

O/0648/25

TRADE MARKS ACT 1994

IN THE MATTER OF REGISTRATION NO. 3742755

IN THE NAME OF ONYINYE UDOKPORO

FOR THE FOLLOWING TRADE MARK:

The logo for 'enrich LEARNING' features the word 'enrich' in a lowercase, rounded, yellow sans-serif font. To the left of the 'e' are several short, yellow, radiating lines, resembling a sunburst. Below 'enrich', the word 'LEARNING' is written in a dark blue, uppercase, spaced-out sans-serif font.

IN CLASSES 9, 16 AND 41

AND

AN APPLICATION FOR A DECLARATION OF INVALIDITY

UNDER NO. 507337

BY ENRICH INTERNATIONAL LTD

Background and pleadings

1. Onyinye Udokporo (“the proprietor”) is the registered proprietor of the trade mark shown on the front cover of this decision (“the proprietor’s mark”) under registration number 3742755. The proprietor’s mark was filed on 13 January 2022 and became registered on 13 May 2022. It stands registered in respect of the following goods and services:

Class 9: Education software; Educational software; Downloadable educational media; Educational computer applications; Educational tablet applications; Children’s educational software; Educational computer software; Educational mobile applications; Computer software for education; Downloadable educational course materials; Master of Education software.

Class 16: Educational equipment; Educational publications; Educational and instructional material.

Class 41: Education; Educational instruction; Educational consultancy; Educational seminars; Education services; Educational services; Education information; Educational information; Education examination; Primary education services; Academy education services; Information on education; Educational services for providing courses of education; Higher education services; Pre-school education; Technological education services; Education and training; Educational examination services; Online education services; Adult education services; Educational consultancy services; Providing of education; Educational information services; Computer education training; Educational assessment services; Education and instruction; Examination services (Educational -); Information about education; Computer assisted education services; Organisation of educational seminars; Educational and training services; Services of schools [education]; Provision of educational information; Organising of educational lectures; Secondary school educational services; Education and training services; Provision of physical education; English language education services; Computer based educational services; Provision of education courses; Educational courses (Provision of -); Computer education training services; Dissemination of educational material; Organising

of educational seminars; Education, entertainment and sports; Provision of educational examinations; Providing information about education; Educational and teaching services; Conducting of educational events.

2. On 13 May 2024, Enrich International Ltd (“the applicant”) made an application for a declaration of invalidity in respect of the proprietor’s mark pursuant to section 47 of the Trade Marks Act 1994 (“the Act”). The application is based upon section 5(2)(b) of the Act.

3. The applicant relies upon its UK trade mark registration number 3380751, which is shown below (“the applicant’s mark”):



4. The applicant’s mark was filed on 5 March 2019 and became registered on 24 May 2019. It stands registered for the following services, all of which are relied upon:

Class 41: Teaching services for communication skills; Training and education services; Training and further training consultancy; Training courses; Coaching; Coaching [training].

5. In its statement of grounds, the applicant argues that the competing marks are highly similar, and the goods and services are identical and highly similar. On this basis, the applicant submits that there is a likelihood of confusion.

6. The proprietor filed a counterstatement denying the grounds of invalidation.

7. The applicant is professionally represented by Squire Patton Boggs (UK) LLP, whereas the proprietor is not represented. Neither party filed evidence. No hearing was requested but both parties filed written submissions in lieu. This decision is taken following careful consideration of all the papers before me.

8. 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.

Decision

9. Section 5(2)(b) has application in invalidation proceedings because of the provisions of section 47 of the Act, the relevant parts of which read as follows:

“47. (1) [...]

(2) Subject to subsections (2A) and (2G), the registration of a trade mark may be declared invalid on the ground-

(a) that there is an earlier trade mark in relation to which the conditions set out in section 5(1), (2) or (3) obtain, or

(b) [...]

unless the proprietor of that earlier trade mark or other earlier right has consented to the registration.

[...]

(2A) The registration of a trade mark may not be declared invalid on the ground that there is an earlier trade mark unless –

(a) the registration procedure for the earlier trade mark was completed within the period of five years ending with the date of the application for the declaration,

(b) the registration procedure for the earlier trade mark was not completed before that date, or

(c) the use conditions are met.

