

O/0883/26

TRADE MARKS ACT 1994

**IN THE MATTER OF UK APPLICATION NO. 4146516
BY TALENT BOX CONSULTING LTD
TO REGISTER THE FOLLOWING TRADE MARK:**

ADAPT Culture

IN CLASSES 9, 16, 35 AND 41

AND

**IN THE MATTER OF THE OPPOSITION THERETO
UNDER NO. 455997
BY SYMBIOTICS LIMITED**

BACKGROUND AND PLEADINGS

1. On 11 January 2025, Talent Box Consulting Ltd (“the applicant”) applied to register the trade mark shown on the cover page of this decision (“the contested mark”) in the UK. The application was published for opposition purposes on 30 May 2025, and registration is sought for goods and services in classes 9, 16, 35 and 41.¹

2. On 14 August 2025, the application was opposed in full by Symbiotics Limited (“the opponent”), on the basis of section 5(2)(b) of the Trade Marks Act 1994 (“the Act”).² The opposition is directed at all the goods and services in the application.

3. The opponent relies upon its earlier UK trade mark no. 3236241, ‘ADAPT’ (“the earlier mark”). The earlier mark was filed on 8 June 2017 and became registered on 11 January 2019. The opponent relies upon all its goods and services in classes 9, 16, 35, 38, 41, 42 and 44.³

4. The opponent claims that the marks are highly similar, and that the goods and services at issue are either identical or similar, resulting in a likelihood of confusion.

5. The applicant filed a counterstatement denying the ground of opposition.

6. The earlier mark had been registered for five years or more by the date on which the contested application was filed and was therefore potentially subject to proof of use under section 6A of the Act. However, although the applicant requested proof of use in respect of another earlier mark originally relied upon by the opponent, no such request was made in respect of the above earlier mark. The opponent may therefore rely upon all the goods and services identified in its pleadings.⁴

¹ See the goods and services comparison at paragraph [27].

² The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK’s withdrawal from the EU. See also Tribunal Practice Notice (“TPN”) 2/2020 End of Transition Period – impact on tribunal proceedings.

³ See the goods and services comparison at paragraph [27].

⁴ In its Form TM7, the opponent originally relied upon two earlier marks, namely UK3236241 and UK917574559. In its Form TM8, the applicant requested proof of use only in respect of UK917574559. However, in its written submissions filed on 22 December 2025, the opponent withdrew its reliance on that mark. The opposition therefore proceeds solely on the basis of UK3236241, in respect of which proof of use was not requested.

7. Neither party filed evidence in these proceedings. No hearing was requested, though both parties filed written submissions in lieu of the same. This decision is taken following careful consideration of the papers.

8. The opponent is represented by Forresters IP LLP; the applicant is self-represented.

PRELIMINARY ISSUES

9. The applicant raises points in its counterstatement and written submissions⁵ that I intend to address as preliminary issues. Before going any further into the merits of this opposition, it is necessary to explain why, as a matter of law, the points raised will have no bearing on the outcome of this opposition.

10. In its counterstatement the applicant states the following:

- Goods comparison and the target market

“[...] the goods and services target distinct markets.

The Opponent's goods and services, according to its registration and website, concern psychometric testing, recruitment assessments, and HR related consultancy, particularly in aviation and high-performance recruitment contexts.

The Applicant's goods and services relate to organisational culture, leadership development, and behavioural change within established organisations, expressly excluding employment, recruitment, or personnel placement services.

The nature, purpose, and target consumers differ substantially. The Opponent's services target recruitment professionals, HR departments, and airlines seeking psychometric assessment of candidates. The Applicant's services

⁵ Written submissions in lieu of a hearing, dated 14 April 2026.

target business leaders and consultants seeking internal cultural transformation.”

11. Differences between the goods and services currently provided by the parties are irrelevant, except to the extent that those differences are apparent from each party’s specifications. It is the goods and services relied upon by the opponent and the goods applied for by the applicant that I will be comparing later in this decision. The assessment I must make between the goods and services is a notional and objective assessment, rather than a subjective one.

12. Furthermore, marketing strategies, including the targeting of specific consumers, are temporary and may change over time.⁶ As such, it is not appropriate to take marketing factors into account in my assessment. However, I will make an assessment, later in this decision, as to who the average consumer could be for the goods and services at issue.

