O/1179/25

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00004085962
BY DAVID WILLIAMS
TO REGISTER:

Starting from Scratch

IN CLASSES 25, 28 & 41

AND

IN THE MATTER OF OPPOSITION THERETO
UNDER NO. OP600003595 BY
HARRY MAIDMENT

Background and pleadings

1. On 9 August 2024, David Williams ("the applicant") applied to register in the UK the trade mark shown on the cover page of this decision ("the applicant's mark"). The application was accepted and published for opposition purposes on 1 November 2024 and registration is sought for the following goods and services:

   Class 25: Golf shirts; Golf shoes; Golf footwear; Golf shorts; Golf trousers; Golf skirts; Golf caps; Sports clothing [other than golf gloves]; Golf clothing, other than gloves.

   Class 28: Golf putters; Golf tees; Golf clubs; Clubs (Golf -); Golf balls; Golf irons; Headcovers for golf clubs; Caddie bags for golf clubs; Golf tee bags; Golf bags; Golf club shafts; Gloves (Golf -); Gloves for golf; Golf gloves; Golf club bags; Shafts for golf clubs; Golf mats; Golf flags; Golf club heads; Golf club grips; Grips for golf clubs; Golf ball retrievers; Club (Golf -) hoods; Golf ball markers; Handles for golf clubs; Golf club covers; Covers for golf clubs; Golf bag carts; Grip tapes for golf clubs; Shaped covers for golf putters; Golf bag trolleys; Head covers for golf clubs; Golf practice nets; Nets for practising golf; Golf club head covers; Covers (Shaped -) for golf clubs; Shaped covers for golf clubs; Golf practice apparatus; Covers for golf club heads; Golfing gloves; Golf training aids; Golf bag tags; Golf divot repair tools; Golf swing alignment apparatus; Golf flags [sports articles]; Trolley bags for golf equipment; Stands for golf bags; Covers (Shaped -) for golf club heads; Fitted head covers for golf clubs; Divot repair tools [golf accessories]; Divot repair tools being golf accessories; Tools (Divot repair -) [golf accessories]; Golf bags, with or without wheels; Golf bags with or without wheels; Covers (Shaped -) for golf bags; Golf bag tags of leather; Bag stands for golf bags; Balls for sports; Sports balls.

   Class 41: Entertainment services relating to the playing of golf.

2. On 31 January 2025, Harry Maidment ("the opponent") filed a fast track opposition partially opposing the application. The opposition is aimed at the applicant's class 41 services only and is based on sections 5(1) and 5(2)(a) of the Trade Marks Act 1994 ("the Act"). The opponent relies upon the following mark:

Starting from Scratch
("the opponent's mark")

UK registration no. 3087710
Filing date 30 December 2014; registration date 27 March 2015
Relying on some services, being:

Class 41: Production of TV shows; TV entertainment services.

3. By virtue of relying on section 5(1) of the Act, the opponent's case is that the applicant's mark should be refused registration because it is identical to the opponent's mark and is sought to be registered for identical services. Alternatively, under the section 5(2)(a) ground, the opponent's case is that the marks are identical and the services at issue are similar, resulting in a likelihood of confusion.

4. The applicant filed a counterstatement disputing the opposition filed.

5. 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."

6. Neither party is represented. 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. In this case, a hearing was neither requested nor considered necessary. The applicant filed written submissions. The opponent replied to the applicant's written submissions. This decision is taken following a careful perusal of the papers.

7. 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

Proof of use

8. In accordance with section 6(1) of the Act, the opponent's mark qualifies as an earlier trade mark. In addition, I note that the opponent's mark completed its registration process more than five years prior to the filing date of the applicant's mark. In light of this and the fact that these are fast track opposition proceedings, the opponent was required to provide proof of use of his mark within its notice of opposition. I must, therefore, deal with the issue of whether, or to what extent, the opponent has shown genuine use of his mark.