(2B) The use conditions are met if –

(a) the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with their consent in relation to the goods or services for which it is registered-

(i) within the period of 5 years ending with the date of application for the declaration, and

(ii) within the period of 5 years ending with the date of filing of the application for registration of the later trade mark or (where applicable) the date of the priority claimed in respect of that application where, at that date, the five year period within which the earlier trade mark should have been put to genuine use as provided in section 46(1)(a) has expired, or

(b) it has not been so used, but there are proper reasons for non-use.

(2C) 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) Where the grounds of invalidity exist in respect of only some of the goods or services for which the trade mark is registered, the trade mark shall be declared invalid as regards those goods or services only.

10. By virtue of its earlier filing date, the trade mark relied upon by the applicant qualifies as an earlier trade mark pursuant to section 6 of the Act. However, as the applicant’s mark had not completed its registration process more than five years

before the date on which the application for declaration of invalidity was filed, it is not subject to the proof of use requirements specified within section 47(2B) of the Act. As a consequence, the applicant may rely upon all of the services identified without having to establish genuine use.

Section 5(2)(b)

11. 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.”

12. 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 OHIM*, Case C-3/03, *Medion AG v Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P.

The principles

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

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the

imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

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

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

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

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

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

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

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

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

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

Comparison of goods and services

13. In *Canon*, Case C-39/97, the Court of Justice of the European Union (“CJEU”) stated, at paragraph 23 of its judgment, that when considering whether goods and services are similar, all the relevant factors relating to the goods and services should be taken into account. The CJEU stated that those factors include their nature, intended purpose, method of use and whether they are in competition with each other or are complementary.

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

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

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

16. In *Gérard Meric v OHIM*, Case T- 133/05, the GC confirmed that even if goods and services are not worded identically, they can still be considered identical if one term falls within the scope of another (or vice versa):

“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.”

17. The goods and services to be compared are shown in the table below:

The applicant’s services	The proprietor’s goods and services
<p><i>Class 41: Teaching services for communication skills; Training and education services; Training and further training consultancy; Training courses; Coaching; Coaching [training].</i></p>	<p><i>Class 9: Education software; Educational software; Downloadable educational media; Educational computer applications; Educational tablet applications; Children's educational software; Educational computer software; Educational mobile applications; Computer software for education; Downloadable educational course materials; Master of Education software.</i></p> <p><i>Class 16: Educational equipment; Educational publications; Educational and instructional material.</i></p> <p><i>Class 41: Education; Educational instruction; Educational consultancy;</i></p>

	<p><i>Educational seminars; Education services; Educational services; Education information; Educational information; Education examination; Primary education services; Academy education services; Information on education; Educational services for providing courses of education; Higher education services; Pre-school education; Technological education services; Education and training; Educational examination services; Online education services; Adult education services; Educational consultancy services; Providing of education; Educational information services; Computer education training; Educational assessment services; Education and instruction; Examination services (Educational -); Information about education; Computer assisted education services; Organisation of educational seminars; Educational and training services; Services of schools [education]; Provision of educational information; Organising of educational lectures; Secondary school educational services; Education and training services; Provision of physical education; English language education services; Computer based educational services; Provision of education courses; Educational courses</i></p>
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	<p><i>(Provision of -); Computer education training services; Dissemination of educational material; Organising of educational seminars; Education, entertainment and sports; Provision of educational examinations; Providing information about education; Educational and teaching services; Conducting of educational events.</i></p>
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18. In its written submissions, the applicant argues that all of the education-related services in class 41 are identical on the basis that all of the proprietor’s terms in class 41 may be included the applicant’s broader term *training and education*. However, it also submits in the alternative that if any of the terms are not deemed to be identical, then they are nevertheless highly similar on the basis that they share a similar nature, purpose, are complementary, share the same distribution channels, target the same consumers, and share the same origin. It also argues that the proprietor’s term *entertainment and sports* is similar to the applicant’s services. It cites the decision in *Dibevit Import S.r.l. v Berentzen-Gruppe Aktiengesellschaft*, Case R 1007/2014-4, in which the European Union Intellectual Property Office (‘EUIPO’) Board of Appeal found sporting and entertainment services similar to education and training services to a low degree. It also argues that the proprietor’s goods in classes 9 and 16 similar to the applicant’s services on the basis that they share the same nature, they are complementary, they have the same distribution channels, target the same relevant public, and have the same origin.

