

o/0772/25

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00003903719

BY ASHWANI BHOPAL

TO REGISTER THE TRADE MARK:

Your Doctor Your Time

IN CLASSES 5, 9, 35, 36, 37, 41, 42 AND 44

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. 443014

BY YOURGP GROUP LTD

BACKGROUND AND PLEADINGS

1. On 21 April 2023, Ashwani Bhopal (“the applicant”) applied to register the trade mark shown on the cover page of this decision in the UK. The application was published for opposition purposes on 14 July 2023.

2. The application was partially opposed by YourGP Group Ltd (“the opponent”) on 13 September 2023 based upon sections 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act (“the Act”). The opposition is directed against the following services:

Class 41 Educational services in the healthcare sector; Health education; Medical education services; Educational and training services relating to healthcare; Education services relating to health; Conducting educational support programmes for healthcare professionals; Education and training services in the field of occupational health and safety; Physical health education; Medical tuition services; Providing of training in the field of health care and nutrition; Education in the field of occupational health and safety; Education services relating to medicine; Health and wellness training; Health club services [health and fitness training]; Education services relating to pharmacy; Health club services.

Class 44 Healthcare; Medical and healthcare services; Healthcare services; Medical and healthcare clinics; Health-care; Human healthcare services; Providing medical information in the healthcare sector; Animal healthcare services; Health-care services; Healthcare consultancy services; Healthcare advisory services; Healthcare information services; Health care consultancy services [medical]; Health clinic services [medical]; Medical care; Medical care services; Health care; Health resort services [medical]; Health farm services [medical]; Medical nursing services; Nursing services (Medical -); Medical health assessment services; Collation of information in the healthcare sector; Home health care services; Health clinic services; Provision of health care services; Rental of medical and health care equipment; Medical nursing; Nursing, medical; Health care in the nature of health

maintenance organizations; Medical services; Consulting services relating to health care; Nursing care services; Medical tele-reporting [medical services]; Medical services in the field of diabetes; Medical services in the field of oncology; Provision of health care services in domestic homes; Managed health care services; Rental of equipment for human healthcare; Clinic services (Medical -); Clinic (Medical -) services; Medical clinic services; Medical services in the field of nephrology; Consultancy services relating to health care; Health care relating to hydrotherapy; Consultancy relating to health care; Health care relating to homeopathy; Mobile dental care services; Professional consultancy relating to health care; Health spa services; Mental health services; Mobile medical clinic services; Services for the provision of medical care information; Ambulant medical care; Medical treatment services provided by a health spa; Medical treatment services; Advisory services relating to health care; Health center services; Medical care and analysis services relating to patient treatment; Health consultancy; Health care relating to naturopathy; Medical imaging services; Medical spa services; Nursing care; Pharmaceutical services; Health care relating to acupuncture; Physician services; Medical care of feet; Health care relating to osteopathy; Health screening services; Health screening services in the field of asthma; Medical clinics; Clinics (Medical -); Technical consultancy services relating to medical health; Provision of nursing care; Nursing care (Provision of -); Provision of medical services; Pediatric nursing services; Outpatient and inpatient care services; Health centre services; Telemedicine services; Health care services for treating Alzheimer's disease; Medical diagnostic services; Health centers; Mental health screening services; Health care relating to therapeutic massage; Medical consultancy services; Health counseling; Residential medical treatment services; Public health counseling; Medical counseling services; Health care services offered through a network of health care providers on a contract basis; Information services relating to health care; Tele-reporting (medical services); Health care relating to fasting; Medical screening services in the field of asthma; Home-visit nursing care.

3. Under sections 5(2)(b) and 5(3), the opponent relies upon the following mark:



(“Series of 2”)

UK registration no. UK00003148991

Filing date 10 February 2016.

Registration date 13 May 2016.

4. Under section 5(2)(b), the opponent relies upon all of the services for which its earlier mark is registered contained in Annex 1 of this decision. The opponent claims that there is a likelihood of confusion because the services are similar and the applicant’s mark “is effectively a slight rewording of the existing “Your GP” brand/trademark. Many people use the terms “GP” and “doctor” interchangeably”.

5. Under section 5(3), the opponent also relies upon all of the services for which its earlier mark is registered contained in Annex 1 of this decision. The opponent claims to have a reputation for all of the services relied upon, such that the relevant public will believe that the applicant’s services come from the opponent or an undertaking linked to the opponent.

6. Under section 5(4)(a), the opponent relies upon its **Your GP** sign which it claims to have used throughout the UK since 11 July 2014 for all of its class 41 and 44 services. The opponent claims that use of the applicant’s mark would be contrary to the law of passing off.

7. The applicant filed a counterstatement denying the claims made.

8. Both parties are unrepresented. The applicant filed written submissions, evidence in chief and a statutory declaration during the evidence rounds. Neither party requested a hearing nor filed any submissions in lieu of an oral hearing. This decision is taken following a careful perusal of the papers.

RELEVANCE OF EU LAW

9. 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.