- No evidence of confusion

“The Opponent has chosen not to file evidence. Accordingly, there is no evidence of actual confusion.”

13. As previously stated above in paragraph 6, the opponent was not required to file any evidence of use. Further, with regard to an absence of any evidence of actual confusion, in *The European Limited v The Economist Newspaper Ltd* [1998] FSR 283 Millett L.J. stated that:

“Absence of evidence of actual confusion is rarely significant, especially in a trade mark case where it may be due to differences extraneous to the plaintiff’s registered trade mark.”

14. As such, the absence of actual confusion will not have any bearing on whether there exists a likelihood of confusion between the applicant’s mark and the opponent’s

⁶ *Devinlec Développement Innovation Leclerc SA v OHIM*, Case C-171/06P

mark. Whilst evidence of actual confusion may be persuasive where it exists, the absence of confusion in the marketplace is rarely significant. This is because the absence of confusion may be attributable to the earlier mark having only been used to a limited extent, in relation to only some of the goods or services for which it is registered, or in such a way that there has been no possibility of the one, for example, being mistaken for the other. Therefore, this line of argument does not assist the applicant.

- Reputation and enhanced distinctiveness

“The opponent has chosen not to file any evidence of reputation or enhanced distinctiveness.”

15. The opposition is based on section 5(2)(b) of the Act. Accordingly, the opponent is not required to establish reputation of its earlier mark. Further, in its written submissions,⁷ the opponent has confirmed that it does not claim enhanced distinctive character for the purposes of this opposition. I will therefore assess the earlier mark later in this decision by reference to its inherent distinctive character only.

DECISION

16. Section 5(2)(b) of the Act reads as follows:

“5(2) A trade mark shall not be registered if because-

(a) [...]

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

⁷ Opponent's written submissions in lieu of a hearing, filed on 14 April 2026.

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

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

“Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only.”

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

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

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

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

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

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

Comparison of goods and services

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

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

20. In *Gérard Meric v Office for Harmonisation in the Internal Market* (“*Meric*”), 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.”

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

22. 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:

“82. ...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”.

23. For the purposes of considering the issue of similarity of goods and services, it is permissible to consider groups of terms collectively where appropriate: *Separode Trade Mark*, BL O-399-10.⁸

⁸ Paragraph 5.

24. In the case of goods and services, the terms used should not be interpreted widely but confined to the core of the possible meanings attributable to the terms: *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1)* [2024] UKSC 36, at [365].

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

26. I also note that in *Unicorn Studio Inc v Veronese* Case CH-2023-000214, Iain Purvis, KC, sitting as Deputy High Court judge, stated that any finding of similarity (between goods and services) requires the exercise of common sense.

27. The competing goods and services are as follows:

The applicant's goods and services

Class 9

Downloadable electronic publications, videos, podcasts and digital training materials in the field of organisational development, leadership, engagement, workplace culture, and behavioural change; downloadable software applications for facilitating workplace behaviour change and organisational transformation; data collection and analysis tools for measuring behavioural insights in organisational settings.

Class 16

Printed training materials, workbooks, guides, and manuals in the field of organisational culture, leadership development, employee engagement, and behavioural change across workplace settings.

Class 35

Business consultancy and advisory services relating to organisational culture, employee engagement, and behaviour change; strategic business transformation services; business analysis and organisational diagnostics related to behavioural

change; conducting workplace audits and assessments to inform behavioural strategy; all excluding employment, recruitment, or personnel placement services.

Class 41

Providing training, workshops, coaching and educational programs in the field of organisational development, workplace culture, and behavioural transformation for professionals and businesses; development and delivery of customised learning experiences aimed at improving leadership and internal business culture; all the aforesaid services not relating to academic education, job recruitment or personnel placement.

The opponent's goods and services

Class 9

Software programs for recruitment and personnel management services relating to examination and assessment of candidates, training and assessment of employees; downloadable electronic publications relating to recruitment and personnel management services; none of the aforesaid relating to digital product development.

Class 16

Teaching materials, training manuals and training guides for recruitment and personnel management relating to examination and assessment of candidates, training and assessment of employees.

Class 35

Permanent, temporary, fixed price and contract recruitment services; specialist recruitment services; personnel and human resources management services relating to recruitment; recruitment process management services; assessment and development of candidates, employees and personnel relating to recruitment, promotions and human resource services; testing to determine professional and job competency; candidate and employee talent management relating to recruitment, promotions and human resource services; business advisory services and business administration in connection with recruitment and human resource services;

consultancy services relating to human performance enhancement assessment, personnel selection and assessment tools and processes.