9. Section 6A of the Act is relevant here. It reads:

> "(1) This section applies where:
>
> (a) an application for registration of a trade mark has been published,
>
> (a) there is an earlier trade mark of a kind falling within section 6(1)(a), (aa) or (ba) in relation to which the conditions set out in section 5(1), (2) or (3) obtain, and
>
> (b) the registration procedure for the earlier trade mark was completed before the start of the relevant period.

(1A) In this section “the relevant period” means the period of 5 years ending with the date of the application for registration mentioned in subsection (1)(a) or (where applicable) the date of the priority claimed for that application.

(2) In opposition proceedings, the registrar shall not refuse to register the trade mark by reason of the earlier trade mark unless the use conditions are met.

(3) The use conditions are met if –

(a) within the relevant period the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or
(b) the earlier trade mark has not been so used, but there are proper reasons for non- use.

(4) For these purposes –

(a) use of a trade mark includes use in a form (the “variant form”) differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor), and

(b) use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(5)-(5A) [Repealed]

(6) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services.”

10. Section 100 of the Act is also relevant. It reads:

> "100. If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it."

11. In *easyGroup Ltd v Nuclei Ltd & Ors* [2023] EWCA Civ 1247, Arnold LJ summarised the law relating to genuine use as follows:

> "105. The principles applicable to determining whether there has been genuine use of a trade mark have been considered by the CJEU in a considerable number of cases, the principal decisions being Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, Case C-259/02 *La Mer Technology Inc v Laboratories Goemar SA* [2004] ECR I-1159, Case C-416/04 P *Sunrider Corp v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237, Case C-442/07 *Verein Radetsky-Order v Bundervsvereinigung Kamaradschaft 'Feldmarschall Radetsky'* [2008] ECR I-9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Merken BV v Hagelkruis Beheer BV* [EU:C:2012:816], Case C-609/11 *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], Case C-141/13 *P Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089], Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434] and Joined Cases C–720/18 and C– 721/18 Ferrari SpA v DU [EU:C:2020:854].
>
> 106. Ignoring issues which do not arise in the present case, such as use in relation to spare parts or second-hand goods and use in relation to a sub-category of goods or services, the principles may be summarised as follows:
>
> (1) Genuine use means actual use of the trade mark by the proprietor or by a third party with authority to use the mark: *Ansul* at [35] and [37].

(2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Centrotherm* at [71]; *Leno* at [29]; *Ferrari* at [32].

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Centrotherm* at [71]; *Leno* at [29]; *Gözze* at [37], [40]; *Ferrari* at [32].

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: *Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37]; *Verein* at [14]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle* at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23].

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial raison d'être of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all

the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: *Ansul* at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34]; *Leno* at [29]-[30], [56]; *Ferrari* at [33].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no de minimis rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72]; *Leno* at [55].

(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: *Reber* at [32]."

12. In *Awareness Limited v Plymouth City Council*, Case BL O/236/13, Mr Daniel Alexander QC (as he then was) as the Appointed Person stated that:

"22. The burden lies on the registered proprietor to prove use. […] However, it is not strictly necessary to exhibit any particular kind of documentation, but if it is likely that such material would exist and little or none is provided, a tribunal will be justified in rejecting the evidence as insufficiently solid. That is all the more so since the nature and extent of use is likely to be particularly well known to the proprietor itself. A tribunal is entitled to be sceptical of a case of use if, notwithstanding the ease with which it could have been convincingly demonstrated, the material actually provided is inconclusive. By the time the tribunal (which in many cases will be the Hearing Officer in the first instance) comes to take its final decision, the evidence must be sufficiently solid and specific to enable the evaluation of the scope of protection to which the proprietor is legitimately entitled to be properly and fairly undertaken, having

regard to the interests of the proprietor, the opponent and, it should be said, the public."