EVIDENCE

10. The applicant's evidence includes the statutory declaration of Dr Ashwani Bhopal dated 14 June 2024. The declaration states that his clinic's name is Doc Plus and that their slogan is "Your Doctor, Your Time".

11. The applicant's evidence also includes the witness statement of Dr Ashwani Bhopal dated 16 June 2024. Dr Bhopal is the director of Doc Plus Limited, and his statement is accompanied by 6 exhibits (A- F).

12. Dr Bhopal's witness statement evidence has been filed to show that their "name is Doc Plus" and that the contested mark "is used as a slogan". Exhibit A contains photos of the applicant's signage on physical premises which shows the mark "Doc Plus" with the wording "You Doctor, Your Time" presented in a smaller typeface underneath it. Exhibits B to C show screenshots of the applicant's banner on its website, and a Google search of "Doc Plus", again showing that that the applicant's website is called "Doc Plus". Exhibit F contains screenshots of Google searches of "Doc Plus", "your doctor, your time" and "your doctor". Mr Bhopal submits that the Google search evidence has been provided to show that consumers would not be diverted to their

website. I note that the Google search images are blurry and therefore the search results are not particularly clear. Moreover, all of the evidence is undated.

13. Nonetheless, I find that the evidence does not assist the applicant on the basis that, whilst the contested mark may not be the applicant's house mark, that being their primary mark (which they state is "Doc Plus"), slogans can operate as secondary house marks. Therefore, slogans can still act as trade marks, (having the capacity to designate origin), which is why, most likely, the applicant filed an application to protect this mark.

14. Moreover, while the evidence has been filed to show how the applicant's mark has been used in practice, I bear in mind that I have to carry out a notional assessment based upon the specifications before me and all the circumstances in which the mark applied for might be used if it were registered.¹ Consequently, as the evidence does not assist the applicant, I shall not consider it any further.

DECISION

Section 5(2)(b)

15. Section 5(2)(b) reads as follows:

"5(2) A trade mark shall not be registered if because –

(a)...

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark."

¹ *O2 Holdings Limited & Anor v Hutchison 3G UK Limited*, Case C-533/06, paragraph 66.

16. The opponent's earlier mark had completed its registration process more than five years before the relevant date (the filing date of the mark in issue). Accordingly, the use provisions at section 6A of the Act do apply.

17. However, as the applicant did not request that the opponent prove use of its mark, the opponent is entitled to rely upon all of its services without demonstrating that it has used its mark.

Section 5(2)(b) case law

18. The following principles 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:

- (a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;
- (b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;
- (c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;
- (d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only

when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

- (e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;
- (f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;
- (g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;
- (h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;
- (i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;
- (j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;
- (k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

Comparison of services

19. A table of the opponent's and applicant's services are contained in Annex 2 of this decision.

20. When making the comparison, all relevant factors relating to the goods in the specifications should be taken into account. In the judgment of the CJEU in *Canon*, Case C-39/97, the court stated at paragraph 23 that:

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

21. Guidance on this issue has come from Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, where he identified the factors for assessing similarity as:

- (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.

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

“29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 Institut für Lernsysteme v OHIM – Educational Services (ELS) [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark.”

23. I bear in mind the following applicable principles of interpretation of terms within a specification from the judgement of *Sky v Skykick* [2024] UKSC 36:

“365. I agree with Sir Christopher Floyd and the other members of the Court of Appeal on this issue. The correct approach, as a matter of principle, in considering a specification of services which is defined by terms which are not clear or precise, is to confine the terms used to the substance or core of their possible meanings: see, for example, *Reed Executive plc v Reed Business Information Ltd* [2004] EWCA Civ 159; [2004] RPC 40, at para 43. So too, if a specification of goods is defined by terms which are ambiguous, then it should be confined to those goods which are clearly covered. These principles are consistent with first, the requirement that the specifications of goods and services must be clear and precise so that others know what they can and cannot do; and secondly, general fairness because any ambiguity is the responsibility of the owner of the mark. If despite this, the words used are still unclear so that they cannot be interpreted, then it is permissible to disregard them. But, in my opinion, that will rarely be the case.”

24. For the purposes of considering the issue of similarity of 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. BeneluxMerkenbureau* [2007] ETMR 35 at paragraphs 30 to 38).

25. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity

between goods. In *Boston Scientific Ltd v OHIM*, Case T-325/06, the GC stated that “complementary” means:

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

26. In *Sanco SA v OHIM*, Case T-249/11, the GC indicated that goods and services may be regarded as ‘complementary’ and therefore similar to a degree in circumstances where the nature and purpose of the respective goods and services are very different, i.e. chicken against transport services for chickens. The purpose of examining whether there is a complementary relationship between goods/services is to assess whether the relevant public are liable to believe that responsibility for the goods/services lies with the same undertaking or with economically connected undertakings. As Mr Daniel Alexander Q.C. (as he then was) noted, as the Appointed Person, in *Sandra Amalia Mary Elliot v LRC Holdings Limited*, BL-0-255-13:

“It may well be the case that wine glasses are almost always used with wine – and are, on any normal view, complementary in that sense – but it does not follow that wine and glassware are similar goods for trade mark purposes.”
Whilst on the other hand: “... it is neither necessary nor sufficient for a finding of similarity that the goods in question must be used together or that they are sold together.”

