intellectual Property Office found the marks in those previous decisions to be similar, I am not bound by those first instance decisions. Each case must be assessed on its own facts, including the marks at issue, the goods and services concerned, the identity of the average consumer and the nature of the purchasing process. Those factors may differ from case to case and may result in a different assessment of the likelihood of confusion. Accordingly, whilst I have taken the opponent’s submissions into account, I must conduct my own assessment of the present proceedings rather than simply repeat the outcome of decisions which may be said to be comparable.

DECISION

Section 5(2)(b)

12. Section 5(2)(b) of the Act 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 trademark 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.”

13. The following standard summary of the principles applicable to the assessment of the likelihood of confusion was approved by the Supreme Court in *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc & Anor* [2025] UKSC 25:

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. The average consumer is deemed to be reasonably well informed and reasonably circumspect and observant, but someone who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them they have kept in their 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 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; and
- 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

14. In *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, the Court of Justice of the European Union (“CJEU”) stated that:

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

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 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.

16. The competing goods are:

Opponent's goods	Applicant's goods
<u>Class 25</u> Apparel, namely, T-shirts, sweatshirts, and caps.	<u>Class 25</u> Clothing; headgear; footwear; t-shirts; hoodies; caps; vests; shorts; socks.

17. With regards to the similarity of the goods, in its counterstatement the applicant submits:

“The Opponent's Goods include items of clothing identical or similar to those included in class 25 of the Contested Goods, however, it is fair to infer from the other goods and services included in the Contested Application that the inclusion of class 25 goods in the Contested Goods is part of their brand extension where consumers would expect entertainment brands (such as music in this case) to have spin-off, branded merchandise such as clothing.

Accordingly, the distribution channels, purpose and nature of the Opponent's class 25 goods and the Defendant's class 25 goods would be entirely different and negate any likelihood of confusion.”

18. In its submissions,⁶ with regards to the similarity between the respective goods, the opponent submits:

“The Contested Goods in class 25 are broadly defined and encompass the Opponent’s Goods in class 25. The Contested Goods in class 25 and the Opponent’s Goods in class 25 are all clothing and apparel products which share the same purpose, method of use and are purchased by the same consumers in the same sales outlets and channels.

For the aforementioned reasons, the Opponent submits that the Contested Goods encompass and are identical to the Opponent’s Goods.”

My Approach

19. I do not intend to undertake a full comparison of the competing goods at this stage of the decision, but I will instead proceed on the basis that at least some of the contested goods appear identically in the competing specifications, such as *t-shirts* and *caps*; or that the goods are considered identical in line with the principle set out above in *Meriç*, such as, the opponent’s *sweatshirts* which fall within the applicant’s broader term *clothing*. If the opponent is unable to succeed on this basis, it will be in no better position if its goods are only to be regarded as similar to those of the applicant. However, if a likelihood of confusion is found, I will proceed to assess the goods at issue in full.

The average consumer and the nature of the purchasing act

20. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. 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 (see *Lloyd Schuhfabrik Meyer*, Case C-342/97).

⁶ Written submissions in lieu, filed on 13 February 2026.

21. In *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc & Anor*, [2025] UKSC 25, the Supreme Court approved the comments of Arnold LJ in *Lidl Great Britain Ltd & Anor v Tesco Stores Ltd & Anor (Rev1)* [2024] EWCA Civ 262, where he pointed out that:

(a) Consumers who are ill-informed or careless, or consumers with specialised knowledge or who are excessively careful are excluded from consideration;

(b) The average consumer provides a standard which enables the courts to strike a balance between the competing interests involved, such as trade mark owners, their competitors and consumers;

(c) The average consumer is neither a single hypothetical person nor a mathematical average; assessment from the perspective of the average consumer does not involve a statistical test. There is no single meaning rule and if, having regard to the perceptions and expectations of the average consumer, the court considers that a significant proportion of the relevant public is likely to be confused, a finding of infringement may properly be made;

(d) Assessment from the perspective of the average consumer is intended to facilitate adjudication of trade mark disputes by providing an objective criterion, by promoting consistency of assessment and by enabling courts and tribunals to determine such issues so far as possible without the need for evidence;

(e) The average consumer's level of attention varies according to the category of goods or services in question; and

(f) the average consumer rarely has the opportunity to make direct comparisons between trade marks (or between trade marks and signs) and must instead rely upon the imperfect picture of the trade mark they have kept in their mind.

