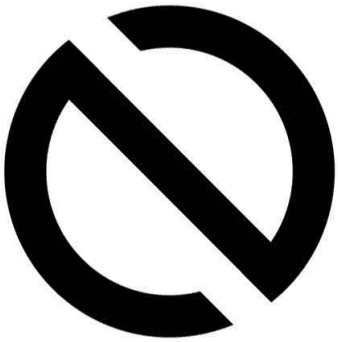
**O/0913/25**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF UK TRADE MARK APPLICATION NUMBER 4051990**

**BY NO LZ LTD**

**FOR THE FOLLOWING TRADE MARK:**



**IN CLASSES 25 AND 35**

**AND**

**IN THE OPPOSITION THERETO UNDER NUMBER 449429**

**BY RAUTUREAU APPLE SHOES, SOCIÉTÉ PAR ACTIONS SIMPLIFIÉE**

## BACKGROUND & PLEADINGS

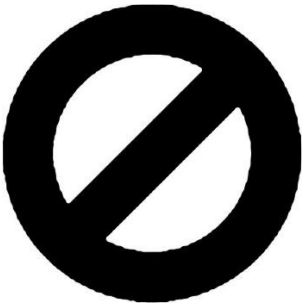
1. On 15 May 2024, no lz ltd ("the applicant") applied to register the trade mark shown on the cover page of this decision in the UK ("the contested mark"). The contested mark was published for opposition purposes in the Trade Marks Journal on 31 May 2024 in respect of the following goods and services:

   **Class 25:** Clothing.

   **Class 35:** Retail services connected with the sale of clothing and clothing accessories.

2. On 2 September 2024, the contested mark was opposed by RAUTUREAU APPLE SHOES, société par actions simplifiée ("the opponent"). The opposition is brought under Section 5(2)(b) of the Trade Marks Act 1994 ("the Act").

3. The opponent relies upon the following International Registration no. WO0000001596299, and on the following goods:



("the earlier mark")

**Class 18:** Articles of leather and imitation leather, namely, bags, handbags, wallets, purses, clutch bags, satchels, beggar's bags; trunks and suitcases; umbrellas.

**Class 25:** Footwear.

4. The earlier mark was registered on 12 April 2021 and, with effect from the same date, the opponent designated the UK as a territory in which it sought to protect its mark under the terms of the Protocol to the Madrid Agreement. Protection was granted on 30 December 2021, and the earlier mark claims a priority date of 2 December 2020 (based on a European Union Intellectual Property Office ("EUIPO") mark).

5. An earlier trade mark is defined in section 6 of the Act, the relevant parts of which state:

"(6)(1) In this Act an "earlier trade mark" means –

a registered trade mark or international trade mark (UK) which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks."

6. The mark identified in paragraph 3 qualifies as an earlier trade mark under the above provisions. As the earlier mark had not completed its registration process more than five years before the relevant date, it is not subject to proof of use requirements. Consequently, the opponent may rely on all of the services highlighted in paragraph 3 for the purposes of this opposition.

7. The opponent submits that the contested mark is similar to the earlier mark and is to be registered for goods and services highly similar to the goods within the earlier mark's specification, such that there exists a likelihood of confusion on the part of the public, which includes a likelihood of association with the earlier mark.

8. The applicant filed a counterstatement denying the claims made by the opponent. Specifically, the applicant submits that the contested mark is sufficiently distinct from the earlier mark visually and conceptually, and that whilst the goods and services in issue overlap in certain classes, they "are sufficiently different in nature, scope, and trade channels, thereby negating any likelihood of

confusion" between them. The applicant therefore requests that the opposition be dismissed in its entirety, and that an award of costs be made in its favour.

9. The opponent is represented by Wilson Gunn, whereas the applicant is self-represented. No hearing was requested, only the opponent filed written submissions in lieu of a hearing, and no evidence was filed by either party. This decision is taken following a careful consideration of the papers that have been filed by the parties, which will not be summarised but will be referred to as and where appropriate during this decision.

10. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

**DECISION**

Section 5(2)(b)

11. The opponent's opposition is based upon section 5(2)(b) of the Act which stipulates the following:

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

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark".