Whilst on the other hand:

“... it is neither necessary nor sufficient for a finding of similarity that the goods in question must be used together or that they are sold together.”

Class 41

Educational services in the healthcare sector; Health education; Medical education services; Educational and training services relating to healthcare; Education services relating to health; Conducting educational support programmes for healthcare

professionals; Education and training services in the field of occupational health and safety; Physical health education; Medical tuition services; Providing of training in the field of health care and nutrition; Education in the field of occupational health and safety; Education services relating to medicine; Education services relating to pharmacy.

27. I consider that the opponent's "arranging and conducting of lectures, events, exhibitions, presentations and seminars for medical training and teaching", "technical training for nurses and doctors", "first aid training" and "arranging CPR and CPD courses for clinicians, nurses and doctors" in the opponent's specification falls within the applicant's above broader categories. The services are identical on the principle outlined in *Meric*.

Health and wellness training.

28. I find that the applicant's above services would likely encompass a variety of lectures, presentations or seminars teaching individuals on how to improve their physical, mental and emotional well-being. I therefore find that these services overlap with the opponent's "organisation of seminars, conferences and master classes", the subject matter of which could pertain to health and wellness. I find that there would be an overlap in trade channels and users, the nature and method of use of the services overlap and they could be in competition with one another. On this basis, I find that the services are similar to a high degree.

Health club services [health and fitness training]; Health club services.

29. The applicant's above health club services provides the user with use of gym equipment, access to fitness classes (such as spin class, for example) and personal trainers, as well as swimming pools and spa facilities such as saunas and steam rooms. I do not consider that these services overlap with the opponent's class 41 services, which cover medical training, the organisation of seminars, conferences and masterclasses, the production and rental of educational and instructional materials and providing electronic publications. The services clearly do not overlap in trade channels, nature or purpose. The services are clearly neither in competition nor

complementary. There may be an overlap in user, however, this is not enough on its own to establish similarity. Taking the above into account, I find that the services are dissimilar.

30. For the sake of completeness, I also do not consider that the opponent's class 44 healthcare services overlap in nature, purpose, method of use and trade channels with the applicant's above health club services. They are neither in competition nor complementary, and if there was an overlap in user, this is not enough on its own to establish similarity. The services are clearly dissimilar.

Class 44

Healthcare; Medical and healthcare services; Medical and healthcare clinics; Medical nursing; Medical treatment services.

31. The above terms appear identically in both parties' specifications.

Healthcare services; Health-care; Human healthcare services; Health-care services; Medical services; Medical care; Medical care services; Health care; Provision of medical services; Provision of health care services.

32. Although expressed slightly differently, the applicant's above services are self-evidently identical to "healthcare" and "medical and healthcare services" in the opponent's specification.

Providing medical information in the healthcare sector; Healthcare consultancy services; Healthcare advisory services; Healthcare information services; Health care consultancy services [medical]; Consulting services relating to health care; Consultancy services relating to health care; Services for the provision of medical care information; Consultancy relating to health care; Professional consultancy relating to health care; Advisory services relating to health care; Health consultancy; Medical consultancy services; Information services relating to health care; Technical consultancy services relating to medical health.

33. Although expressed slightly differently, the applicant's above services are self-evidently identical to "healthcare", "medical and healthcare services" and "consultancy, information and advisory services relating to all of the aforesaid services" in the opponent's specification.

Health clinic services [medical]; Health clinic services; Clinic services (Medical -); Clinic (Medical -) services; Medical clinic services; Medical clinics; Clinics (Medical -); Mobile medical clinic services.

34. I find that the applicant's above services falls within the broader category of "medical and healthcare clinics" in the opponent's specification. The services are identical on the principle outlined in *Meric*.

Medical nursing services; Nursing services (Medical -); Nursing, medical.

35. Although expressed slightly differently, the applicant's above services are self-evidently identical to "medical nursing" in the opponent's specification.

Medical health assessment services.

36. Although expressed slightly differently, the applicant's above services are self-evidently identical to "medical [...] examinations and assessments" in the opponent's specification.

Medical counseling services.

37. Although expressed slightly differently, the applicant's above services are self-evidently identical to "medical counselling" in the opponent's specification.

Medical tele-reporting [medical services]; Tele-reporting (medical services); Medical services in the field of diabetes; Medical services in the field of oncology; Medical services in the field of nephrology; Health care relating to hydrotherapy; Health care relating to homeopathy; Health care relating to naturopathy; Health care relating to acupuncture; Health care services for treating Alzheimer's disease; Health care

relating to therapeutic massage; Health care relating to fasting; Home health care services; Provision of health care services in domestic homes; Managed health care services; Health care in the nature of health maintenance organizations; Health care services offered through a network of health care providers on a contract basis; Ambulant medical care; Medical care and analysis services relating to patient treatment; Pharmaceutical services; Medical imaging services; Physician services; Medical care of feet; Health care relating to osteopathy; Health screening services; Health screening services in the field of asthma; Outpatient and inpatient care services; Telemedicine services; Medical diagnostic services; Medical screening services in the field of asthma.