22. The average consumer of the goods at issue will be a member of the general public or a business user, such as a clothing retailer. The average consumer is likely to take

into consideration various factors when selecting the goods, such as suitability, size, colour, quality and cost, etc. Overall, I find that a medium degree of attention is likely to be paid by both groups during the purchasing process.

23. The goods are likely to be obtained by self-selection from the shelves of a retail outlet, online or through a catalogue equivalent. Overall, I am of the view that visual considerations would dominate the purchasing process.⁷ However, I bear in mind that the goods may sometimes be the subject of word-of-mouth recommendations and therefore aural considerations are also borne in mind.

Comparison of the trade marks

24. It is clear from *Sabel BV v. Puma AG* 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 them, bearing in mind their distinctive and dominant components. The CJEU stated in *Bimbo SA v OHIM*, that:

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

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

26. The trade marks to be compared are:

⁷ *New Look Limited v OHIM*, joined cases T-117/03 to T-119/03 and T-171/03, paragraph 50.

Opponent's mark	Applicant's marks
ROGUE	 (the First Application) ROGUE UNIT RECORDS (the Second Application)

27. Both parties have filed submissions regarding the similarity of the marks. Whilst I do not propose to reproduce those here, I have taken them all into consideration in reaching my decision.

Overall impression

The opponent's mark

28. The opponent's trade mark consists solely of the word ROGUE, with no stylisation or figurative elements. The overall impression of the mark resides in this single word itself.

The applicant's marks

29. The First Application comprises a device element followed by the words ROGUE UNIT. The words, which are placed one above the other, are presented in a large, uppercase, black stylised font. The letter 'R' in ROGUE is heavily stylised, resembling a solid black rectangular shape with a triangular cut-out on its right-hand side. This stylised letter 'R' is replicated in the device element, where it is superimposed over what appears to be the side view of a white figurative skull, with both elements set against a black background.

30. I find that the eye is naturally drawn to the elements of the mark that can be read,⁸ namely 'ROGUE UNIT', which hangs together as a unitary phrase, as the word ROGUE qualifies the word UNIT. When considered as a whole, I am of the view that the words ROGUE UNIT will likely convey the idea of a group, team or collective which is rogue in character, i.e. operating independently, outside normal control, or in a rebellious or non-conforming manner. Overall, I consider that the words play the greater role in the overall impression, with the figurative device playing a slightly lesser, but still noticeable, role.

31. The Second Application comprises the three words ROGUE UNIT RECORDS. I am of the view that these three words hang together as a unit. The word 'ROGUE' qualifies the word UNIT, with the resulting phrase ROGUE UNIT then being further qualified by the word RECORDS. When considered as a whole, I am of the view that ROGUE UNIT RECORDS will likely be understood as indicating, for example, a record label or music-related undertaking. Accordingly, the overall impression of the mark resides in the combination of these three words.

Visual Comparison

The opponent's mark 'ROGUE' and the First Application 

32. Visually, the marks coincide insofar as they identically share the same word 'ROGUE'. However, the marks differ in that the application contains the additional word 'UNIT' along with a figurative device element, neither of which are replicated in the opponent's mark. As for the differences between the fonts used in the respective marks, I do not consider this to be a point of significant difference. Accordingly, I consider the opponent's mark and the application to be visually similar to between a low and medium degree.

The opponent's mark 'ROGUE' and the Second Application 'ROGUE UNIT RECORDS'.

⁸ *MigrosGenossenschafts-Bund v EUIPO*, T-68/17.

33. Visually, the marks coincide insofar as they identically share the same word 'ROGUE'. The marks differ in that the application contains the additional words 'UNIT' and 'RECORDS', which are not replicated in the opponent's mark. I consider the opponent's mark and the application to be visually similar to between a low and medium degree.

Aural Comparison

The opponent's mark 'ROGUE' and the First Application 

34. Aurally, as the word 'ROGUE' in the respective marks is an English dictionary word, it will likely be pronounced in the ordinary way ('rohg'), therefore this element in the marks will be pronounced identically. The additional English dictionary word 'UNIT' (pronounced 'yoo-nit') in the application will act as a point of aural difference. The device element in the application will not be articulated. Overall, I find the competing marks to be aurally similar to a medium degree.