19. In her written submissions, the proprietor submits that there are fundamental differences between the parties’ goods and services. She submits that her company offers tuition services aimed at children, whereas she argues that the services offered by the applicant is in relation to wellness retreats, as well as adults’ psychological, coaching, and well-being services. She argues that there is no overlap in relation to target demographics, nature, or “market presentation”. She submits that the claim of low level of similarity between educational and entertainment services is irrelevant, and cites the differences in purpose and audience. She also denies any similarity

between the goods in classes 9 and 16, and argues that consumers “understand the distinction between retailers of educational goods and providers of teaching services”.

20. As a matter of law, the proprietor’s comments regarding different market segments can have no bearing on the outcome of this opposition. As previously explained, the mark relied upon by the applicant had not been registered for five years at the date on which the cancellation application was filed. Consequently, the applicant is not required to prove use in the UK for any of the services for which its mark is registered. The applicant’s mark is entitled to protection against a likelihood of confusion with the proprietor’s mark based on its ‘notional’ use for all the services listed in the register. The concept of notional use was explained by Laddie J in *Compass Publishing BV v Compass Logistics Ltd* [2004] RPC 41 like this:

“22. [...] It must be borne in mind that the provisions in the legislation relating to infringement are not simply reflective of what is happening in the market. It is possible to register a mark which is not being used. Infringement in such a case must involve considering notional use of the registered mark. In such a case there can be no confusion in practice, yet it is possible for there to be a finding of infringement. Similarly, even when the proprietor of a registered mark uses it, he may well not use it throughout the whole width of the registration or he may use it on a scale which is very small compared with the sector of trade in which the mark is registered and the alleged infringer's use may be very limited also. In the former situation, the court must consider notional use extended to the full width of the classification of goods or services. In the latter it must consider notional use on a scale where direct competition between the proprietor and the alleged infringer could take place.”

21. So far as the proprietor’s claimed use of its mark is concerned, as per the CJEU judgement in *O2 Holdings Limited, O2 (UK) Limited v Hutchison 3G UK Limited*, Case C-533/06 (particularly paragraph 66), it is necessary to consider all the circumstances in which the proprietor's mark might be used. As a result, even though the proprietor has suggested that they cater to different markets, my assessment must take into account only the proprietor’s mark and any potential conflict with the applicant’s mark. Any differences between the actual goods and/or services provided by the parties, or

differences in their target markets, are not relevant unless those differences are apparent from the competing marks.

22. For the purposes of comparing goods and services, it is permissible to consider groups of terms collectively where they are sufficiently comparable to be assessed in essentially the same way and for the same reasons (see *Separode Trade Mark* (BL O/399/10) and *BVBA Management, Training en Consultancy v. Benelux-Merkenbureau* [2007] ETMR 35 at paragraphs 30 to 38). I have therefore assessed the applicant's goods and services either as individual terms or by dividing some into groups where required as per below.

Class 9: *Education software; Educational software; Downloadable educational media; Educational computer applications; Educational tablet applications; Children's educational software; Educational computer software; Educational mobile applications; Computer software for education; Downloadable educational course materials; Master of Education software.*

23. These goods are similar to the applicant's term *training and education services*. Their nature is different as the class 9 terms are goods whereas *training and education services* are services. The users of both are members of the public seeking education, and their purpose overlaps as both are used to educate the user. They may be sold through the same trade channels. There may be an element of complementarity, as the proprietor's education-related software may be used to deliver the *training and educational services*, and therefore may be considered essential. Furthermore, consumers are likely to believe that the responsibility for both lies with the same undertaking as it would be reasonable to believe that an undertaking offering educational services may offer those services via software. The goods and services may at times be in competition too, as users may choose between receiving their education or training either via the software or by using the services. Taking all of this into account, the class 9 goods are similar to *training and education services* to a medium degree.

Class 16: *Educational equipment; Educational publications; Educational and instructional material.*

24. These goods are similar to the applicant's term *training and education services*. Their nature is different, as the class 16 terms are physical products whereas the services are intangible. However, they share the same users, who are members of the public seeking education, and their purpose overlaps as they are both used to educate the user. They may be sold through the same trade channels. There may be an element of complementary, as the proprietor's education-related equipment and material may be used within the delivery of *training and educational services*, and therefore may be seen as essential to them. Furthermore, consumers are likely to believe that the responsibility for both lies with the same undertaking as it would be reasonable to believe that an undertaking offering educational services may also offer educational written resources and equipment. The goods and services may at times be in competition too, as users may choose between receiving their education either via the publications and materials or by using the services. Taking all of this into account, the class 16 goods are similar to *training and education services* to a medium degree.