38. All of the applicant's above services fall within the broader category of "medical and healthcare services" in the opponent's specification. The services are identical on the principle outlined in *Meric*.

Residential medical treatment services.

39. The applicant's above services falls within the broader category of "medical treatment services" in the opponent's specification. The services are identical on the principle outlined in *Meric*.

Mental health services; Mental health screening services.

40. The applicant's above mental health and counselling services falls within the broader category of "medical and healthcare services" in the opponent's specification. The services are identical on the principle outlined in *Meric*.

Nursing care; Nursing care services; Provision of nursing care; Nursing care (Provision of -); Pediatric nursing services; Home-visit nursing care.

41. The applicant's above services fall within the broader categories of "medical and healthcare services" and "medical nursing" in the opponent's specification. The services are identical on the principle outlined in *Meric*.

Health counseling; Public health counseling.

42. The applicant's above mental health and counselling services fall within the broader categories of "counselling" and "medical and healthcare services" in the opponent's specification. The services are identical on the principle outlined in *Meric*.

Mobile dental care services.

43. I bear in mind that dental services are a type of medical service, focused on oral health, to address diseases and conditions affecting the teeth, gums and surrounding structures, which are integral to overall health. Therefore the applicant's above services fall within the broader category of "medical and healthcare services" in the opponent's specification, making them identical on the principle outlined in *Meric*.

Animal healthcare services.

44. The applicant's above services are specifically concerned with healthcare for animals, such as the services provided by a veterinarian. Veterinarians are healthcare professionals who manage a wide range of health conditions, as well as diagnose, treat and help prevent diseases and injuries in animals. The opponent's "medical and healthcare services" are not limited to use on humans and it cannot be ruled out that these services could likewise be directed to animals. While I bear in mind the guidance of *SkyKick* not to apply too liberal an interpretation to the natural meaning of the services at issue, I consider that the opponent's medical and healthcare services could encompass animal healthcare services. In reaching this view, I bear in mind that the respective services are both contained in class 44 of the NICE classification system. As neither party has filed submissions to the contrary, I find that the applicant's "animal healthcare services" falls within the opponent's broader category of "medical and healthcare services". The services are identical on the principle outlined in *Meric*.

Health center services; Health centre services; Health centers.

45. A health centre is staffed by professionals such as doctors and nurses who will provide healthcare services to its users. I therefore consider that it could fall within the

broader categories of “medical and healthcare services” and “medical and healthcare clinics” in the opponent’s specification, making them identical on the principle outlined in *Meric*. However, if I am wrong in this finding, I find that all of the services overlap in trade channels, nature, purpose, method of use and user, making them similar to a high degree.

Health resort services [medical]; Medical treatment services provided by a health spa; Medical spa services.

46. Without any evidence or submissions on the contrary, I find that the applicant’s above services are all types of medical spa services, which would be provided by a facility that combines both the services of a spa with the supervision of medical professionals. These facilities provide non-surgical and non-invasive cosmetic procedures such as fillers, laser treatments and chemical peels. I therefore find that the applicant’s above services overlap with the opponent’s “cosmetic treatment” services and “medical services for treatment of the skin and scarring”. The services will overlap in trade channels (all being provided by medical spas), however, I appreciate that the opponent’s services may also be provided by skin care clinics. The services will overlap in user and purpose (all being used to improve the appearance of the users’ skin). The services may also be in competition to the extent that the user may want their treatment either via a medical spa or a skin care clinic. Taking the above into account, I find the services to be similar to between a medium and high degree.

Health farm services [medical].

47. The applicant’s above services are typically provided by wellness retreats, hotels or establishments which offer medical and therapeutic treatments alongside a variety of services such as spa treatments, fitness activities (like yoga and Pilates) as well as nutritional guidance and wellness programmes that are designed to improve the users’ overall health. I find that the medical and therapeutic treatments will be provided by healthcare professionals such as doctors. I therefore consider that the applicant’s services overlap with “medical and healthcare services” and “medical and healthcare clinics” in the opponent’s specification, which are also services provided by healthcare

professionals (albeit these services are provided in clinics and hospitals, for example). All of the services will overlap to some extent in purpose, and user, as they are all used to improve the health of the general public. The services may also be in competition as the user may choose to be treated at a medical health farm or at a GP/hospital. Thus, I find that the parties' services are similar to a medium degree.

Collation of information in the healthcare sector.

48. I find that the applicant's above services refers to the process of data collection via medical records. Whilst I find that the nature, purpose and method of use of these services clearly does not overlap with the opponent's "medical and healthcare services", I find that there would be an overlap in trade channels, as medical and healthcare bodies would not only provide such care, but would collate their patients' information in the form of medical records. I also find that there would be an overlap in user, and that the services could be complementary, being important and indispensable to one another (the professional body would not be able to provide care for its patients without its medical records), and the user would believe that both services are provided by the same undertaking. On this basis I find that the services are similar to a medium degree.

