O/0283/26

TRADE MARKS ACT 1994

IN THE MATTER OF UK TRADE MARK APPLICATION NUMBER 4141751

BY

SIOBHAN BILLSON

TO REGISTER THE FOLLOWING TRADE MARK:

Blyss Patches

IN CLASS 5

AND

IN THE MATTER OF FAST TRACK OPPOSITION

THERETO UNDER NUMBER 600003663

BY ILIE VIROZUB

BACKGROUND & PLEADINGS

1. On 28 December 2024, Siobhan Billson ("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 17 January 2025. The applicant seeks registration for the following goods:

Class 5

Transdermal patches; Skin patches for the transdermal delivery of pharmaceuticals; Transdermal patches for medical treatment; Adhesive skin patches for medical use; Adhesive patches for medical purposes.

2. On 16 April 2025, the application was partially opposed under the fast-track opposition scheme by Ilie Virozub ("the opponent"). The opposition is brought under Section 5(2)(b) of the Trade Marks Act 1994 ("the Act") and, specifically, the opponent sought to challenge the applicant's application to register the contested mark for the goods underlined in paragraph 1.

3. For the purpose of its opposition, the opponent relies upon the following word mark ("the earlier mark"), and the following goods for which its earlier mark is registered:

BLYSS

Trade mark number: UK00004095816
Filing date: 4 September 2024
Registration date: 10 January 2025

Class 5: Supplements; Dietary supplement drink mixes; Dietary supplement drinks; Powdered nutritional supplement energy drink mix; Dietary supplemental drinks.

4. The opponent submits that the marks overlap in their incorporation of the word "Blyss", and that the incorporation of the "descriptive term 'Patches'" in the contested mark "does not mitigate the visual, aural and conceptual dominance of 'Blyss", which remains the distinctive and memorable component of the [contested] mark, increasing the risk of confusion". The opponent also submits that consumers are likely to assume a commercial connection between the goods in issue "given their complementary nature in health/wellness markets".

5. The applicant filed a counterstatement denying the claims made against it. Specifically, the applicant submits that the marks differ as a result of the presence of the word "Patches" in the contested mark, and that the goods in issue differ in nature, purpose, method of use, trade channels and target customer. Consequently, the applicant submits that "confusion is unlikely".

6. 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 it 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."

7. The effect of the above is to require parties to seek leave in order to file evidence in fast track oppositions. Further, 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.

8. In this case, both parties are self-represented and neither party sought leave to file evidence. No hearing was requested, and neither party filed written submissions in lieu of a hearing. This decision is therefore 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.

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

DECISION

Section 5(2)(b)

10. The 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".

11. 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."

12. Given its earlier filing date, the trade mark upon which the opponent relies qualifies as an earlier trade mark pursuant to section 6 of the Act. As the earlier mark had not completed its registration process more than 5 years prior to the date of the application for registration of the contested mark, it is not subject to the use provisions in section 6A of the Act. Consequently, the opponent can rely upon the full breadth of its specification as identified.

13. The following standard summary of the principles applicable to the assessment of the likelihood of confusion was approved by the Supreme Court in *Iconix Luxembourg Holdings SARL v Dream Paris Europe Inc & Anor*:[1]

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 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, in certain circumstances, be dominated by one or more of its components;

f. and beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite 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;

[1] [2025] UKSC 25

g. a lesser degree of similarity between the goods may be offset by a greater degree of similarity between the marks, and vice versa;

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

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

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

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

Comparison of Goods

14. The competing goods are as follows:

The opponent's goods	**The applicant's goods**
Class 5 Supplements; Dietary supplement drink mixes; Dietary supplement drinks; Powdered nutritional supplement energy drink mix; Dietary supplemental drinks.	Class 5 Transdermal patches; Skin patches for the transdermal delivery of pharmaceuticals; Adhesive skin patches for medical use.

15. The opponent appears to be submitting that the goods in issue are similar as they are all "in Class 5" and are targeting "health and wellness products", and that consumers are likely to assume a commercial connection between the goods in issue given their "complementary nature".

16. By contrast, the applicant submits that the goods in issue "differ in nature, purpose, method of use, trade channels, and target customers". Whilst all of the goods in issue fall within class 5, the applicant submits that this "is administrative only and does not create similarity".

17. As a preliminary point, it should be noted that section 60A of the Act provides that goods 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,[2] or dissimilar on the ground that they appear in different classes under the Nice Classification."

18. In *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*,[3] 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".

19. In *Kurt Hesse v OHIM*,[4] the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*,[5] the General Court ("GC") stated that "complementary" means:

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

[2] "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.
[3] Case C-39/97
[4] Case C-50/15 P
[5] Case T-325/06

20. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case[6], for assessing similarity were:

a. The uses of the respective goods;

b. The users of the respective goods;

c. The physical nature of the goods;

d. The respective trade channels through which the goods 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 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,*[7] I also bear in mind that it is permissible to group the goods together, for the purpose of comparison, where they are sufficiently comparable to be assessable in essentially the same way for the same reasons.

