O/1099/25

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00004100221
IN THE NAME OF ONEGYM LIMITED
TO REGISTER THE FOLLOWING TRADE MARK:

FIT ASS FK

IN CLASSES 25, 41 and 44

AND

IN THE MATTER OF OPPOSITION THERETO
UNDER NO. OP600003449
BY OWEN KING

Background and pleadings

1. On 16 September 2024, OneGym Limited ("the Applicant") applied to register the trade mark shown on the cover page of this decision in the UK. It was accepted and published in the Trade Marks Journal on 27 September 2024 in respect of goods and services in classes 25, 41 and 44.

2. On 27 September 2024, Owen King ("the Opponent") partially opposed the application under the Fast Track opposition procedure, based upon section 5(2)(b) of the Trade Marks Act 1994 ("the Act"). The opposition is directed at all goods in class 25 of the application, as set out in paragraph 14 of this decision.

3. The Opponent relies upon the following mark:

FITASFK

UK Registration no. UK00003547603
Filing date 23 October 2020
Date of registration: 26 February 2021
Relying upon the following goods:

Class 25: Clothing.

4. By virtue of its earlier filing date, the above registration constitutes an earlier mark within the meaning of section 6 of the Act. As the earlier mark had not completed its registration process more than five years before the filing date of the application in issue, it is not subject to the use provisions contained in section 6A of the Act. The Opponent can, therefore, rely upon all of the goods it has identified without having to demonstrate use of the mark.

5. The Opponent submits that the goods are similar and that the applied for mark is nearly identical to the earlier mark due to them differing by only one letter.

6. The Applicant filed a counterstatement in which it submits the applied for mark is significantly different to the opposed mark. They denied that the marks are similar, however did not specifically comment on the similarity of the goods at issue.

7. Rule 6 of the Trade Marks (Fast Track Opposition) (Amendment) Rules 2013, S.I. 2013 2235, disapplies paragraphs 1-3 of Rule 20 of the Trade Mark Rules 2008, but provides that Rule 20(4) shall continue to apply. Rule 20(4) states that: "(4) The registrar may, at any time, give leave to either party to file evidence upon such terms as the registrar thinks fit." The net effect of these changes is to require the parties to seek leave in order to file evidence in fast track oppositions. However, no leave was sought to file any evidence in respect of these proceedings.

8. Rule 62(5) (as amended) states that arguments in fast track proceedings shall be heard orally only if (i) the Office requests it or (ii) either party to the proceedings requests it and the registrar considers that oral proceedings are necessary to deal with the case justly and at proportionate cost; otherwise, written arguments will be taken.

9. Neither party is professionally represented. A hearing was neither requested nor considered necessary; and neither party filed written submissions in lieu. This decision is taken following a careful consideration of the papers.

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

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

…

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

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

12. Section 5A of the Act is as follows:

"5A 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,* 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; Page 8 of 20

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

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

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

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

Comparison of goods

14. The goods for comparison are as follows:

Opponent's goods	Applicant's goods
Class 25: Clothing.	Class 25: Clothing; Knitwear [clothing]; Jackets [clothing]; Ready-to-wear clothing; Woolen clothing; Furs [clothing]; Layettes [clothing]; Clothing layettes; Garments for protecting clothing; Linen clothing; Headbands [clothing]; Headbands for clothing; Clothes; Gloves as clothing; Gloves [clothing]; Jerseys [clothing]; Shorts [clothing]; Denims [clothing]; Cashmere clothing; Silk clothing; Leather clothing; Clothing of leather; Leather (Clothing of -); Parts of clothing, footwear and headgear; Collars [clothing]; Knitted clothing; Embroidered clothing; Hoods [clothing]; Windproof clothing; Wristbands [clothing]; Belts [clothing]; Belts for clothing; Casual clothing; Rainproof clothing; Waterproof clothing; Jackets being sports clothing; Visors [clothing]; Jackets (Stuff -) [clothing]; Stuff jackets [clothing]; Clothing for leisure wear; Ready-made clothing; Bottoms [clothing]; Latex clothing; Trunks being clothing; Playsuits [clothing]; Woven clothing; Drawers [clothing]; Drawers as clothing; Sports clothing; Clothing for sports; Leisure clothing; Athletic clothing; Ties [clothing];

	Muffs [clothing]; Bodies [clothing]; Tops [clothing]; Weatherproof clothing; Clothing for cycling; Water-resistant clothing; Fabric belts [clothing]; Pockets for clothing; Handwarmers [clothing]; Clothing for skiing; Beach clothing; Triathlon clothing; Thermal clothing; Men's clothing; Dance clothing; Mitts [clothing]; Plush clothing.

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

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

16. When making the comparison, all relevant factors relating to the goods in the specifications should be taken into account. In the judgment of the Court of Justice of the European Union ("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.