Rental of medical and health care equipment; Rental of equipment for human healthcare.

49. I do not consider that the applicant's above services are similar to any of the opponent's class 44 services. Although all of the opponent's services are concerned with medical and healthcare services (including those that would involve the use of equipment such as testing and screening services, surgery and laser therapy), the opponent's services are directed to the general public. I consider that the applicant's medical rental services will typically be directed to healthcare professionals. The services also do not overlap in user, nature, method of use or purpose. The services do not overlap in trade channels as the opponent's services are provided by medical and healthcare bodies such as hospitals and GP clinics whereas the applicant's services will be provided by medical equipment specialists. The services are not obviously in competition, and whilst the equipment may facilitate in providing

healthcare to patients, I do not find that the services are complementary as the user would not believe that the healthcare services and the rented equipment are provided by the same undertaking. I therefore find that the parties' services are dissimilar.

Health spa services.

50. I find that the applicant's above services are those which are provided by spa hotels and resorts, which provide the user with a variety of services such as spa treatments, fitness activities (like yoga and Pilates) as well as nutritional guidance and wellness programmes. I note that these services do not encompass any medical services, nor are they provided by medical professionals. Therefore, whilst I appreciate that there may be some overlap in user and purpose with the opponent's medical and healthcare services in class 44, (to the extent that all of the services are used to improve the health of the general public), the services clearly do not overlap in trade channels (as the opponent's services are provided by medical and healthcare bodies such as hospitals and GPs etc). I also find that the nature and method of use of the services clearly differ. I do not consider that the services are complementary, nor are they directly in competition with one another. I find that, taking all of the above into account, the services are dissimilar.

51. It is a prerequisite of section 5(2)(b) that the services be identical or at least similar. The opposition will, therefore, fail in respect of the services that I have found to be dissimilar.² The opposition under section 5(2)(b) fails for the following services:

Class 41 Health club services [health and fitness training]; Health club services.

Class 44 Rental of equipment for human healthcare; Health spa services.

The average consumer and the nature of the purchasing act

52. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties' services. I must then determine the

² *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA

manner in which the services are likely to be selected by the average consumer. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J (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 word “average” denotes that the person is typical. The term “average” does not denote some form of numerical mean, mode or median.”

53. The average consumer for most of the healthcare services will be members of the general public. The average consumer for the educational services, such as “conducting educational support programmes for healthcare professionals” and “medical tuition”, will include healthcare professionals.

54. The cost of the services in question is likely to vary, but it is not likely to be at the very highest end of the scale. Albeit I appreciate that some of the services can be quite costly, particularly where they involve ongoing use of the services, such as nursing care for example. The frequency of the purchase is also likely to vary. The average consumer will take various factors into consideration such as the cost, the efficacy of the services for treating an illness or condition and the reputational standing of the provider. Furthermore, because the services are in relation to improving the end user’s health, I consider that the level of attention paid during the purchasing process will be high.

55. The services are likely to be obtained from the premises of a medical establishment such as a hospital or GP clinic where it will be seen on signage and promotional information. Visual considerations are, therefore, likely to dominate the selection process. However, I do not discount that there will also be an aural component to the purchase through advice sought from a medical professional.



Comparison of the trade marks

56. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the trade marks must be assessed by reference to the overall impressions created by the trade marks, bearing in mind their distinctive and dominant components. The CJEU 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.”

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

58. The respective trade marks are shown below:

Opponent's series of 2 trade mark	Applicant's mark
	

59. The opponent's series of 2 marks consists of the word “yourGP”. In the first mark, the “your” element is presented in a thick lower-case standard grey typeface, with the

letter “y” depicting a stethoscope, and the “GP” element presented in a thin light green standard upper-case typeface. In the second mark, the word “yourGP” is all presented in the colour black. I bear in mind that the word “yourGP” and the stethoscope is highly allusive of the opponent’s class 41 and 44 medical and healthcare services. Nonetheless, I find that the word “yourGP” and the letter “y” depicting a stethoscope plays a greater role in the overall impression, with the typeface and colours playing a lesser role.

60. The applicant’s mark consists of four ordinary dictionary words “Your Doctor Your Time”. I find that the overall impression lies in the combination of these elements.

61. Visually, the marks overlap in the word “your” at the beginning of the marks, a position to which the average consumer usually pays more attention.³ This acts as a visual point of similarity. While I bear in mind that the opponent’s marks are presented in standard typefaces, the applicant’s mark is a word mark and therefore normal and fair use of this mark covers use in any standard typeface. Therefore these elements do not act as visual points of difference. However, I bear in mind that the letter “y” in the opponent’s mark is depicted as a stethoscope, and the opponent’s marks end in the “GP” element. Moreover, in the opponent’s first mark, “your” is presented in grey and “GP” is presented in green. The applicant’s mark also ends in the words “Doctor Your Time”. All of these elements act as visual points of difference. Thus, taking the above into account, I find that the marks are visually similar, but only to a low degree.