13. In *Dosenbach-Ochsner Ag Schuhe Und Sport v Continental Shelf 128 Ltd*, Case BL 0/404/13, Mr Geoffrey Hobbs QC (as he then was) as the Appointed Person stated that:

"21. The assessment of a witness statement for probative value necessarily focuses upon its sufficiency for the purpose of satisfying the decision taker with regard to whatever it is that falls to be determined, on the balance of probabilities, in the particular context of the case at hand. As Mann J. observed in *Matsushita Electric Industrial Co. v. Comptroller- General of Patents* [2008] EWHC 2071 (Pat); [2008] R.P.C. 35:

> '[24] As I have said, the act of being satisfied is a matter of judgment. Forming a judgment requires the weighing of evidence and other factors. The evidence required in any particular case where satisfaction is required depends on the nature of the inquiry and the nature and purpose of the decision which is to be made. For example, where a tribunal has to be satisfied as to the age of a person, it may sometimes be sufficient for that person to assert in a form or otherwise what his or her age is, or what their date of birth is; in others, more formal proof in the form of, for example, a birth certificate will be required. It all depends who is asking the question, why they are asking the question, and what is going to be done with the answer when it is given. There can be no universal rule as to what level of evidence has to be provided in order to satisfy a decision-making body about that of which that body has to be satisfied.'

22. When it comes to proof of use for the purpose of determining the extent (if any) to which the protection conferred by registration of a trade mark can legitimately be maintained, the decision taker must form a view as to what the evidence does and just as importantly what it does not 'show' (per Section 100 of the Act) with regard to the actuality of use in relation to goods or services

covered by the registration. The evidence in question can properly be assessed for sufficiency (or the lack of it) by reference to the specificity (or lack of it) with which it addresses the actuality of use."

14. What I take from this case law is that there is no requirement to produce any specific form of evidence, but that I must consider what the evidence as a whole shows me and whether on this basis I can reasonably be satisfied on the balance of probabilities that there has been genuine use of the mark.

15. Section 6A of the Act (cited above) confirms that the relevant period for the present assessment is the five-year period prior to the filing date of the applicant's mark, being 9 August 2024. The relevant period is, therefore, 10 August 2019 to 9 August 2024 ("the relevant period").

16. Proven use of a mark which fails to establish that "the commercial exploitation of the mark is real"[1] because the use would not be "viewed as warranted in the economic sector concerned to maintain or create a share in the mark for the goods or services protected by the mark" is, therefore, not genuine use.

Assessment of evidence

17. I will now consider an assessment of the evidence. This is a global assessment which includes looking at the evidential picture as a whole, not whether each individual piece of evidence shows use by itself.[2]

18. As indicated in the case law cited above, use does not need to be quantitatively significant in order to be genuine. The assessment must take into account a number of factors in order to ascertain whether there has been real commercial exploitation of the mark which can be regarded as "warranted in the economic sector concerned to maintain or create a share in the market for the goods or services protected by the mark".

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[1] *Jumpman* BL O/222/16
[2] *New Yorker SHK Jeans GmbH & Co KG v OHIM*, T-415/09

19. The opponent's evidence of use can briefly be summarised as the content of the Form TM7 dated 28 February 2025. No other documentary evidence has been provided.

20. The opponent states that its mark is the name of a television programme that is in extensive development. The opponent submits that the trademark has not yet been publicly used and the television programme has not yet been sold to a production company for commissioning. The opponent's evidence does not show any outward use of the opponent's mark.

21. The opponent submits that social media handles and domain names have been purchased, and the concept has been copyrighted. However, no evidence has been filed to prove this or to explain what social media advertising has been carried out (if any) and how many consumers this reached.

22. The opponent submits that the trademark has been in extensive use over the past ten years even though there are no public examples available. The opponent submits five ways the show has developed since the trademark was registered but has not provided evidence of any of these for confidentiality reasons.