17. 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:

i. The respective uses of the respective goods or services;

ii. The respective users of the respective goods or services;

iii. The physical nature of the goods or acts of service;

iv. The respective trade channels through which the goods or services reach the market;

v. 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;

vi. 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.

18. For the purposes of considering the similarity of goods, 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.[1]

"Clothing"

19. The Applicant's above goods are self-evidently identical to the Opponent's "clothing".

"Knitwear [clothing]; Jackets [clothing]; Ready-to-wear clothing; Woolen clothing; Furs [clothing]; Layettes [clothing]; Clothing layettes; Linen clothing; Headbands

[1] *Separode Trade Mark (*BL O/399/10), per Mr Geoffrey Hobbs QC, sitting as the Appointed Person; and *BVBA Management, Training en Consultancy v. Benelux-Merkenbureau* [2007] ETMR 35, at paragraphs 30 to 38).

[clothing]; Headbands for clothing; Clothes; Gloves as clothing; Gloves [clothing]; Jerseys [clothing]; Shorts [clothing]; Denims [clothing]; Cashmere clothing; Silk clothing; Leather clothing; Clothing of leather; Leather (Clothing of -); Knitted clothing; Embroidered clothing; Windproof clothing; Wristbands [clothing]; Belts [clothing]; Belts for clothing; Casual clothing; Rainproof clothing; Waterproof clothing; Jackets being sports clothing; Visors [clothing]; Jackets (Stuff -) [clothing]; Stuff jackets [clothing]; Clothing for leisure wear; Ready-made clothing; Bottoms [clothing]; Latex clothing; Trunks being clothing; Playsuits [clothing]; Woven clothing; Drawers [clothing]; Drawers as clothing; Sports clothing; Clothing for sports; Leisure clothing; Athletic clothing; Ties [clothing]; Muffs [clothing]; Bodies [clothing]; Tops [clothing]; Weatherproof clothing; Clothing for cycling; Water-resistant clothing; Fabric belts [clothing]; Handwarmers [clothing]; Clothing for skiing; Beach clothing; Triathlon clothing; Thermal clothing; Men's clothing; Dance clothing; Mitts [clothing]; Plush clothing"

20. The Applicant's above goods fall within the Opponent's broader category of "clothing". They are therefore identical on the principle outlined in *Meric.*

"Parts of clothing, footwear and headgear; Pockets for clothing; Collars [clothing]; Hoods [clothing]"

21. The Applicant's above goods are components of clothing, footwear and headgear rather than the finished articles covered by the Opponent's "clothing". I bear in mind that just because a particular good is used as a part, element or component of another, it should not result in a finding of identity/similarity between those goods.[2] However, it does not mean that there can never be similarity between such goods where there is overlap in the factors identified in *Treat*. The nature of the goods at issue will overlap as there is likely to be a similarity in materials used, however, I do not consider there to be an overlap in user, purpose or trade channels. I say this because parts of clothing are likely to be purchased through craft or wholesale suppliers for use in the manufacture of clothing, footwear or headgear, while finished articles of clothing are sold to the general public through fashion retailers

[2] *Les Editions Albert Rene v OHIM,* Case T-336/03

for wearing on the body. In view of the above, I do not consider the goods to be in competition, nor complementary. Overall, I find the goods to be similar to a low degree.

"Garments for protecting clothing"

22. To my mind "garments for protecting clothing" will include items such as aprons, bibs and overalls. The Applicant's above goods will overlap in user and physical nature with the Opponent's "clothing". There is an overlap in method of use, as the respective goods will all be worn on the body, however, I consider there is a difference in purpose, as while clothing is intended to cover or protect the body itself, the Applicant's goods are intended for the distinct purpose of protecting clothing. There may be some overlap in users and trade channels for example, I find that bibs for babies would typically be sold within close proximity to baby clothes. However, in the case of items such as aprons and overalls, these are likely to reach the market via different trade channels. I do not consider the goods to be competitive, nor do I find them complementary. Overall, I consider the goods to be similar to a medium degree.

Average consumer and the purchasing act

23. It is necessary for me to determine who the average consumer is for the goods in question; I must then determine the manner in which the goods are likely to be selected by the average consumer in the course of trade.

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

> "The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The words "average" denotes that the person is typical. The term "average" does not denote some form of numerical mean, mode or median."