The opponent's mark 'ROGUE' and the Second Application 'ROGUE UNIT RECORDS'

35. Aurally, as previously stated, the word 'ROGUE' in the marks will likely be pronounced in the ordinary way, therefore this element in the marks will be pronounced identically. The additional ordinary words 'UNIT' (pronounced 'yoo-nit') and 'RECORDS' (pronounced 'rek-awdz') in the application will act as points of aural difference. Overall, I find the competing marks to be aurally similar to between a low and medium degree.

Conceptual Comparison

36. 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.

The opponent's mark 'ROGUE' and the First and Second Applications, and 'ROGUE UNIT RECORDS'

37. Conceptually, the word ROGUE in the opponent's mark will likely be attributed its ordinary dictionary meaning, i.e. inter alia, a dishonest, unprincipled or rebellious person.

38. With regard to the applications, whilst I acknowledge that the word ROGUE is present, I am of the view that it will be considered in combination with the other words in those marks. As previously stated, in the First Application, the words ROGUE UNIT will likely convey the idea of a group, team or collective which is rogue in character, i.e. operating independently, outside normal control, or in a rebellious or non-conforming manner. In the Second Application, the addition of the word RECORDS means that the words ROGUE UNIT RECORDS, taken as a whole, are likely to be perceived as referring to a record label or music-related undertaking with a rebellious and/or independent identity.

39. The figurative device element present in the First Application, as described above,⁹ does not, in my view, convey any clear concept when considered as a whole.

40. Accordingly, whilst the word ROGUE is present in all three marks, the additional words in the applications give rise to different overall conceptual messages. Therefore, taking into account the shared presence of the word ROGUE, I consider the opponent's mark and the applications to be conceptually similar to no more than a low degree.

Distinctive character of the earlier mark

41. The distinctive character of a trade mark can be measured only, first, by reference to the goods or services in respect of which registration is sought and, second, by

⁹ See paragraph 27.

reference to the way it is perceived by the relevant public. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, the CJEU stated that:

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

42. 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.

43. 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 the earlier mark, nor were they required to do so. Consequently, I have only the inherent position to consider.

44. I bear in mind that whilst neither descriptive nor allusive of the goods at issue, the opponent's mark ROGUE is a common English dictionary word meaning, inter alia, a dishonest, unprincipled or rebellious person. Overall, I find that the mark has a medium degree of inherent distinctive character.

Likelihood of confusion

45. 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 them, and the goods, down to the responsible undertaking 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 marks may be offset by a greater degree of similarity between the goods and vice versa. It is necessary for me to keep in mind the distinctive character of the earlier 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.

46. Earlier in the decision I found that:

- At least some of the goods are identical.
- The average consumer for the goods is a member of the general public or business user, both of whom will pay a medium degree of attention during the purchasing process.
- The purchasing process for the goods is predominantly visual, although I do not discount an aural component.

- The First Application and the opponent's mark are visually similar to between a low and medium degree, aurally similar to a medium degree, and conceptually similar to no more than a low degree.
- The Second Application and the opponent's mark are visually and aurally similar to between a low and medium degree, and conceptually similar to no more than a low degree.
- The earlier mark is inherently distinctive to a medium degree.

47. The identity of the goods is clearly a factor in favour of the opponent. However, taking all of the above factors into account, and even bearing in mind the principle of imperfect recollection and that the average consumer rarely has the opportunity to compare marks side-by-side, I consider it unlikely that the opponent's mark and the applications will be mistakenly recalled or misremembered as each other. This is particularly the case given the low to medium degree of visual similarity between the marks, and the fact that the average consumer will be paying a medium degree of attention during the purchasing process. I say this whilst also bearing in mind that the beginnings of marks tend to make more of an impact than their endings, being where consumers tend to focus.¹⁰ However, in this regard, despite the identical presence of the word ROGUE at the start of the marks, I do not consider it likely that consumers would entirely forget the additional word elements present in the applications.