23. There are multiple issues with the evidence. The first is that no turnover or revenue figures have been provided for the relevant period. The absence of such is not automatically fatal to the issue of genuine use but it does cause me some issues in that I am not able to determine the overall picture with regard to the level of use in the UK during the relevant period.

24. This leads me to the second criticism of the evidence, which is there are no examples or dated images of the opponent's mark being used. The opponent was aware of the need to show use of his mark in the relevant period. It was open to, and presumably entirely possible for, the opponent, in order to demonstrate as much use as possible, to (1) provide overall revenue/turnover figures, (2) file all of the invoices for the relevant period in relation to advertising, marketing or social media spend, for example, or (3) even a selection from each year of the relevant period. He did not. Instead he did not file any documentary evidence. As such, I am not satisfied that there has been consistent use throughout the relevant period.

25. Thirdly, the opponent states that over the past 5 years approximately £5,000 has been spent in creating a company; developing a logo for the show; filming and editing promotional materials; copywriting the idea; protecting the trademark by reserving domain names and social media handles and working with various specialists to develop the business plan further. The opponent also states that these costs have arisen sporadically over the past 10 years but it is not possible to break it down year by year. It is not clear how much of the £5,000 spent refers to promotional materials and how much refers to other activities. It is reasonable to infer that less than £5,000 has been spent on promotional materials as the opponent has listed other activities in addition to the filming and editing of promotional materials. However, even if all £5,000 had been spent on promotional materials this is a very low figure to demonstrate advertising or marketing spend over a ten year period.[3] In addition to the material that has not been provided that was listed in the preceding paragraph, none of the claimed promotional materials, the logo for the show, domain names, social media handles or business plans have been provided.

26. Having considered all of the evidence before me whilst bearing in mind section 100 of the Act and the aforementioned comments of Mr Alexander Q.C. in *Plymouth Life*, I note there is talk of ongoing preparations for the launch of the TV show but these do not appear to be anywhere near completion and whilst promotional materials are mentioned, this does not appear to be enough to satisfy sub-paragraph (4) of *easyGroup Ltd v Nuclei Ltd & Ors (cited above)* which covers advertising campaigns being used pre-launch of the actual services. The opponent's evidence sets out that he has spent £5,000 on launching his business but, as above, it is not clear when this spend was incurred and there is nothing before me to show any actual effort to promote the mark. Further, it is not clear if any of this spend relates to the relevant territory.

27. As per *Awareness Limited*, cited above, the burden lies on the opponent to prove use. Taking all of the above into account and considering all of the criticisms cited,

[3] On this point, I note that the relevant period is just five years of the ten years claimed. A further issue arises here in that not all of the amount provided would have accrued during the relevant period.

my primary view is that I have been unable to find that the opponent's evidence is sufficiently solid to enable me to find genuine use within the relevant period. The consequence of this is that the opponent is not able to rely on his mark meaning that the opposition falls away. While it would be appropriate for me to bring the decision to a close at this point, I am of the view that even if there were genuine use of the opponent's mark, the opposition would still fail. In order to demonstrate this point, I will proceed with the remainder of my decision in the scenario that genuine use has been adequately proven for the services relied upon.

Section 5(1) and 5(2)(a) legislation and case law

28. Section 5(1) of the Act reads as follows:

> "(1) A trade mark shall not be registered if it is identical with an earlier trade mark and the goods or services for which the trade mark is applied for are identical with the goods or services for which the earlier trade mark is protected."

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

> "5(2) A trade mark shall not be registered if because-
>
> (a) it is identical with an earlier trade mark and is to be registered for goods or services 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".

30. 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."