25. The average consumer for the clothing goods is members of the general public. In the case of parts of clothing, the average consumer will be those with the intention of making clothes, either for personal use (by members of the general public with an interest in sewing) or on a professional level (such as a dress maker, seamstress or clothing manufacturer). In both cases the goods will be self-selected from the shelves of high street fashion retail outlets (for clothing), and specialist retailers or haberdashers (for parts of clothing) or their online equivalents. Given the process of selection, the marks' visual impact is likely to play the greater role,[3] though I do not discount the opportunity for aural recommendations made by salespeople, for example. The goods may vary in price, but none are likely to be prohibitively expensive and will be purchased reasonably frequently. However, various factors are still likely to be taken into consideration during the purchasing process, such as materials used, cut, aesthetic appearance and durability. Weighing all factors, I find that the average consumer will apply a medium degree of attention to the purchase.

Comparison of marks

26. 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

[3] *New Look Limited v OHIM*, Joined cases T-117/03 to T-119/03 and T-171/03, paragraph 50

components. The Court of Justice of the European Union 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."

27. 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.

28. The respective trade marks are shown below:

Earlier trade mark	Contested trade mark
FITASFK	**FIT ASS FK**

29. The Opponent's mark consists of the word "FITASFK". There are no other elements that contribute to the overall impression of the mark, which lies in the word itself.

30. The Applicant's mark consists of three words, "FIT", "ASS" and "FK". The overall impression lies in the combination of these words.

31. Visually, the marks coincide in the first five letters (FITAS-) and the last two letters (-FK), however a point of visual difference is the additional letter "S" in the middle of the Applicant's mark. Another point of visual difference is the use of spaces in the Applicant's mark which separates the mark into three elements, being the words "fit" and "ass", and the letter combination "fk". Considering the above and

bearing in mind that the beginnings of marks tend to have more impact,[4] I consider the marks are visually similar to a high degree.

32. Aurally, the marks coincide in the pronunciation of the first and last syllables, being the word "FIT", pronounced in the normal way, and "FK", which I consider a significant proportion of average consumers would pronounce the same as the common swear word "F**K". If I am wrong in this, and the average consumer does not articulate the letter "FK" combination as "F**K", there would still be identity between the marks in the pronunciation of the letters as "EFF" - "KAY". A point of aural difference is in the second syllable of each mark, being "AS" in the Opponent's mark, and "ASS" in the Applicant's mark. Overall, I consider the marks to be aurally similar to a high degree.

33. Conceptually, although it would be wrong to artificially dissect the trade marks, I consider that a significant proportion of average consumers would perceive the Opponent's mark as three conjoined words, namely "FIT", "AS" and "FK". I say this because although consumers normally perceive marks as a whole, they nevertheless will break down elements if they suggest a meaning or resemble words known to them.[5] Bearing this in mind, I consider that a significant proportion of average consumers would identify the words "fit", "as" and "fk" in the Opponent's mark. Where this is the case, two of the three words within the Opponent's mark would be identical to those in the applied for mark, being "FIT" at the beginning of the mark and "FK" at the end of the mark.

34. The word "FIT" can refer to the size or shape of an item, be an adjective meaning 'healthy', or can be used informally as a slang word to refer to someone who is physically attractive. I consider that the letter combination "FK" is a common shortening of the swear word f**k. The word "AS" at the centre of the Opponent's mark is a conjunction often used to denote time, position or comparison. I consider that when viewed as a whole, the Opponent's mark will likely be recognised as the informal phrase/expression "fit as f**k", referring to a person who is very physically attractive.

[4] *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02
[5] *Usinor SA v OHIM*, Case T-189/05

35. The Applicant submits that the use of "ASS" within their mark is allusive to the trade mark's intended use, being a clothing brand focused on exercising the glutes area of the body,[6] which is a point of conceptual difference. However, I consider that this may still be seen as a play on the phrase "fit as f**k". Taking the above into account, I consider the marks to be conceptually similar to a medium to high degree.

36. For the group of average consumers who do not perceive the Opponent's mark in this way outlined above, they will perceive the mark as an invented word with no immediate graspable cohesive concept. Where this is the case, the marks will be conceptually dissimilar.

Distinctive character of the earlier trade mark

37. The distinctive character of a trade mark can be appraised only, first, by reference to the goods in respect of which registration is sought and, secondly, by reference to the way it is perceived by the relevant public – *Rewe Zentral AG v OHIM (LITE)* [2002] ETMR 91. In *Lloyd Schuhfabrik*, the CJEU stated that:

> "22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee* v *Huber and Attenberger* [1999] ECR I-0000, paragraph 49).
>
> 23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested

[6] Applicant's TM8 and counterstatement question 8.

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)."

38. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use that has been made of it.

39. The Opponent has not filed any evidence to support that the earlier mark's distinctive character has been enhanced through use. Consequently, I have only the inherent position to consider.

40. I consider that a significant proportion of average consumers would perceive the Opponent's mark as three conjoined words, namely "FIT", "AS" and "FK". This has no allusive or descriptive meaning in relation to the goods applied for. Where the mark is seen in this way, I consider it to be inherently distinctive to a medium degree.