Class 38

Providing access to a global computer network for the transfer and dissemination of information relating to recruitment, human resource and training services; providing access to an online examination portal for administrators to create and configure examinations and for candidates to take part in the examinations; provision of online communication systems and forums relating to recruitment, human resource and training services.

Class 41

Provision of training and facilities for employment skills training; educational and skills assessment services; provision of computer-delivered and online educational testing and assessments; provision of educational examination and skills testing services; consultancy services relating to training systems, training analysis and human factors training; electronic publications relating to recruitment and personnel management services (non-downloadable).

Class 42

Design, development, custom design, installation and maintenance of software programs for recruitment and personnel management services relating to examination and assessment of candidates and training and assessment of employees.

Class 44

Medical health assessment; personality assessment services (mental health services); psychological assessment and examination services; assessment of physical and cognitive abilities, personality, skills and behaviour.

28. With regard to the similarity of the goods and services, both parties have provided comments in their submissions.⁹ Whilst I do not intend to discuss these here, I can confirm that I have given them due consideration in making the following comparisons.

⁹ Submissions in lieu of a hearing, filed on 14 April 2026.

Class 9 of the contested application

Downloadable electronic publications in the field of organisational development, leadership, engagement, workplace culture, and behavioural change

29. It is noted that the opponent's specification also contains *downloadable electronic publications*; however, those publications relate to recruitment and personnel management services. The parties' goods are therefore not identical because the respective limitations in the specifications confine the publications to different, albeit related, subject matters. Nevertheless, both parties' goods are downloadable electronic publications. Further, there may be an overlap in purpose, users and trade channels, for example where such publications are directed at HR, workplace development, employee engagement or organisational consultancy matters. I therefore find the goods similar to between a medium and high degree.

Downloadable videos, podcasts and digital training materials in the field of organisational development, leadership, engagement, workplace culture, and behavioural change

30. The above contested goods differ in nature from the opponent's *downloadable electronic publications relating to recruitment and personnel management services*, insofar as the former concern audio, visual and training-based content, whereas the latter are electronic publications. However, I am of the view that there remains some overlap in purpose, users and trade channels, particularly where the goods may be directed at HR, workplace training, employee engagement or organisational development matters. To that extent, the goods may be aimed at some of the same professional users and may be offered through similar online educational or workplace-development channels. However, bearing in mind the differences in format and the respective subject-matter limitations, I find the goods to be similar to a low degree.

Downloadable software applications for facilitating workplace behaviour change and organisational transformation

31. I note that the opponent's specification also contains *software programs*; however, these relate to recruitment and personnel management services concerning the examination and assessment of candidates, and the training and assessment of employees. Due to the respective limitations in the specifications, the software goods at issue are therefore confined to different areas. However, both sets of goods concern software applications/programs, and there may be an overlap in purpose, users and trade channels in a workplace, HR or organisational development context. Accordingly, whilst these goods are not identical, I find them similar to a medium degree.

Data collection and analysis tools for measuring behavioural insights in organisational settings

32. The above contested goods are, broadly speaking, software tools designed to collect and analyse data in order to measure behavioural insights in organisational settings. Whilst these goods are not replicated in the opponent's specification, I consider that they share a degree of similarity with the opponent's *software programs for recruitment and personnel management services relating to examination and assessment of candidates, training and assessment of employees*. Both sets of goods are software-based tools and may be used in a workplace or HR context to gather, evaluate or interpret information relating to individuals, employees or organisational behaviour. There may therefore be an overlap in users, trade channels and providers. However, the respective goods are subject to different limitations and are directed at different, albeit related, purposes: the applicant's goods concern behavioural insights in organisational settings, whereas the opponent's goods concern recruitment, personnel management, candidate examination and employee training/assessment. Taking those differences into account, I find the goods to be similar to between a low and medium degree.

33. For the avoidance of doubt, I do not consider that the limitation in the opponent's class 9 specification, namely *none of the aforesaid relating to digital product*

development, affects my comparison of the parties' goods. The applicant's class 9 goods are not expressed as relating to digital product development, and my comparisons above are based on the respective terms as specified.