62. Aurally, I find that the opponent’s marks will likely be pronounced as YOUR-GEE-PEE. I also find that the applicant’s mark will likely be pronounced as YOUR DOCTOR YOUR TIME. Therefore, as the marks only overlap in their identical first syllables, I find that they are aurally similar, but only to a low degree.

63. Conceptually, the opponent’s mark “yourGP” will be recognised as consisting of the ordinary dictionary words “your” and “GP”, which together evokes the meaning of a general practitioner who belongs to or serves the user. The opponent submits that “to the general public the use of the word “GP” and “doctor” is often interchangeable,

³ *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

and many still do not understand the difference”. Furthermore, the opponent states that a large part of their business “is based on non-UK nationals using” their service and “they would tend to use the term “doctor” most of the time”.

64. Firstly, the opponent’s above submission regarding how its services are largely used by non-UK nationals does not assist them on the basis that my notional assessment of the marks is made from the perspective of the UK average consumer, not the particular profile of those who may in fact use the opponent’s services. Secondly, I do not consider that the words “GP” and “doctor” are interchangeable per se, though a GP is certainly a *type* of doctor, and will be recognised as such to the UK average consumer. I find that this is supported by the applicant’s submission in its counterstatement which claims that its mark “implies that patients can see the doctor that they choose to see whether it is a GP, surgeon, male, female or particular doctor in the clinic”.

65. The applicant’s mark, “Your Doctor Your Time”, is composed of 3 ordinary dictionary words, and the applicant submits that as a whole, its mark evokes the meaning that patients “can see the doctor at any time it suits” them and that they “can choose the appointment duration”. I agree with the applicant that the mark would evoke the meaning of being able to see a doctor in a way that respects a patient’s time and availability. However, I do not consider that the average consumer will understand it as evoking the meaning that they can choose the appointment duration. I find that this would stretch the ordinary meaning of the words.

66. Therefore, on the basis that the opponent’s mark evokes the meaning of “your GP”, a GP being a type of doctor, and the words “your doctor” is evoked by the applicant’s mark, I find that this acts as a point of conceptual overlap. However, I find that as a whole, the marks are only conceptually similar to a low degree.

Distinctive character of the earlier trade marks

67. 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 C108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-2779, 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 promotion of 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).”

68. 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 and services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use that has been made of it.

69. The opponent has not filed any evidence of use, and therefore, I am unable to establish whether the distinctiveness of the opponent’s earlier mark has been enhanced. On this basis, I only have the inherent distinctive character to assess.

70. As noted above, the opponent’s series of 2 marks consists of the word “yourGP”. In the first mark, the “your” element is presented in a thick lower-case standard grey typeface, with the letter “y” depicting a stethoscope. The “GP” element is presented in

a thin light green standard upper-case typeface. In the second mark, the word “yourGP” is all presented in the colour black.

71. I bear in mind that the word “yourGP” and the stethoscope is highly allusive of the opponent’s class 41 and 44 medical and healthcare services. However, as per *Formula One Licensing BV v OHIM*,⁴ the earlier mark must be considered to have at least some distinctive character. Consequently, I consider that the distinctiveness of the opponent’s mark lies in combination of the (compounded) word “yourGP” and the letter “y” depicting a stethoscope. The use of the standard typeface and colour does not contribute to the distinctiveness of the mark. Therefore, as the opponent’s mark is, as a whole, highly allusive of the opponent’s services, I consider that it is inherently distinctive to a low degree.

Likelihood of confusion

72. 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. 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 services and vice versa. It is necessary for me to keep in mind the distinctive character of the earlier mark, the average consumer for the services 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.

73. The following factors must be considered to determine if a likelihood of confusion can be established:

⁴ Case C-196/11P

- I have found the marks to be visually similar to a low degree.
- I have found the marks to be aurally similar to a low degree.
- I have found the marks to be conceptually similar to a low degree.
- I have found the opponent's earlier mark to be inherently distinctive to a low degree.
- I have identified the average consumer as members of the general public and healthcare professionals, who will select the goods primarily by visual means, although I do not discount an aural component.
- I have concluded that a high degree of attention will be paid during the purchasing process.
- The parties' services range from being identical to similar to a medium degree.

74. Taking all of the factors listed in paragraph 73 into account, particularly bearing in mind the visual, aural and conceptual differences between the marks, and the low distinctiveness of the opponent's earlier mark, I am satisfied that the parties' marks are unlikely to be mistakenly recalled or misremembered as each other.

75. Whilst the words "yourGP" and "Your Doctor" share some conceptual overlap (with a GP being a type of doctor), I do not consider that the average consumer, paying a high degree of attention during the purchasing process, would mistakenly recall one for the other, especially on the basis that the words "GP" and "Doctor" are visually and aurally dissimilar. I also do not consider that the average consumer would overlook the words "Your Time" at the end of applicant's mark, which contributes to the overall impression of the mark (alongside the words "Your Doctor"), as well as acting as a visual, aural and conceptual point of difference between the parties' marks. Consequently, I do not find there to be a likelihood of direct confusion.

76. It now falls to me to consider the likelihood of indirect confusion. Indirect confusion was described in the following terms by Iain Purvis Q.C. sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10:

"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.”

77. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ referred to the comments of James Mellor Q.C. (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.

78. Mr Purvis KC in *L.A Sugar Limited* sets out that there are three main categories of indirect confusion and that indirect confusion ‘tends’ to fall in one of them.⁵ I note that the opponent hasn’t provided any submissions as to what category this case would fall within. I also bear in mind that the examples set out by Mr Purvis are not exhaustive.

79. However, I consider that, having noticed that the competing marks are different, I see no reason why the average consumer would assume that they came from the same or economically linked undertakings. I do not consider that the average consumer would think that the opponent’s “YourGP” mark was connected with the applicant’s “Your Doctor Your Time” mark, or vice versa, on the basis that they both start with the ordinary dictionary word “Your”, followed by the word “GP” or “Doctor”, which share some conceptual overlap on the basis that a GP is a type of doctor. As

⁵ Paragraphs 16 & 17 of *L.A Sugar Limited v By Black Beat Inc*, Case BL-O/375/10

noted above, the earlier mark is inherently distinctive to a low degree on the basis that it is highly allusive of the opponent's class 41 and 44 services. On this basis, I find that it is more likely to be viewed as a coincidence that both marks make a reference to "GP" and "Doctor" as the marks are being used on healthcare and medical services which are predominantly going to be carried out by GPs and other doctors.

80. Taking all of the above into account, I do not consider that the average consumer, paying a high degree of attention during the purchasing process, would think that the applicant's trade mark was connected with the opponent, or vice versa. I find there is no likelihood of indirect confusion.

81. The opposition under section 5(2)(b) fails.

Section 5(3) and 5(4)(a)

82. Section 5(3) of the Act states:

"5(3) A trade mark which –

(a) is identical with or similar to an earlier trade mark, shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom (or, in the case of a European Union trade mark or international trade mark (EC), in the European Union) and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or repute of the earlier trade mark."

83. Section 5(3A) of the Act states:

"Subsection (3) applies irrespective of whether the goods and services for which the trade mark is to be registered are identical with, similar to or not similar to those for which the earlier trade mark is protected."

84. Section 5(4)(a) of the Act states as follows:

“5(4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented –

a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, where the condition in subsection (4A) is met,

aa)...

b) ...

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of “an earlier right” in relation to the trade mark”.

85. Subsection (4A) of section 5 of the Act states:

“(4A) The condition mentioned in subsection (4)(a) is that the rights to the unregistered trade mark or other sign were acquired prior to the date of application for registration of the trade mark or date of the priority claimed for that application.”

86. I can deal with both of these grounds relatively swiftly. Both the section 5(3) and 5(4)(a) grounds requires the opponent to have filed evidence to establish that it had a reputation and/or goodwill at the relevant date, that being 21 April 2023. However, the opponent has not filed any evidence in these proceedings. On this basis, I am unable to establish that the opponent had a reputation or a protectable goodwill at the relevant date, and thus the section 5(3) and 5(4)(a) grounds falls at the first hurdle.

87. The opposition based upon sections 5(3) and 5(4)(a) of the Act is dismissed.

CONCLUSION

88. The opposition is unsuccessful, and the application may proceed to registration.

COSTS

89. The applicant has been successful and would normally be entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice 1/2023. However, as the applicant is unrepresented, at the conclusion of the evidence rounds the tribunal wrote to the applicant and invited them to indicate whether they intended to make a request for an award of costs. The applicant was informed that, if so, they should complete a Pro Forma, providing details of their actual costs and accurate estimates of the amount of time spent on various activities associated with the proceedings. They were informed that “if the pro-forma is not completed and returned, costs, other than official fees arising from the action (excluding extensions of time) may not be awarded”.

90. The applicant did not file a completed Pro Forma and paid no official fees. That being the case, I make no award of costs in this matter.

Dated this 21st day of August 2025

L FAYTER

For the Registrar

ANNEX 1

Class 41

Arranging and conducting of lectures, events, exhibitions, presentations and seminars for medical training and teaching; technical training for nurses and doctors; first aid training; arranging CPR and CPD courses for clinicians, nurses and doctors; organisation of seminars, conferences and master classes; production and rental of educational and instructional materials; providing online electronic publications; consultancy, information and advisory services relating to all of the aforesaid services.

Class 44

Healthcare; medical and healthcare clinics; medical and healthcare services; clinics; homeopathic clinical services; surgery; laser vision surgery; cosmetic and plastic surgery clinic services; medical treatment services; vaccinations; injections for medical purposes; medical and psychological examinations and assessments; psychological tests; hearing tests; hearing loss treatment; health checks; medical examinations; medical assistance; medical nursing; blood tests; testing for allergies; vitamin deficiency tests; tests for medical and clinical conditions; preparation of prescriptions; pharmacists' services to make up prescriptions; provision of information relating to vaccination for overseas travel; minor injuries treatment services; cosmetic treatment; cosmetic surgery; cosmetic treatments for the face, neck, body, arms, hands and hair; medical counselling; consultation services relating to skin care; medical services for treatment of the skin and scarring; treatments using cosmeceuticals; ear syringing; warts treatment and removal; sexual health screening services; testing and treatment for sexually transmitted diseases and infections; counselling; consultation and counselling on sexual dysfunction, sexual abuse and gender dysphoria; occupational healthcare; occupational therapy services; occupational psychology services; counselling relating to occupational therapy; chiropody; physiotherapy; general practitioner services; referrals to specialists; footcare; podiatry; medical services connected with nail care and fungal nail treatment; nail surgery; medical services connected with verrucae treatment; therapy services; complementary therapy services; physical therapy services; physiotherapy; insomnia therapy; speech therapy; providing laser therapy for treating medical conditions; complementary therapy for physical, psychological and cognitive purposes; providing information and advice