48. The coinciding word ROGUE is the only word in the opponent's mark, whereas it is accompanied by the word UNIT (and device) in the First Application, and the words UNIT RECORDS in the Second Application. Therefore, despite the coinciding element, I am of the view that the word ROGUE does not play an independent or dominant role in the applications. In my view, the word ROGUE qualifies the word UNIT in the First Application. Likewise, in the Second Application, the phrase ROGUE UNIT is further qualified by the word RECORDS. Accordingly, the marks will be perceived as the unitary phrases ROGUE UNIT and ROGUE UNIT RECORDS, which convey different overall meanings¹¹ and will assist the average consumer in

¹⁰ *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

¹¹ *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271 (Ch), [paragraph 20-21].

distinguishing one mark from the other. Furthermore, the figurative element in the First Application is unlikely to be overlooked by the average consumer. Accordingly, I do not consider there to be a likelihood of direct confusion.

49. Having found no likelihood of direct confusion, I now go on to consider indirect confusion.

50. I acknowledge that a finding of indirect confusion should not be made merely because the marks share a common element. Furthermore, it is not sufficient that a mark merely calls to mind another mark.¹² This is mere association, not indirect confusion.

51. Indirect confusion was described in the following terms by Iain Purvis QC (as he then was), sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc.*¹³

“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:

¹² *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17.

¹³ BL O/375/10.

(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 16 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)."

52. These examples are not exhaustive but provide helpful focus.

53. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ 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". Arnold LJ agreed, pointing out that there must be a "proper basis" for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion. He added that, "trade mark law was about consumers' unwitting assumptions, not what they could find out if they thought to check".

54. Accordingly, it is necessary for me to bear this in mind when considering whether the common element ROGUE is sufficiently powerful, when weighed against the differences.

55. Having recognised the differences between the marks, I consider it unlikely that the average consumer will conclude that they originate from the same or economically linked undertakings. The word ROGUE is not so strikingly distinctive that consumers would assume that only one undertaking would use it in a trade mark. Nor do I consider

the words UNIT and UNIT RECORDS in the applications to be non-distinctive additions or obvious/logical brand extensions. Accordingly, I find no proper basis for a finding of indirect confusion. In my view, the average consumer would simply put the shared presence of the word ROGUE down to coincidence rather than to an economic connection between the undertakings.

Final Remarks

56. For the avoidance of doubt, as I have found no likelihood of confusion where the goods are identical or identical on the principle set out in *Meric*, I would have reached the same conclusion even if I had undertaken a full assessment of the goods and found that they are only similar.

CONCLUSION

57. The oppositions are unsuccessful and subject to any successful appeal, the applications may proceed to registration for the full list of goods and services applied for.

COSTS

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

Considering the notices of opposition

and filing counterstatements (x2):

£700

Total

£700

59. I therefore order Coulter Ventures, LLC to pay James Haskell Elite Management Limited the sum of £700. This should be paid within twenty-one days of the expiry of the appeal period or, if there is an unsuccessful appeal, within twenty-one days of the appeal proceedings.

Dated this 21st day of July 2026

**Sam Congreve
For the Registrar**

Annex

(The opposed goods are underlined)

- Class 9 Sound recordings; downloadable music files; pre-recorded audio and video recordings featuring music and musical entertainment; digital music (downloadable) provided from the internet; electronic publications in the field of music and entertainment; mobile applications in relation to music recordings.
- Class 25 Clothing; headgear; footwear; t-shirts; hoodies; caps; vests; shorts; socks.
- Class 35 Promotion, marketing and advertising services in the field of music; business management of performing artists and musicians; online retail services relating to downloadable music files, sound recordings, and merchandise related to musical artists; brand management for musical artists; business consultancy and advisory services in the music industry.
- Class 41 Entertainment services; entertainment services provided by a music label including managing musical artists and organising performances; production of musical recordings; production, recording and distribution of music and musical performances; live music services; music festival services; music performance services; music publishing services; music recording studio services; musical performance services; musical performances; providing digital music (not downloadable) from the internet; publication of music; recording of music; music concert services; recording studio services; arranging of music performances; live show production services; organisation of musical events; arranging of music shows; production of music shows; production of audio recordings; providing a website featuring non-downloadable audio and video recordings, music, and entertainment information.