Class 16 of the contested application

Printed training materials, workbooks, guides, and manuals in the field of organisational culture, leadership development, employee engagement, and behavioural change across workplace settings

34. With regard to the above contested goods, I note that the opponent's specification contains *teaching materials, training manuals and training guides for recruitment and personnel management relating to examination and assessment of candidates, training and assessment of employees*. The parties' goods are not identical because the respective limitations in the specifications confine the goods to different, albeit related, subject matters. However, both parties' goods are printed training/teaching materials, manuals and guides. There may also be an overlap in purpose, users and trade channels, for example where such materials are directed at HR, workplace development, employee engagement, training or organisational consultancy matters. Bearing in mind the close overlap in nature, together with the potential overlap in users, purpose and trade channels, I find the goods to be similar to a high degree.

Class 35 of the contested application

Business consultancy and advisory services relating to employee engagement; all excluding employment, recruitment, or personnel placement services

35. I am of the view that the above contested services share a degree of similarity with the opponent's *business advisory services [...] in connection with [...] human resource services*. However, before making that comparison, it is necessary for me to take into account the effect of the limitation, *all excluding employment, recruitment, or personnel placement services*, which applies to the above contested services. I interpret the reference to 'employment' in the context of the accompanying exclusions for recruitment and personnel placement services. Accordingly, in my view, it excludes

services concerned with securing, providing or placing persons in employment, rather than consultancy relating more broadly to employees within an existing workforce. A broader interpretation would also be difficult to reconcile with the express inclusion of services relating to employee engagement.

36. Both parties' services involve the provision of business advice. Further, employee engagement is a matter which may fall within the remit of human resource professionals. Consequently, the respective services may overlap in nature and purpose, insofar as they may both involve advising businesses on matters concerning their employees and workforce. There may also be an overlap in users, providers and trade channels. However, the applicant's services are specifically concerned with employee engagement, whereas the opponent's services, viewed in the context of its specification, have a greater focus upon recruitment, personnel assessment and related human resource functions. Further, I find that the services are neither in competition nor complementary. Taking these factors into account, I find the services to be similar to between a low and medium degree.

Business consultancy and advisory services relating to organisational culture, and behaviour change; strategic business transformation services; business analysis and organisational diagnostics related to behavioural change; conducting workplace audits and assessments to inform behavioural strategy; all excluding employment, recruitment, or personnel placement services

37. I consider that the above contested services share a degree of similarity with the opponent's *business advisory services [...] in connection with [...] human resource services and consultancy services relating to human performance enhancement assessment*. However, the applicant's services are concerned with organisational culture, behavioural change, strategic business transformation and the analysis or assessment of organisations and workplaces in order to inform behavioural strategy. Whilst these matters may have some relevance to the workforce of a business, their focus is upon the organisation and its culture or strategy more broadly. By contrast, the opponent's services are directed principally towards human resources, recruitment, personnel selection and the assessment or development of individuals.

38. Nevertheless, I find there to be a degree of overlap between the respective services, insofar as they may involve the provision of consultancy, advice or assessment to businesses. The services may also share users, providers and trade channels, since consultancies operating in the fields of organisational development and human resources may offer services across both areas. However, I find that their specific purpose and subject matter differ on the basis that the applicant's services seek to analyse or bring about change at an organisational or workplace level, whereas the opponent's services focus more particularly upon recruitment, personnel and human performance assessment. Accordingly, the services are neither in competition nor complementary. Taking all of the above into account, I find the services to be similar to a low degree.

Class 41 of the contested application

Providing training, workshops, coaching and educational programs in the field of organisational development, workplace culture, and behavioural transformation for professionals and businesses; development and delivery of customised learning experiences aimed at improving leadership and internal business culture; all the aforesaid services not relating to academic education, job recruitment or personnel placement.

39. Although the applicant's services are limited so as not to relate to *academic education, job recruitment or personnel placement*, I do not consider that limitation to exclude any overlap with the opponent's various training services. The opponent's *provision of training and facilities for employment skills training* is not confined to recruitment or personnel placement and may include training directed at improving skills in an employment or workplace context. The applicant's services, being training, workshops, coaching and educational programmes in the field of organisational development, workplace culture and behavioural transformation for professionals and businesses, may also be directed at workplace learning and professional development.