Class 41:

Education; Educational instruction; Educational seminars; Education services; Educational services; Education examination; Primary education services; Academy education services; Educational services for providing courses of education; Higher education services; Pre-school education; Technological education services; Education and training; Educational examination services; Online education services; Adult education services; Providing of education; Computer education training; Educational assessment services; Education and instruction; Examination services (Educational -); Computer assisted education services; Organisation of educational seminars; Educational and training services; Services of schools [education]; Organising of educational lectures; Secondary school educational services; Education and training services; Provision of physical education; English language education services; Computer based educational services; Provision of education courses; Educational courses (Provision of -); Computer education training services; Organising of educational seminars; Provision of educational examinations;

Educational and teaching services; Conducting of educational events; Education, [...].

25. The proprietor's terms listed above are incorporated within the applicant's wider term *training and education services*. On this basis, they are identical under the principle in *Meric*.

Information on education; Dissemination of educational material; Educational information services; Educational information services; Provision of educational information; Providing information about education; Education information; Educational information; Information on education; Information about education.

26. The proprietor's terms relating to providing information about education are closely associated with the applicant's term *training and education*. They will have the same users, who are members of the public seeking educational services. Their nature and purpose overlap as both are services which disseminate information to the user. The information-related services are likely to be provided by the same undertaking offering the *training and education* services, and through the same trade channels. The services are complementary to each other, because without *training and education* services, there would be no value in providing information about education, and vice versa. Furthermore, consumers are likely to think that the responsibility for the services lies with the same undertaking as it is common for education providers to supply information about related services. The services however are not in competition with each other. Taking all these factors into account, I find that there is a high degree of similarity between the services.

Educational consultancy; Educational consultancy services.

27. As I consider training consultancy to fall within the scope of educational consultancy, the applicant's term *training and further training consultancy* may be included in the proprietor's terms. They are therefore considered identical under the principle in *Meric*.

[...], entertainment and sports.

28. Whilst there may be instances of where education may be entertaining or related to sports, and vice versa,¹ I do not agree that this results in the services being similar. The core purposes of entertainment and educational services are different, as are their natures. Although both are available to the general public at large, *entertainment* is used by those seeking enjoyment and *sports* are used by those wishing to take part in sporting events, whereas *training and education* is sought by those seeking opportunities for learning. The respective services typically reach the market through different trade channels, because *training and education* is provided through educational providers such as schools, universities, and tuition centres. Furthermore, the services are likely to be supplied by different undertakings and are neither complementary nor in competition with each other. As I am not bound by the decision in *Dibevit Import S.r.l. v Berentzen-Gruppe Aktiengesellschaft*, Case R 1007/2014-4, I do not agree that these services are similar to *training and education*. I therefore find that the services are dissimilar to each other.

Average consumer and the purchasing act

29. 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 in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97.

30. 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 (as he then was) described the average consumer in these terms:

“60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The words

¹ See, for example, the comments of Philip Harris, sitting as the Appointed Person, in *Spilsbury Holdings Limited v TV Azteca S.A.B de C.V*, BL O/0055/25, paragraph 27.

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

31. The average consumer of the goods will be members of the general public seeking education-related goods. The cost of purchase is likely to vary depending on, for instance, the level of qualification the education relates to and how sophisticated the software is, but overall, the price will be relatively inexpensive. The goods will be purchased on a fairly infrequent basis. Several factors may influence the average consumer when purchasing the goods, such as, inter alia, the expertise and reputation of the provider of the goods, how accessible the information and software is, and the volume of information provided. Taking all of these factors into account, it is my view that the average consumer will pay at least a medium degree of attention. The goods will be bought in retail outlets, specialist shops (such as educational premises, bookshops, or libraries), or their online equivalents and app stores. The customer will self-select the goods from display shelves, or by selecting the image of their desired product if purchasing online, and therefore the visual component will dominate the selection process. However, I do not discount the role that aural selection may play when purchasing, such as through word-of-mouth recommendations or when discussing the goods with staff in a shop.