Transdermal patches;

22. I understand that transdermal patches are adhesive patches used to absorb some form of substance through the skin. Whilst they are often used to absorb medication and for medical or pharmaceutical purposes, I am aware that they

[6] [1996] R.P.C. 281
[7] BL O/399/10, Mr Geoffrey Hobbs QC, sitting as the Appointed Person

are also used as a means of absorbing other substances, such as vitamins and minerals for the purpose of supplementing a diet.

23. The opponent's goods are all types of supplements (i.e., vitamins and minerals) in varying forms, such as in liquid or powder form. The applicant's transdermal patches clearly differ in nature to the opponent's various supplement goods by virtue of them being patches. I also note that the applicant's goods are applied to the skin, whereas the opponent's goods are ingested. Consequently, these goods also differ in method of use.

24. Having said that, I do consider there to be an overlap in purpose on the basis that they can all be used as a means of supplementing your diet with vitamins and minerals. In that regard, given their overlapping purpose, consumers may opt to purchase supplements for ingesting over the patch variations of those supplements, and vice versa. Consequently, I do consider there to be a level of competition between these goods.

25. I also consider there to be an overlap in user and trade channels between these goods, as these goods would all be purchased by the general public, and could all be purchased in health stores, or in the same areas of larger generalised supermarkets.

26. In the light of the above, I do consider there to be a medium degree of similarity between the applicant's "transdermal patches" and the opponent's various supplement goods.

<u>Skin patches for the transdermal delivery of pharmaceuticals; Adhesive skin patches for medical use.</u>

27. It is my view that the position differs for the applicant's above referenced goods. This is because the above referenced goods are expressly defined as types of patches applied to the skin for medical/pharmaceutical purposes (i.e., to deliver a dose of medication). By virtue of the fact that the applicant's goods are patches

which are applied to the skin, and the opponent's goods are supplements for ingesting, they clearly differ in nature and method of use.

28. Whilst I do accept that you could purchase all of these goods at pharmacies and health stores, and that they may be available in some supermarkets, I do not consider that they would be located in the same sections of these stores. Consequently, I do not find there to be an overlap in trade channels, nor have I been provided with any evidence to support such a finding.

29. I do accept that there is a very superficial overlap in purpose (i.e., that they assist with supporting individuals' health and wellbeing) and user (the general public). However, the specific purpose of these goods differs, with the purpose of the applicant's supplements goods being to support nutritional intake and wellbeing, and the purpose of the opponent's goods being to deliver medication systematically. Given their differing purpose, I can see no basis for finding the goods to be competitive or complementary, as you would not purchase the applicant's patches in place of the opponent's supplements. I also do not consider them to be important or indispensable from one another,[8] nor can I see any basis for finding that customers may think that the responsibility for the goods lies with the same undertaking.[9] I do not consider the fact that these goods all fall within the "health/wellness" industry, to be a sufficient basis for reaching a finding of complementarity.

30. Whilst the very superficial overlap in general purpose and user is noted, I do not consider this to be sufficient to reach a finding of similarity, and I am conscious of the judgment of Iain Purvis KC in *Unicorn Studio Inc v Veronese* in which he stipulated that "any finding of similarity in the end requires the exercise of common sense and requires the hearing officer to stand back and consider the overall question" rather than by engaging "in a box-ticking exercise, asking how many of the factors identified in *TREAT* or in *Canon* could be said to have been

[8] *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM),* Case T-325/06
[9] *Sanco SA v OHIM,* Case T-249/11

satisfied".[10] Consequently, for all of the above reasons, I consider the goods in issue to be dissimilar.

31. As some degree of similarity between the goods is required for a successful claim under section 5(2)(b) of the Act, the opponent's opposition must fail in respect of the goods I have found to be dissimilar,[11] namely:

Class 5: Skin patches for the transdermal delivery of pharmaceuticals; Adhesive skin patches for medical use.

32. However, I will proceed to consider whether there is a likelihood of confusion or association on the part of the average consumer in respect of the goods ("transdermal patches") which I have deemed to be similar, and therefore whether the opposition succeeds in respect of those goods under section 5(2)(a) of the Act.

Average consumer and the purchasing act

33. 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*[12]).