40. Therefore, I find that the services may overlap in nature, users, broad purpose and trade channels, particularly where they are provided to businesses or professionals

seeking to improve workplace performance, skills or organisational effectiveness. However, I acknowledge that the specific subject matter and focus of the services may differ. I therefore find the services to be similar to a medium degree.

The average consumer and the nature of the purchasing act

41. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question (see *Lloyd Schuhfabrik Meyer*, Case C-342/97).

42. In *Iconix* (cited above), the Supreme Court approved the comments of Arnold LJ in *Lidl Great Britain Ltd & Anor v Tesco Stores Ltd & Anor (Rev1)* [2024] EWCA Civ 262, where he pointed out that:

- (a) Consumers who are ill-informed or careless, or consumers with specialised knowledge or who are excessively careful are excluded from consideration;
- (b) The average consumer provides a standard which enables the courts to strike a balance between the competing interests involved, such as trade mark owners, their competitors and consumers;
- (c) The average consumer is neither a single hypothetical person nor a mathematical average; assessment from the perspective of the average consumer does not involve a statistical test. There is no single meaning rule and if, having regard to the perceptions and expectations of the average consumer, the court considers that a significant proportion of the relevant public is likely to be confused, a finding of infringement may properly be made;
- (d) Assessment from the perspective of the average consumer is intended to facilitate adjudication of trade mark disputes by providing an objective criterion, by promoting consistency of assessment and by enabling courts and

tribunals to determine such issues so far as possible without the need for evidence;

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

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

43. With regard to the average consumer, the opponent submits that:¹⁰

"[...] the average consumer is in a professional or business setting who will pay an average degree of attention during the purchasing process of the parties' goods and services. Neither of the parties' goods or services - as they are listed in the Contested Application and Earlier Registration - are said to target a niche or specialist audience. Thus, a normal degree of attention is to be expected when the consumer views the marks and engages with the parties' trade marks."

44. The applicant disagrees with the opponent's assessment of the average consumer and submits:¹¹

"The Opponent submits that the relevant consumer exercises only an average degree of attention. This is incorrect.

The services in question involve: Significant financial investment; Strategic organisational impact; Careful evaluation and procurement processes. The relevant consumers are: Senior business leaders (typically C-Suite); Senior HR professionals (typically CHRO). Such consumers will exercise a high to very high degree of attention, which reduces any likelihood of confusion.

¹⁰ Written submissions in lieu, filed on 14 April 2026.

¹¹ Written submissions in lieu, dated 14 April 2026.

Such services are typically procured following structured evaluation processes, often involving multiple stakeholders and significant financial commitment.”

45. The average consumer for the goods and services at issue will include professional and business users, as well as members of the general public seeking goods or services in a workplace, training or organisational development context. Given the range of goods and services, the cost and frequency of the purchases is likely to vary. When selecting the goods, the average consumer is likely to consider factors such as suitability, subject matter, functionality, compatibility with existing systems and particular features. When selecting the services, the average consumer is likely to consider factors such as the expertise and reputation of the service provider, price, delivery method, content and suitability for their business or professional needs. Consequently, I consider that at least a medium degree of attention will be paid during the purchasing process, although not the highest.

46. The goods and services are likely to be purchased following perusal of websites, online platforms, advertisements, brochures, proposals and other promotional materials. Consequently, visual considerations will dominate the selection process. However, I do not discount that aural considerations will also play a part, for example where advice is sought from business or training consultants, or where recommendations are made by word-of-mouth.

Comparison of the marks

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

“34. [...] it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of

their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

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

49. The trade marks to be compared are as follows:

The opponent's mark	The applicant's mark
ADAPT	ADAPT Culture

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

Overall impression

51. The opponent's mark comprises the word 'ADAPT'. The overall impression of the mark resides in this single word.

52. The applicant's mark comprises the words 'ADAPT Culture'. I am of the view that the words hang together as a unitary phrase, with the word 'ADAPT' qualifying the word 'Culture'. Accordingly, the overall impression of the mark resides in the combination of those two words.

Visual comparison

53. Visually, the marks coincide in the presence of the word 'ADAPT'. They differ in the presence of the additional word 'Culture' in the application. Overall, I find the marks to be visually similar to a medium degree.

Aural comparison

54. Aurally, as the word 'ADAPT' in the respective marks is an English dictionary word, it will likely be pronounced in the ordinary way ('a-dapt'), therefore, this element in the marks will be pronounced identically. The additional English dictionary word 'Culture' (pronounced 'cul-ture') in the application will act as a point of aural difference. Overall, I find the competing marks to be aurally similar to a medium degree.