12. Section 5A of the Act stipulates that 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."

13. The following principles are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*,[1] *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc* ("Canon"),[2] *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.*,[3] *Marca Mode CV v Adidas AG & Adidas Benelux BV*,[4] *Matratzen Concord GmbH v Office for Harmonization in the Internal Market (Trade Marks and Designs) ("OHIM")*,[5] *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*,[6] *Shaker di L. Laudato & C. Sas v OHIM*[7] and *Bimbo SA v OHIM*[8]:

    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 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

[1] Case C-251/95
[2] Case C-39/97
[3] Case C-342/97
[4] Case C425/98
[5] Case C-3/03
[6] Case C-120/04
[7] Case C-334/05P
[8] Case C-591/12P

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;

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

**Comparison of Goods and Services**

14. The competing goods and services are as follows:

| **The opponent's goods** | **The applicant's goods and services** |
|---|---|

| | |
|---|---|
| **Class 18**<br>Articles of leather and imitation leather, namely, bags, handbags, wallets, purses, clutch bags, satchels, beggar's bags; trunks and suitcases; umbrellas. | **Class 25**<br>Clothing. |
| **Class 25**<br>Footwear. | **Class 35**<br>Retail services connected with the sale of clothing and clothing accessories. |

15. The opponent submits that all of the relevant goods and services of the application are at least similar to the relevant goods of the earlier mark as the goods and services of the contested mark all relate to clothing and retail services which relate to clothing and clothing accessories, which means that they will be targeted at the same consumers and through the same channels of trade.

16. The applicant submits that any overlap between the respective goods and services is minimal and unlikely to lead to consumer confusion as the applicant's "focus on clothing and related retail services contrasts with the Opponent's focus on leather goods and footwear." The applicant also submits that the parties have "vastly different product categories in practice" (i.e. it submits that the applicant focuses on providing streetwear, which has no cross over with the opponent's goods), and "the goods and services under the respective marks are marketed and distributed through distinct and different channels". The applicant submits that its goods and services are marketed to "primarily UK customers through word of mouth and trade through their own tailor-made web service", whereas the opponent's goods have a "primarily French target market".

17. As a preliminary point, I must compare the goods and services in the parties' specifications on the basis of the 'notional' coverage of the goods and services listed in the specifications, not those currently provided. Any differences between the actual goods and services offered by the parties or the parties' marketing/trading styles will, as a matter of law, have no bearing on the outcome of this opposition, unless those perceived differences are apparent from the

specifications. This is because a trade mark registration is essentially a claim to a piece of legal property (the trade mark). Every registered mark is entitled to legal protection against the use, or registration, of the same or similar trade marks for the same or similar goods/services if there is a likelihood of confusion, and the scope of protection afforded to that mark will be identified in its specifications. As outlined above, once a trade mark has been registered for five years, section 6A of the Act is engaged and the opponent can be required to provide evidence of use of its mark within the United Kingdom. Until that point, however, the earlier mark is entitled to protection in the United Kingdom in respect of the full range of goods and services for which it is registered.

18. It should be noted that section 60A of the Act provides that goods and services are not to be regarded as being similar to each other on the ground that they appear in the same class under the Nice Classification[9], or dissimilar on the ground that they appear in different classes under the Nice Classification."

19. In *Canon*,[10] the Court of Justice of the European Union ("CJEU") stated (at paragraph 23) that, when making the comparison, "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. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case[11], for assessing similarity were:

    a. The uses of the respective goods or services;

    b. The users of the respective goods or services;

[9] "Nice Classification" means the system of classification under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957.
[10] Case C-39/97
[11] [1996] R.P.C. 281

c. The physical nature of the goods or services;

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 in the same or different sectors.