32. The average consumer of the services will be members of the general public seeking learning opportunities. The cost of purchase is likely to vary considerably, with short online training sessions at one end and longer in-person courses in higher education at the other. They will be purchased on a fairly infrequent basis. Several factors may influence the average consumer when purchasing the services, such as, inter alia, the expertise and reputation of the provider, the length of the training, and whether the services result in a qualification. Taking all of these factors into account, it is my view that the average consumer will pay a medium to high degree of attention. The services will be bought direct from the course provider, or their online equivalents. The services will be purchased after seeing information online, in brochures or in prospectuses, or after attending open days. The visual component will dominate the selection process. However, I do not discount the role that aural selection may play when purchasing, such as through word-of-mouth recommendations or when

consumers discuss the course with the provider or a representative before signing up to it.



Comparison of marks

33. 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.”

34. 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.

35. The respective trade marks are shown below:

The applicant's mark	The proprietor's mark
	

36. In its written submissions, the applicant submits that the word 'enrich' is the dominant element in both marks. In her counterstatement, the proprietor argues that

the word 'LEARNING' is not descriptive as both companies "are in the education industry", and therefore she submits that both words in her mark have equal dominance.

37. The applicant's mark is a composite mark which consists of the word "enrich" written in a basic typeface in lowercase. Above it is a figurative gold circular device with white lines and a white centre. In its written submissions, the applicant states that the average consumer will understand the word "enrich" as meaning "to improve or enhance", which is consistent with my own understanding of the term. Whilst this is allusive of goods and services in the field of education, it is considered that the word "enrich" in abstract does not convey a directly descriptive message, as it is not clear what is subject to the verb "enrich". Moreover, due to the principle that the eye is naturally drawn to elements of marks which can be read (see paragraph 37 of *Wassen International Ltd v OHIM (SELENIUM-ACE)*, Case T-312/03) and the larger size of the verbal element, the word "enrich" is slightly more dominant in the overall impression. The device will still contribute, but it plays a slightly lesser role in the overall impression. The use of colour is purely decorative and plays a much lesser role.

38. The proprietor's mark is also a composite mark which consists of the word "enrich" written in a basic yellow typeface in lowercase. There are several line devices placed around the "e". Underneath it is the word "LEARNING" written in a basic black typeface in uppercase. The word "enrich" strongly alludes to the goods and services. However, due to the larger size of the word and the fact that "LEARNING" is descriptive in relation to the goods and services (precisely because they are in the field of education), it is considered that the word "enrich" dominates the overall impression of the mark. Whilst the line devices and the colour contribute to the mark's overall impression, they play a much lesser role in the overall impression of the mark.

Visual comparison

39. In its submissions, the applicant argues that the marks are visually similar as they both contain the same word "enrich", which it states is the dominant element of each mark. It also submits that the other visual elements play a limited role within the overall impression of each mark. In her written submissions, the proprietor argues that the marks are visually distinct on account of her mark including the word "LEARNING",

the use of the sunburst line devices over the “e”, the use of colours, and the thicker font. She submits that these elements differentiate her mark from the applicant’s mark, which does not have these features and instead also includes the circular device.

40. The competing marks are similar as they both contain the word “enrich”. The marks are different as the applicant’s mark also contains a circular device, whereas this is not present in the proprietor’s mark. The proprietor’s mark contains the line devices around the “e” and the additional word “LEARNING” at the bottom of the mark. There are also different colours used within the marks. Taking into account my earlier finding in relation to the marks’ overall impressions, I find that the competing marks are visually similar to a medium degree.

Aural comparison

41. In its written submissions, the applicant argues that the marks are highly similar as they both contain the word “enrich” as their first word and as the dominant element within each mark. In her written submissions, the proprietor argues that the marks are aurally distinct.

42. The competing marks are similar as the only verbal element in the applicant’s mark is “enrich”. The proprietor’s mark begins with the word “enrich”. The marks differ as the proprietor’s mark also contains the additional word “learning”. In *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02, the GC noted that the beginnings of words tend to have more visual and aural impact than the ends. Furthermore, in *GRE v OHMI*, Case T-206/12, the GC stated at [44] that “...all the signs at issue will most often not be pronounced, but only the dominant party will be pronounced”. Whilst I acknowledge the comments made in *Purity Wellness Group Ltd v The Stockroom (Kent) Ltd*, BL O/115/22, by Philip Harris as the Appointed Person, where he said at [31] that “Descriptiveness does not of itself render an element negligible or aurally invisible”, he also stated that the terms in question had “a unitary character”. This differs from the immediate case, and I do not find that this is the case with the applicant’s mark. As the word ‘LEARNING’ is descriptive of the education-related goods and services, it is my view that the average consumer would not articulate the word ‘LEARNING’ when saying the mark. Taking this into account, I find that the competing marks are aurally identical.