31. While only applicable to the section 5(2)(a) ground, the following principles are still applicable here. They 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 Office for Harmonization in the Internal Market (Trade Marks and Designs) ("OHIM")*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P:

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

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

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

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

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

(f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a

composite mark, without necessarily constituting a dominant element of that mark;

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

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

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

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

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

Identity of the marks

32. It is a pre-requisite of both sections 5(1) and 5(2)(a) of the Act that the trade marks at issue are identical. The question of when a mark may be considered identical to another was addressed in *S.A. Société LTJ Diffusion v. Sadas Vertbaudet SA*, Case C-291/00, where the Court of Justice of the European Union ("CJEU") held that:

> "54... a sign is identical with the trade mark where it reproduces, without any modification or addition, all the elements constituting the trade mark or where, viewed as a whole, it contains differences so insignificant that they may go unnoticed by an average consumer."

33. In this case, the marks are both word only marks that contain the same three letter words. As word marks are protected for the words within them regardless of the case used (be that upper case, lower care or any customary combination of the two), I find that the respective marks are self-evidently identical. The opposition against the applicant's mark can therefore proceed.

Comparison of services

34. In order for the opponent to succeed under section 5(1) of the Act, the services at issue must be considered identical. Where the services are deemed identical, the opposition will succeed in full under the section 5(1) ground. However, section 5(2)(a) grounds only require a level of similarity. Therefore, where the services are not identical it is still necessary for me to consider the level of similarity (if any) between the non-identical services. I will discuss the impact this has on the opposition at the conclusion of my assessment of the services at issue.

35. Where goods and services are worded identically in both specifications, it is clear they should be considered identical. Additionally, where the wording of a term differs to the wording of another term, but both terms share an identical meaning, again those goods and services are self-evidently identical and should be considered as such. Finally, the General Court confirmed in *Gérard Meric v Office for Harmonisation in the Internal Marke*t, Case T-133/05, that, even if goods (though it equally applied to services) are not worded identically, they can still be considered identical if one term falls within the scope of another (or vice versa):

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

36. The parties services are outlined below:

The opponent's services	The applicant's services
Class 41: Production of TV shows; TV entertainment services.	Class 41: Entertainment services relating to the playing of golf.

37. When making the comparison, all relevant factors relating to the goods and services in the specifications should be taken into account, as per *Canon*, where the CJEU stated at paragraph 23 of its judgement:

> "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."

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

(a) The respective uses of the respective goods or services;

(b) The respective users of the respective goods or services;

(c) The physical nature of the goods or acts of service;

(d) The respective trade channels through which the goods or services reach the market;

(e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be, found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;

(f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

39. In *YouView TV Ltd v Total Ltd*, [2012] EWHC 3158 (Ch), paragraph 12, Floyd J (as he then was) gave the following guidance on construing the words used in specifications:

> "[…] Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless, the principle should not be taken too far. Treat was decided the way it was because the ordinary and natural, or core, meaning of 'dessert sauce' did not include jam, or because the ordinary and natural description of jam was not 'a dessert sauce'. Each involved a straining of the relevant language, which is incorrect. Where words of phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question."

40. The opponent's position is that the services which he understands the applicant intends to use his trademark for, are identical to the services for which he has registered his trademark, albeit the applicant's broadcasting services focus on golf. The opponent submits that it is impossible to have two television shows operate under the same name. Therefore, even though it is the applicant's intention to operate in a different field, to allow the applicant's mark to be registered would cause significant harm and potentially destroy ten years of work and could even prevent the show from being commissioned.

41. The applicant's position is that his mark is intended to support a golf-focused brand, including clothing, accessories, equipment and lifestyle content. The applicant submits that while his application includes class 41, his use of the mark does not involve television production, scripted programming or any form of traditional entertainment services like those claimed by the opponent. The applicant states that his intended use in class 41 is limited to golf-related content or events, such as showcasing the sport on social media, through brand-led golf events, or informal visual content, which is fundamentally different from the opponent's stated use, which is based on a television show concept that has not been released or used publicly.

42. While noted, the above comments of the parties have no bearing on the assessment I am required to make. When considering the likelihood of confusion under section 5(2)(a) the assessment must be based, in fact, on the concept of 'notional and fair use' which involves carrying out the comparison of the goods based on the specifications before me, not the goods effectively provided by the parties.[4] While the case law does not expressly mention section 5(1), the principle remains in that goods and services assessments are notional ones.