21. As per the case of *Separode,*[12] I also bear in mind that it is permissible to group the goods and services together, for the purpose of comparison, where they are sufficiently comparable to be assessable in essentially the same way for the same reasons

Clothing

22. The opponent submits that the applicant's "clothing" is similar to a medium degree to the opponent's "footwear" and "Articles of leather and imitation leather, namely bags, handbags, wallets, purses, clutch bags, satchels". In relation to its position on the similarity between clothing and footwear, the opponent references *Hagit Maxliah v Closet Clothing Co. Ltd*[13] in which it was determined that footwear is similar to a medium degree to women's clothing on the basis that these goods overlap in purpose, share channels of trade, are used by the same consumers, and "are often selected as part of an overall aesthetic and are likely to be considered to be produced by the same undertakings", making them complementary. Whilst this determination was made in relation to women's

[12] BL O/399/10, Mr Geoffrey Hobbs QC, sitting as the Appointed Person
[13] Case O/0353/25

clothing specifically in this case, I am of the view that it will apply to clothing generally as clothing and footwear will be purchased by the general public, from clothing retailers, for the purpose of being worn. Consequently, I do agree with this determination and find that the applicant's clothing is similar to a medium degree to the opponent's footwear.

Retail services connected with the sale of clothing and clothing accessories

23. The opponent submits that the above referenced goods are similar to a low to medium degree to the opponent's "footwear" and similar to at least a low degree to the opponent's "Articles of leather and imitation leather, namely, bags, handbags, wallets, purses, clutch bags, satchels, beggar's bags, truck and suitcases".

24. In *Oakley, Inc v OHIM*, Case T-116/06, at paragraphs 46-57, the GC held that although retail services are different in nature, purpose and method of use to goods, retail services for particular goods may be complementary to those goods, and distributed through the same trade channels, and therefore similar to a degree.

25. In *Tony Van Gulck v Wasabi Frog Ltd*, Case BL O/391/14, Mr Geoffrey Hobbs Q.C. as the Appointed Person reviewed the law concerning retail services v goods. He said that:

> "9. The position with regard to the question of conflict between use of BOO! for handbags in Class 18 and shoes for women in Class 25 and use of MissBoo for the Listed Services is considerably more complex. There are four main reasons for that: (i) selling and offering to sell goods does not, in itself, amount to providing retail services in Class 35; (ii) an application for registration of a trade mark for retail services in Class 35 can validly describe the retail services for which protection is requested in general terms; (iii) for the purpose of determining whether such an application is objectionable under Section 5(2)(b), it is necessary to ascertain whether there is a likelihood of confusion with the opponent's earlier trade mark in all the circumstances in

which the trade mark applied for might be used if it were to be registered; (iv) the criteria for determining whether, when and to what degree services are 'similar' to goods are not clear cut."

26. However, on the basis of the European courts' judgments in *Sanco SA v OHIM*, Case C-411/13P and *Assembled Investments (Proprietary) Ltd v. OHIM*, Case T105/05, at paragraphs [30] to [35] of the judgment, upheld on appeal in *Waterford Wedgewood Plc v. Assembled Investments (Proprietary) Ltd* Case C-398/07P, Mr Hobbs concluded that:

    i) Goods and services are not similar on the basis that they are complementary if the complementarity between them is insufficiently pronounced that, from the consumer's point of view, they are unlikely to be offered by one and the same undertaking;

    ii) In making a comparison involving a mark registered for goods and a mark proposed to be registered for retail services (or vice versa), it is necessary to envisage the retail services normally associated with the opponent's goods and then to compare the opponent's goods with the retail services covered by the applicant's trade mark;

    iii) It is not permissible to treat a mark registered for 'retail services for goods X' as though the mark was registered for goods X;

    iv) The General Court's findings in Oakley did not mean that goods could only be regarded as similar to retail services where the retail services related to exactly the same goods as those for which the other party's trade mark was registered (or proposed to be registered)

27. In this case, I compare the applicant's class 35 "Retail services connected with the sale of clothing and clothing accessories" and the opponent's class 25 "footwear" and class 18 "Articles of leather and imitation leather, namely, bags, handbags, wallets purses, clutch bags, satchels…". I consider that all of the opponent's goods will be sold through the applicant's trade channels, to the same

users (i.e., members of the general public), who may perceive the goods and services as emanating from the same undertaking. I also consider that some of the opponent's class 18 goods would be important/indispensable to the applicant's services on the basis that they would be considered clothing accessories (i.e., the opponent's handbags, clutch bags, satchels and beggar's bags), and those goods are therefore also complementary to the applicant's class 35 services. Consequently, I consider these goods to be similar to a medium degree to the applicant's services. However, in respect of the other class 18 and 25 goods in the opponent's specification, I consider these to be similar to between a low and medium degree to the applicant's services.