Conceptual comparison

43. In its written submissions, the applicant argues that the average consumer will understand the word 'enrich' as meaning 'to improve or enhance' and 'enrich learning' as 'improve or enhance learning'. On this basis, it argues that the marks will be seen as having an identical or at least very highly similar meaning. In her written submissions, the proprietor states that the marks are conceptually distinct. She also argues that the visual elements convey a different concept behind the branding, stating that her mark has "bright, educational imagery, clearly identifying it as an academic service provider" whereas the applicant's mark "focuses solely on "Enrich" with neutral tones and sophisticated branding aligned with luxury wellness retreats".

44. The marks are conceptually similar as they both contain the word "enrich" as their dominant element. It is considered that this word will convey the concept of "improve or enhance" in both marks. The competing marks are different as the second mark contains the additional word "LEARNING", which is likely to be seen as descriptive in relation to the good and services. Whilst the proprietor has commented on the different stylistic elements, a concept must be capable of immediate grasp to be relevant. It is my view that the average consumer is unlikely to interpret the marks in this way without substantial reflection or thought. In my view, the figurative elements do not provide any obvious meanings to the marks as a whole and would not change the conceptual identity of the word "enrich", which would be understood in the same way in both marks regardless of the use of colours or other elements. Taking into account the marks' overall impressions, it is my view that the marks are conceptually similar to a high degree.

Distinctive character of the earlier trade mark

45. 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 *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).”

46. Registered trade marks possess various degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities.

47. Although the distinctiveness of a mark can be enhanced by virtue of the use made of it, the applicant has not filed any evidence. As such, I have only the inherent position to consider.

48. The applicant’s mark comprises the word “enrich” and the circular logo device. As stated previously, the word “enrich” is allusive of the educational services. However, with no additional words within the mark, it is considered that there is not a directly descriptive or complete message conveyed by the verbal component of the mark as it is not clear what is subject to the abstract verb ‘enrich’. The circular device is not connected to the services. It is aesthetically pleasing but not overly complex. Overall, it is my view that the mark is distinctive to a low to medium degree.

Global assessment – conclusions on likelihood of confusion

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

average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods and services down to the responsible undertakings being the same or related. There is no set formula for establishing a likelihood of confusion between marks; it is a global assessment where a number of factors need to be borne in mind.

50. One such factor is the interdependency principle, i.e. a lesser degree of similarity between the competing marks may be offset by a greater degree of similarity between the respective goods and services, and vice versa. As mentioned above, it is necessary for me to keep in mind the distinctive character of the applicant's mark, the average consumer for the goods and services and the nature of the purchasing process. In doing so, I must be mindful 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 they have retained in their mind.

51. In its written submissions, the applicant argues that there is a likelihood of direct confusion due to the marks being highly similar particularly visually and conceptually, due to their dominant and distinctive element "enrich", and on the basis that they cover identical and similar goods. It also states that the high degree of similarity between the competing marks will offset a lower degree of similarity for services such as *entertainment and sports*. In her written submissions, the proprietor argues that the principles of imperfect recollection and interdependency are irrelevant on the basis that the trade marks and goods and services are fundamentally distinct from each other. She argues that the substantial differences between the competing marks and the goods and services results in no likelihood of confusion.

52. It is my view that, particularly when accounting for imperfect recollection, consumers may mistake or misremember the marks for one another. Both marks contain the identical verbal element "enrich". Although this word alludes to the goods and services, it is also the dominant component of both marks. It is my view that the points of visual difference between the marks, such as the use of colours, the line devices around the 'e' and the circular device, would be overlooked by the average consumer of the goods and services, even when paying a medium degree of attention or higher. The medium degree of visual similarity, the aural identity between the marks, and the high degree of conceptual similarity between the competing marks, and the

identical or similar nature of the goods and services are factors which support this finding. Whilst the proprietor's mark also contains the descriptive word 'LEARNING', it is my view that this would also be overlooked in the context of the education-related goods and services. The average consumer is more likely to retain and recall the identical and dominant word "enrich", which exists in both marks. I therefore find that there is a likelihood of direct confusion, notwithstanding the points of difference between the marks.