43. I do not intend to summarise the remaining comments of the parties in full here. However, I confirm that I have taken all filed documents into account and will summarise them to the extent deemed necessary below.

Entertainment services relating to the playing of golf.

44. In considering the above term, I am of the view that it would be too liberal an interpretation for the applicant's service to be construed as covering any form of entertainment relating to golf (which could include TV entertainment services). I say this because the applicant's service is limited by "relating to the playing of golf" which, to me, covers services wherein the user is actually playing golf themselves, as opposed to watching golf. Upon the plain reading of the above, I consider that

[4] *O2 Holdings Limited, O2 (UK) Limited v Hutchison 3G UK Limited*, Case C-533/06 at [66] and *Compass Publishing BV v Compass Logistics Ltd* [2004] RPC 41 at [22]

the reasonable interpretation of the same relates to consumers playing golf in simulators in bars or playing mini-golf, for example. In comparing the above to the opponent's "TV entertainment services", I accept there may be an overlap in the purpose as both services aim to provide entertainment to the user. Further, it may very well be the case that the user of the applicant's service would also seek entertainment via TV shows. However, if these points were considered sufficient to warrant any meaningful overlap then it could be said that a wide range of entertainment services would be similar to one another purely on the basis that they aim to entertain consumers. This cannot be the case as it would provide far too broad a scope of protection to such services. In addition, in considering these terms, I remind myself of the judgment in *Unicorn Studios Inc v Veronese*,[5] most notably paragraph 24 wherein Mr Purvis K.C. (sitting as a deputy High Court judge) set out that goods comparison is not simply a box-ticking exercise in respect of the *Treat* or *Canon* factors but requires the Hearing Officer to take a step back and consider the overall question of similarity. Following this guidance and in adopting a 'common sense approach' overall, I consider the above services to be dissimilar to those of the opponent.

Conclusion of services comparison

45. As I have not found any of the parties' services to be identical, the opponent's claim fails under the section 5(1) ground. As for the section 5(2)(a) ground, I remind myself that for there to exist a likelihood of confusion under section 5(2) of the Act, there must be a degree of similarity between the services.[6] As the services are dissimilar, this ground fails also.

CONCLUSION

46. The opposition fails in its entirety and, subject to any successful appeal against my decision, the applicant's mark is permitted to proceed to registration in the UK in respect of the services applied for.

[5] [2024] EWHC 1098 (Ch)
[6] *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA

COSTS

47. As the applicant has succeeded, it is entitled to a contribution towards his costs. On this point, I note that the applicant was unrepresented during these proceedings. As such, any costs award is to be awarded in line with the ordinary approach for litigants in persons. In order for a litigant in person to claim costs in Tribunal proceedings, it is required to file a costs proforma setting out the time undertaken for certain tasks associated with the proceedings. The applicant claims that he spent the following amount of time on these proceedings.

Notice of defence:	2 hours
Considering forms filed by the other party:	1 hour 15 minutes
Researching the IPO process, TM8, trademark law:	3 hours
Drafting original counter statement:	2 hours
Reviewing opponent's amended opposition and preparing response:	1 hour 30 minutes
Drafting written submissions/continuation sheet, reviewing, formatting and finalising documents for submission:	3 hours
Total:	12 hours 45 minutes

48. I consider the time claimed to be reasonable. The Litigants in Person (Costs and Expenses) Act 1975 (as amended) sets the minimum level of compensation for litigants in person in Court proceedings at £19.00 an hour. I see no reason to award anything other than this amount and therefore award the applicant the sum of **£242.25** (12.75 x £19) in respect of his costs proforma.

49. I hereby order Harry Maidment to pay David Williams the sum of £242.25. The above 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 18th day of December 2025

N Barratt
For the Registrar