**Average consumer and the purchasing act**

28. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties' goods and services. I must then determine the manner in which the goods and services are likely to be selected by the average consumer. 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 and services in question (see *Lloyd Schuhfabrik Meyer*[14]).

29. 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,*[15] Birss J. held:

> "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.

[14] Case C-342/97
[15] [2014] EWHC 439 (Ch)

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

30. The average consumer for the parties’ goods and services will be a member of the general public.

31. The cost of the goods and services in issue is likely to vary considerably, and the goods/services will be purchased/utilised relatively frequently. However, various factors are still likely to be taken into consideration during the purchasing process, such as materials used, available sizes, cut, aesthetic appearance and durability for the goods, and when selecting the services, the average consumer is likely to consider things such as stock, price of goods offered in comparison to other retailers, expertise/knowledge of staff and delivery time. Consequently, I consider that a medium degree of attention will be paid by the average consumer when selecting both the goods and the services.

32. The goods are likely to be obtained by self-selection from the shelves of a retail outlet, or an online or catalogue equivalent. As for the retail services at issue, I consider that these are most likely to be selected having considered, for example, promotional material (in hard copy and online), signage appearing on the high street (for physical retailers only) or web content from retailers’ websites. Visual considerations are, therefore, likely to dominate the selection process for the goods and services. However, I do not discount that there will also be an aural component, as a result of word-of-mouth recommendations, or advice being sought from a sales assistant or representative.

**Comparison of marks**

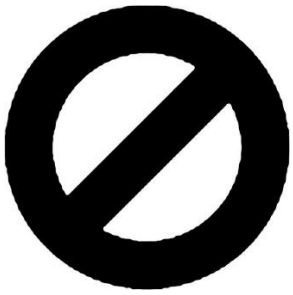
33. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference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

dominant components. The CJEU stated at paragraph 34 of its judgment in *Bimbo SA v OHIM*,[16] that:

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

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

35. The respective trade marks are shown below:

| Earlier mark | Contested Mark |
|---|---|
|  |  |

36. The opponent submits that the marks in issue are visually similar to a high degree and, if the earlier mark has any conceptual meaning, the marks are conceptually identical or, at the very least, highly similar conceptually.

37. By contrast the applicant submits that the marks in issue are dissimilar. Specifically, the applicant submits that the marks differ in directionality, stroke

[16] Case C-591/12P

thickness, and in the addition of two breaks in the circle device in the contested mark, which are not present in the earlier mark.

**Overall Impression**

38. Both the contested mark and the earlier mark are figurative marks, consisting of one device. The earlier mark consists of a circular device with a diagonal line crossing through it from the bottom left to the top right. The contested mark consists of what appears to be a broken circular device, with breaks in the top left and the bottom right of the circular device, and with a diagonal line crossing from the top left to the bottom right of the circular device.

39. There are no other elements to either mark, so the overall impression of both marks lies in their respective devices.

Visual Comparison

40. Visually, the marks are similar in that the devices both consist of circular devices with a diagonal line running from the one side to the other, albeit the contested mark has two breaks in the circular device which are not present in the earlier mark, and the diagonal lines in the centre of the marks run form opposing sides. I also agree with the applicant that there is some difference in the line thickness between the marks, albeit I do consider that this difference may be easily overlooked. Balancing the similarities against the differences, I find that there is a high degree of visual similarity between the competing marks.

Aural Comparison

41. There are no verbal elements in the competing marks and, to my mind, consumers will make no attempt to articulate the respective devices. As such, the aural position is neutral.

Conceptual Comparison

42. 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*.[17] The assessment must, therefore, be made from the point of view of the average consumer.