Conceptual comparison

55. For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer. This is highlighted in numerous judgments of the GC and the CJEU including *Ruiz Picasso v OHIM* [2006] E.C.R.-I-643; [2006] E.T.M.R 29. The assessment must, therefore, be made from the point of view of the average consumer.

56. With regard to the conceptual comparison between the marks, the opponent submits:¹²

“Conceptually, the shared word "ADAPT" may be seen to indicate that both trade marks are used to alter, change or adjust something to make it suitable for certain conditions. In such an event, the parties' marks will be identical from a conceptual comparison. On the other hand, the relevant consumers may view the marks as having no inherent meaning or relevance in relation to the goods and services, leading the conceptual assessment of the trade marks to be neutral.”

¹² Written submissions in lieu, filed on 14 April 2026.

57. The applicant disagrees with the opponent's assessment of the conceptual comparison and submits:¹³

“Conceptually, the difference is clear: "ADAPT" conveys a general idea of change; "ADAPT Culture" conveys a specific and defined concept relating to organisational culture. Any similarity arises solely from a weak shared element and is therefore limited.”

58. Conceptually, the word ‘ADAPT’ in the opponent’s mark will likely be attributed its ordinary dictionary meaning, i.e. inter alia, to change or adjust something.

59. The application combines the ordinary dictionary words ‘ADAPT’ and ‘Culture’. The word ‘Culture’ will likely be understood as referring, inter alia, to the shared beliefs, values, customs, behaviours or way of life of a particular group of people, including in a workplace or organisational context. In the applicant’s mark, the word ‘ADAPT’ qualifies the word ‘Culture’, so that the mark as a whole is likely to convey the concept of adapting or changing culture. Accordingly, whilst the application conveys a more specific concept than the earlier mark by identifying the subject of the adaptation as ‘culture’, both marks share the concept of adaptation/change.

60. Overall, I consider the marks to be conceptually similar to a medium degree.

Distinctive character of the opponent’s mark

61. The distinctive character of a trade mark can be measured only, first, by reference to the goods or services in respect of which registration is sought and, second, by reference to the way it is perceived by the relevant public. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, the CJEU stated that:

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an

¹³ Written submissions in lieu, dated 14 April 2026.

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)."

62. 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.

63. The distinctive character of a mark can be enhanced by virtue of the use that has been made of it. However, in its submissions,¹⁴ the opponent states:

"For the purposes of this Opposition, the Opponent does not wish to further its claim of enhanced distinctive character."

64. Consequently, I have only the inherent position to consider.

¹⁴ Witten submissions in lieu of a hearing, filed on 14 April 2026.

65. With regard to the inherent distinctive character of its mark, the opponent submits:¹⁵

“[...] the Earlier Mark is formed of the word "ADAPT" which can be understood as a reference to altering, changing or adjusting something. In any event, when viewed in relation to the goods and services in question, the Earlier Mark has no clear, obvious or inherent meaning, thus meaning that the Earlier Mark has a normal degree of distinctive character.”

66. Conversely, the applicant submits:¹⁶

“The Opponent asserts that the earlier mark "ADAPT" possesses a normal degree of inherent distinctiveness. This is incorrect.

"ADAPT" is an ordinary English word meaning to adjust, modify or change. In the context of organisational development, behavioural change, training and consultancy it is directly allusive to the intended purpose and outcome of such services. Accordingly, the earlier mark is inherently weak and, at best, of low to average distinctive character.

The word "ADAPT" is commonly used across industries to denote change, flexibility and transformation. Consumers are therefore accustomed to encountering it from multiple undertakings without assuming a common trade origin.

[...]

It is well established that marks of limited distinctiveness enjoy a narrow scope of protection, and relatively small differences are sufficient to avoid a likelihood of confusion.

¹⁵ Witten submissions in lieu of a hearing, filed on 14 April 2026.

¹⁶ Witten submissions in lieu of a hearing, dated 14 April 2026.

Given its ordinary meaning, "ADAPT" is a term that is inherently likely to be used by multiple traders in relation to change-oriented services. This reduces its capacity to function as a unique badge of origin."