41. For the group of average consumers who do not perceive the Opponent's mark in this way, they will perceive the mark as an invented word with no immediate graspable cohesive concept. Where the mark is seen as an invented word, it will be inherently distinctive to a high degree.

Likelihood of confusion

42. I must now feed all of my earlier findings into the global assessment of the likelihood of confusion, keeping in mind the following factors: i) the interdependency principle, whereby a lesser degree of similarity between the goods may be offset by a greater similarity between the marks, and vice versa (*Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*); ii) the principle that the

more distinctive the earlier mark is, the greater the likelihood of confusion (*Sabel BV v Puma AG*), and; iii) the factor of imperfect recollection i.e. that consumers rarely have the opportunity to compare marks side by side but must rather rely on the imperfect picture that they have kept in their mind (*Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V*).

43. There are two types of confusion that may occur. Direct confusion is where the average consumer mistakes one mark for the other, while indirect confusion is where the average consumer recognises that the marks are different, but for some reason assumes that the later mark also identifies the goods of the owner of the earlier mark, or that the two undertakings are related: see *L.A. Sugar Limited v Back Beat Inc*, BL O/375/10, paragraph 16.

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

- I have found the marks to be visually similar to a high degree.
- I have found the marks to be aurally similar to a high degree.
- I have found the marks to be conceptually similar to either a medium to high degree where the words “FIT”, “AS” and “FK” are recognised within the Opponent’s mark, or conceptually dissimilar, where Opponent’s mark is seen as an invented word with no cohesive meaning.
- I have found the earlier mark to be inherently distinctive to a medium or high degree, depending on how it is perceived by the average consumer.
- I have identified the average consumer for clothing to be members of general public, while for parts of clothing the average consumer may either be the general public or a clothing manufacturer. I have found that both sets of average consumers will select the goods primarily by visual means, although I do not discount an aural component.
- I have concluded that a medium degree of attention will be paid during the purchasing process.
- I have found the parties’ goods to be between identical and similar to a low degree.

45. In *The Picasso Estate v OHIM*, Case C-361/04 P, the Court of Justice of the European Union found that:

> "20. By stating in paragraph 56 of the judgment under appeal that, where the meaning of at least one of the two signs at issue is clear and specific so that it can be grasped immediately by the relevant public, the conceptual differences observed between those signs may counteract the visual and phonetic similarities between them, and by subsequently holding that that applies in the present case, the Court of First Instance did not in any way err in law."

46. In *Nokia Oyj v OHIM,* Case T-460/07, the General Court stated that:

> "Furthermore, it must be recalled that, in this case, although there is a real conceptual difference between the signs, it cannot be regarded as making it possible to neutralise the visual and aural similarities previously established (see, to that effect, Case C-16/06 P Éditions Albert René [2008] ECR I-0000, paragraph 98)."

47. Taking all of the above into account, given that the average consumer rarely has the opportunity to compare marks side-by-side and will instead encounter them in different settings at different times will, to my mind, lead the average consumer to mistake one mark for the other, even for those who are paying a medium degree of attention during the purchasing process. This is particularly the case given the high visual and aural similarity between the marks. Even if consumers perceive the earlier mark as an invented word, I consider it unlikely that any conceptual differences between the marks will offset the visual and aural similarities, particularly considering that the purchasing process will predominantly be visual. I remind myself that the marks at issue share five identical letters at the beginning (where the attention of consumers is usually directed)[7] and two identical letters at

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

the end (which may also be impactful).[8] I consider the average consumer could easily overlook or imperfectly recall the differences between the marks (being the presence of spaces and the additional letter "S" in the centre of the Applicant's mark). Bearing in mind the interdependency principle, I consider that there is a likelihood of direct confusion, even where I found a low level of similarity between the goods.

CONCLUSION

48. The opposition under section 5(2)(b) of the Act has been successful. Subject to any successful appeal against my decision, the application will be refused for all goods in class 25. The Application will therefore proceed to registration for the unopposed services in classes 41 and 44.

COSTS

49. The Opponent has been successful and would normally be entitled to a contribution towards their costs based upon the scale published in Tribunal Practice Notice 1/2023. However, as the Opponent is unrepresented, at the conclusion of the evidence rounds the tribunal wrote to the Opponent and invited them to indicate whether they intended to make a request for an award of costs. The Opponent 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".[9]

50. The Opponent did not file a completed Pro Forma and therefore I make an award of costs which covers only the official fees arising from the action, that being £100.

[8] *Bristol Global Co Ltd v EUIPO*, T-194/14
[9] Official letter to the Opponent dated 20 February 2025

51. I therefore order OneGym Limited to pay Owen King the sum of £100. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 24th day of November 2025

Emma Rees
For the Registrar