43. In this instance, neither party has identified a conceptual meaning to either of the marks. However, I do consider the earlier mark to be reminiscent of the generally recognised prohibition sign (i.e., the "no", "stop" or "do not" symbol), and, for some consumers, this may be the conceptual meaning the average consumer would attribute to the earlier mark. Whilst the contested mark does have two breaks in its circular device, I am of the view that the average consumer may also identify the contested mark as being reminiscent of the generally recognised prohibition sign, and that this would be the conceptual meaning the average consumer would attribute to the contested mark. Consequently, I do consider the marks to be conceptually identical. Alternatively, there is likely to be a significant proportion of average consumers who do not take a meaning from either sign and for whom the conceptual position is neutral.

**Distinctive character of the earlier trade mark**

44. In *Lloyd Schuhfabrik Meyer* 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-0000, paragraph 49)

[17] [2006] ECR I-643; [2006] E.T.M.R

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)."

45. Whilst the distinctiveness of a mark may be enhanced as a result of it having been used in the market, in this instance the opponent has filed no evidence of use. Consequently, I have only the inherent position to consider.

46. Distinctiveness is a scale along which marks of various types sit. A mark which is allusive of the goods/services will have less distinctive character than one that is not; dictionary words will also be less distinctive than words which are entirely fanciful. However, all will turn on the particular facts. For example, there are "invented" words which are really just composites of two allusive words and only distinctive as a result, and dictionary words which are more or less common than others.

47. In this instance, as outlined above, I consider that the average consumer would understand the earlier mark to be either reminiscent of the generally recognised prohibition sign or just a figurative device. I do not consider this to be descriptive or allusive of the opponent's goods. I therefore consider it to have between a low and medium level of distinctive character.

**Likelihood Of Confusion**

48. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, whilst 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/services down to the responsible undertakings being the same or related.

49. 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 (see *Sabel*[18]). The first is the interdependency principle i.e., a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa (see *Canon*[19]). It is necessary for me to keep in mind the distinctive character of the earlier mark, the average consumer for the goods/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.

50. In this instance, I have found the opponent's goods to be similar to between a low and medium degree to the applicant's goods and services. I have also found that the marks are highly visually similar. I have found the aural position to be neutral and have found the marks to be either conceptually identical or neutral, depending upon the perception of the average consumer. The earlier mark has between a low and medium level of distinctive character.

51. I have also identified that the average consumer of the goods and services would be members of the general public, who will pay a medium level of attention during the purchasing process for the goods and services in issue, and I have determined that the purchasing process for all of the goods/services in issue would be primarily visual in nature, although I do not discount aural considerations.

[18] C-251/95, para 22
[19] C-39/97, para 17

52. Considering all of the above, I am satisfied that the similarities between the marks may result in the average consumer mistaking one mark for the other. I bear in mind that in addition to the visual similarities, for a significant proportion of average consumers there will be no conceptual hook to distinguish between the marks, and for another significant proportion of average consumers, the identical conceptual message will be conveyed by both. In either case, this increases the likelihood that the marks will be mistakenly recalled or misremembered for each other. Whilst I have only found the goods and services in issue to be similar to between a low and medium degree, I consider that this will be offset by the degree of similarity between the marks.

53. Further, given my determination that the average consumer will only be paying a medium level of attention during the purchasing process, I am of the view that the few presentational differences between the marks that I have identified above will be misremembered, especially in light of the principle of imperfect recollection and the fact that consumers rarely have the opportunity to compare marks side by side.

54. Whilst I appreciate that the earlier mark only has between a low and medium degree of distinctive character, I remind myself that a weaker degree of distinctive character does not preclude a finding of confusion.[20] Consequently, I consider that there exists a likelihood of direct confusion between the marks.

**CONCLUSION**

55. The opposition succeeds in full, and the contested mark is hereby, subject to any successful appeal of my decision, refused registration in relation to the class 25 goods and class 35 services.

[20] L'Oréal SA v OHIM, Case C-235/05 P

**COSTS**

56. As the opponent has been successful it is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Note 1/2023. In the circumstances, I award the opponent the sum of £700 as a contribution towards the cost of the proceedings. The sum is calculated as follows:

| | |
|---|---|
| Official fee: | £100 |
| Preparing a notice of opposition & considering the other side's statement: | £250 |
| Preparing submissions-in-lieu of a hearing: | £350 |
| **Total:** | **£700** |

**Dated this 29th day of September 2025**

**B Hartland**
**For the Registrar**