67. I bear in mind that, whilst not directly descriptive, the English dictionary word 'ADAPT' may be perceived as allusive in relation to the goods and services at issue, insofar as it may suggest that they assist with, relate to, or bring about change, adjustment or adaptation. Accordingly, I find the earlier mark to be inherently distinctive to between a low and medium degree.

Likelihood of confusion

68. 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 scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the marks may be offset by a greater degree of similarity between the goods and 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 goods and 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.

69. Earlier in the decision I found that:

- The goods and services vary from being similar to a high degree to similar to a low degree.
- The average consumer for the goods and services at issue is a member of the general public or a professional or business user, who will pay at least a

medium degree of attention during the purchasing process, although, in my view, not the highest degree.

- The purchasing process for the goods and services is predominantly visual, although I do not discount an aural component.
- The marks are visually, aurally and conceptually similar to a medium degree.
- The earlier mark is inherently distinctive to between a low and medium degree. On this point, it is acknowledged that a weaker degree of distinctive character in an earlier mark does not preclude a finding of confusion.¹⁷

70. I acknowledge that the word 'ADAPT' is identically present in the competing marks. I also bear in mind that the word 'Culture' in the contested mark is not replicated in the earlier mark. Further, the additional word materially lengthens the contested mark when compared with the earlier mark. Given that the purchasing process is predominantly visual, I do not consider that this difference will be overlooked or disregarded by consumers. Accordingly, I am satisfied that consumers paying at least a medium degree of attention, albeit not the highest degree, are unlikely to mistake one mark for the other, or to misremember them as each other. Therefore, even factoring in imperfect recollection and interdependency, I do not consider there to be a likelihood of direct confusion.

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

72. I acknowledge that a finding of indirect confusion should not be made merely because the marks share a common element. Furthermore, it is not sufficient that a mark merely calls to mind another mark.¹⁸ This is mere association, not indirect confusion.

¹⁷ *L'Oréal SA v OHIM*, Case C-235/05 P.

¹⁸ *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17.

73. Indirect confusion was described in the following terms by Iain Purvis QC (as he then was), sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc.*¹⁹

“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).”

¹⁹ BL O/375/10.

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

75. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ referred to the comments of James Mellor QC (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at [16] that “a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion”. Arnold LJ agreed, pointing out that there must be a “proper basis” for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion. He added that, “trade mark law was about consumers’ unwitting assumptions, not what they could find out if they thought to check”.

76. Given the similarity between the marks and the varying degrees of similarity between the goods and services, I find that there is a likelihood that consumers will perceive a commercial connection between them. Whilst consumers will recognise the differences between the competing marks, the common use of the word ‘ADAPT’, considered in the context of the marks as wholes, is likely to be viewed as indicating such a connection. In particular, I consider that the addition of the word ‘Culture’ in the contested mark is likely to be perceived as identifying a particular area or focus of the opponent’s ‘ADAPT’ offering, rather than indicating an unrelated undertaking. Accordingly, I find that consumers will view the contested mark as a sub-brand or brand extension of the earlier mark, resulting in a likelihood of indirect confusion. I reach this conclusion notwithstanding that some of the goods and services are similar only to a low, or low to medium, degree, and bearing in mind the earlier mark’s low to medium level of inherent distinctive character. In reaching this conclusion, I note that a degree of caution is required before finding a likelihood of confusion on the basis of common elements which are either descriptive or are low in distinctive character.²⁰ Nevertheless, taking all of the above factors into account, I find that there is a likelihood of indirect confusion.

²⁰ *Nicoventures Holdings Limited v The London Vape Company Ltd* [2017] EWHC 3393 (Ch) and *Whyte and Mackay Ltd v Origin. Wine UK Ltd and Another* [2015] EWHC 1271 (Ch).

CONCLUSION

77. The opposition has succeeded under section 5(2)(b). Subject to any successful appeal, the application will be refused in full.

COSTS

78. The opponent has succeeded and is entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 1/2023. In the circumstances, I award the opponent the sum of £650 as a contribution towards the costs of the proceedings. The sum is calculated as follows:

Official fee	£100
Preparing a notice of opposition and considering the applicant's counterstatement	£250
Preparing written submissions in lieu of a hearing	£300
Total:	£650

79. I therefore order Talent Box Consulting Ltd to pay Symbiotics Limited the sum of £650. This sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 29th day of September 2026

Sam Congreve
For the Registrar