relating to contraception and family planning; consultancy, information and advisory services relating to all of the aforesaid services.

ANNEX 2

Opponent's services	Applicant's services
<p><u>Class 44</u></p> <p>Healthcare; medical and healthcare clinics; medical and healthcare services; clinics; homeopathic clinical services; surgery; laser vision surgery; cosmetic and plastic surgery clinic services; medical treatment services; vaccinations; injections for medical purposes; medical and psychological examinations and assessments; psychological tests; hearing tests; hearing loss treatment; health checks; medical examinations; medical assistance; medical nursing; blood tests; testing for allergies; vitamin deficiency tests; tests for medical and clinical conditions; preparation of prescriptions; pharmacists' services to make up prescriptions; provision of information relating to vaccination for overseas travel; minor injuries treatment services; cosmetic treatment; cosmetic surgery; cosmetic treatments for the face, neck, body, arms, hands and hair; medical counselling; consultation services relating to skin care; medical services for treatment of the skin and scarring; treatments using cosmeceuticals; ear syringing; warts treatment and removal; sexual health screening services; testing</p>	<p><u>Class 44</u></p> <p>Healthcare; Medical and healthcare services; Healthcare services; Medical and healthcare clinics; Health-care; Human healthcare services; Providing medical information in the healthcare sector; Animal healthcare services; Health-care services; Healthcare consultancy services; Healthcare advisory services; Healthcare information services; Health care consultancy services [medical]; Health clinic services [medical]; Medical care; Medical care services; Health care; Health resort services [medical]; Health farm services [medical]; Medical nursing services; Nursing services (Medical -); Medical health assessment services; Collation of information in the healthcare sector; Home health care services; Health clinic services; Provision of health care services; Rental of medical and health care equipment; Medical nursing; Nursing, medical; Health care in the nature of health maintenance organizations; Medical services; Consulting services relating to health care; Nursing care services; Medical tele-reporting [medical services]; Medical services in the field of diabetes;</p>

<p>and treatment for sexually transmitted diseases and infections; counselling; consultation and counselling on sexual dysfunction, sexual abuse and gender dysphoria; occupational healthcare; occupational therapy services; occupational psychology services; counselling relating to occupational therapy; chiropody; physiotherapy; general practitioner services; referrals to specialists; footcare; podiatry; medical services connected with nail care and fungal nail treatment; nail surgery; medical services connected with verrucae treatment; therapy services; complementary therapy services; physical therapy services; physiotherapy; insomnia therapy; speech therapy; providing laser therapy for treating medical conditions; complementary therapy for physical, psychological and cognitive purposes; providing information and advice relating to contraception and family planning; consultancy, information and advisory services relating to all of the aforesaid services.</p>	<p>Medical services in the field of oncology; Provision of health care services in domestic homes; Managed health care services; Rental of equipment for human healthcare; Clinic services (Medical -); Clinic (Medical -) services; Medical clinic services; Medical services in the field of nephrology; Consultancy services relating to health care; Health care relating to hydrotherapy; Consultancy relating to health care; Health care relating to homeopathy; Mobile dental care services; Professional consultancy relating to health care; Health spa services; Mental health services; Mobile medical clinic services; Services for the provision of medical care information; Ambulant medical care; Medical treatment services provided by a health spa; Medical treatment services; Advisory services relating to health care; Health center services; Medical care and analysis services relating to patient treatment; Health consultancy; Health care relating to naturopathy; Medical imaging services; Medical spa services; Nursing care; Pharmaceutical services; Health care relating to acupuncture; Physician services; Medical care of feet; Health care relating to osteopathy; Health screening services; Health screening services in the field of asthma; Medical clinics; Clinics (Medical -);</p>
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	<p>Technical consultancy services relating to medical health; Provision of nursing care; Nursing care (Provision of -); Provision of medical services; Pediatric nursing services; Outpatient and inpatient care services; Health centre services; Telemedicine services; Health care services for treating Alzheimer's disease; Medical diagnostic services; Health centers; Mental health screening services; Health care relating to therapeutic massage; Medical consultancy services; Health counseling; Residential medical treatment services; Public health counseling; Medical counseling services; Health care services offered through a network of health care providers on a contract basis; Information services relating to health care; Tele-reporting (medical services); Health care relating to fasting; Medical screening services in the field of asthma; Home-visit nursing care.</p>
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