53. If I am wrong in this finding, I now go 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)."

54. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ approved Mr Purvis's formulation but added:

"13. As James Mellor QC sitting as the Appointed Person pointed out in *Cheeky Italian Ltd v Sutaria* (O/219/16) at [16] 'a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion'. Mr Mellor went on to say that, if there is no likelihood of direct confusion, 'one needs a reasonably special set of circumstances for a finding of a likelihood of indirect confusion'. I would prefer to say that there must be a proper basis for concluding that there is a likelihood of indirect confusion given that there is no likelihood of direct confusion."

55. It is not sufficient that a mark merely calls to mind another mark (as per *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17). This is mere association not indirect confusion. A finding of indirect confusion should not be made merely due to a shared element within marks. As per *L.A. Sugar Limited v By Back Beat Inc*, BL O/375/10 (set out above), indirect confusion should be identified in cases where the average consumer is likely to notice the differences between the competing marks but assume an economic link between the two undertakings based on their similarities.

56. It is my view that even if consumers recognise the competing marks' differences, such as the device in the applicant's mark, the inclusion of the descriptive word "LEARNING" and the line devices within the proprietor's mark, these appear consistent with a brand variant or brand extension. I am of the view that consumers are likely to view the addition of the descriptive word "LEARNING" within the proprietor's mark as being added to the applicant's house mark "enrich". Furthermore, the visual changes such as the line devices around the 'e' and the different use of colours are likely to be

viewed as being minor decorative alterations to the branding. Consumers may therefore view these differences within the proprietor's mark as a brand variant or brand extension of the existing house mark "enrich", and therefore assume a commercial association between the parties. Although the word 'enrich' is not overly distinctive, it dominates the overall impressions of the marks and is, in my view, sufficiently distinctive to result in confusion occurring. Consequently, I find that there exists the likelihood of indirect confusion, even when a higher than medium level of attention is paid.

Final remarks

57. The application for invalidation been partially successful. Subject to any appeal, the proprietor's mark will be declared invalid for the following goods and services:

Class 9: Education software; Educational software; Downloadable educational media; Educational computer applications; Educational tablet applications; Children's educational software; Educational computer software; Educational mobile applications; Computer software for education; Downloadable educational course materials; Master of Education software.

Class 16: Educational equipment; Educational publications; Educational and instructional material.

Class 41: Education; Educational instruction; Educational consultancy; Educational seminars; Education services; Educational services; Education information; Educational information; Education examination; Primary education services; Academy education services; Information on education; Educational services for providing courses of education; Higher education services; Pre-school education; Technological education services; Education and training; Educational examination services; Online education services; Adult education services; Educational consultancy services; Providing of education; Educational information services; Computer education training; Educational assessment services; Education and instruction; Examination services (Educational -); Information about education; Computer assisted education services; Organisation of educational seminars; Educational and training services; Services of schools [education]; Provision of educational

information; Organising of educational lectures; Secondary school educational services; Education and training services; Provision of physical education; English language education services; Computer based educational services; Provision of education courses; Educational courses (Provision of -); Computer education training services; Dissemination of educational material; Organising of educational seminars; Education [...]; Provision of educational examinations; Providing information about education; Educational and teaching services; Conducting of educational events.

58. Under section 47(6) of the Act, the registration is deemed to have never been made for these goods and services. However, the proprietor's mark will remain registered for the following services, for which the application for a declaration of invalidity has failed:

Class 41: Entertainment and sports.

Costs

59. The applicant has enjoyed the most success and is therefore entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 1/2023. As this is a partial success, I have made a slight reduction in costs to reflect this.

60. In the circumstances I award the opponent the sum of £820 as a contribution towards the cost of the proceedings. The sum is calculated as follows:

Preparing a statement and considering the proprietor's counterstatement: £290

Preparing submissions in lieu: £330

Official fees: £200

61. I therefore order Onyinye Udokporo to pay Enrich International Ltd the sum of £820. This sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 16th day of July 2025

K SERRAVALLE

For the Registrar