34. In *Iconix Luxembourg Holdings SARL v Dream Paris Europe Inc & Anor*, [2025] UKSC 25, the Supreme Court approved the comments of Arnold LJ in *Lidl Great Britain Ltd & Anor v Tesco Stores Ltd & Anor (Rev1)* [2024] EWCA Civ 262, where he pointed out that:

[10] [2024] EWHC 1098 (Ch) - paragraph 24
[11] *eSure Insurance v Direct Line Insurance* [2008] ETMR 77 CA
[12] Case C-342/97

a. Consumers who are ill-informed or careless, or consumers with specialised knowledge or who are excessively careful are excluded from consideration;

b. The average consumer provides a standard which enables the courts to strike a balance between the competing interests involved, such as trade mark owners, their competitors and consumers;

c. The average consumer is neither a single hypothetical person nor a mathematical average; assessment from the perspective of the average consumer does not involve a statistical test. There is no single meaning rule and if, having regard to the perceptions and expectations of the average consumer, the court considers that a significant proportion of the relevant public is likely to be confused, a finding of infringement may properly be made;

d. Assessment from the perspective of the average consumer is intended to facilitate adjudication of trade mark disputes by providing an objective criterion, by promoting consistency of assessment and by and enabling courts and tribunals to determine such issues so far as possible without the need for evidence;

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

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

35. As discussed above, I consider the average consumer of the goods in issue will be members of the general public. All of the goods in issue are likely to vary in price depending on their nature, but the price is not likely to be at the highest end of the spectrum. I consider that all of the average consumers will consider factors such as price, quality, suitability and any possible side effects of the goods during the purchasing process. I therefore recognise that the identified average

consumer group for the goods in issue will pay a slightly higher than medium degree of attention during the purchasing process. This is because, whether the goods relate to purchasing vitamin and mineral supplements for ingesting, or purchasing patches containing those vitamins or minerals, they are being purchased to combat a particular deficiency/supplement a diet.

36. The purchasing process for the goods in issue is likely to involve perusal of goods on shelves or perusal of a website. Consequently, visual considerations are likely to dominate the purchasing process. However, given that requests may be made over the counter, and consumers may seek advice from retail assistants or sale representatives, I do not discount that aural considerations will also play a part.

Comparison of marks

37. 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.[13] 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*,[14] 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."

38. 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

[13] Case C-251/95
[14] Case C-591/12P

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.

39. The respective trade marks are shown below:

Earlier mark	Contested mark
BLYSS	**Blyss Patches**

40. The basis of the opponent's argument regarding the similarity of the marks is that the contested mark fully incorporates the earlier mark. As discussed above, the opponent further submits that the "Blyss" element of the contested mark is the dominant and distinctive element, and that the "descriptive term 'Patches' does not mitigate the visual, aural and conceptual dominance of 'Blyss', which remains the distinctive and memorable component of the mark, increasing the risk of confusion."

41. The applicant denies that the marks in issue are similar. Whilst the applicant notes that both marks contain the "Blyss" element, the applicant also submits that the word "Patches" in the contested mark is "wholly descriptive of the Applicant's goods and creates an immediate conceptual distinction from the [earlier mark]".

Overall Impression

42. The earlier mark is a word only mark. There are no other elements in the mark which contribute to its overall impression, so the overall impression lies in the word "BLYSS" itself.

43. The contested mark is also a word only mark. Once again, as there are no other elements in the mark contributing to its overall impression, the overall impression lies in the words “Blyss Patches”. Having said that, the word “Patches” is clearly descriptive of all of the goods in the applicant’s specification. I am also conscious that the GC noted in *El Corte Inglés, SA v OHIM* that the beginnings of words tend to have more visual and aural impact than the end.[15] In the light of its position (at the end of the mark) and its descriptive nature, I consider the word “Patches” to play a lesser role, and the word “Blyss” to play a dominant role in the overall impression of the contested mark.

Visual Comparison

44. Visually, the marks overlap in their first word, “Blyss”. However, the contested mark also has the additional word “Patches”, which is not present in the earlier mark. Having due regard to this difference in the marks, whilst also noting my finding that the word “Blyss” plays a dominant role in the overall impression of the contested mark, I find the marks to be similar to a medium degree.

Aural Comparison

45. As outlined above, the marks share the same first word (“Blyss”), but the contested mark also has the additional word “Patches”, which is not present in the earlier mark. I consider that all of the words in both marks will be pronounced, and that the word “Blyss” will be pronounced identically in both marks.

46. Whilst I appreciate that the word “Patches” in the contested mark will result in the marks having a different phonetical sound, I am also conscious of my finding that the word “Blyss” plays a dominant role in the overall impression of the contested mark. Consequently, I find the marks to be aurally similar to a medium degree.

[15] Cases T-183/02 and T-184/02

Conceptual Comparison

47. 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*.[16] The assessment must, therefore, be made from the point of view of the average consumer.

48. As outlined above, both marks contain the word "Blyss", which I consider the average consumer would identify as a misspelling of the word "bliss". Bliss is a standard English dictionary word which is defined as a state of complete happiness,[17] and I consider this to be the conceptual meaning that the average consumer would attribute to the earlier mark.

49. The contested mark consists of two words, being "Blyss Patches". The meaning of "Blyss" will be understood as above. As for "Patches", I consider that the average consumer will identify this as a pluralised version of the dictionary word patch, which has a number of meanings. Whilst I appreciate that conceptual comparisons are usually done without reference to the goods at issue,[18] the consumer does look to the goods to inform the meaning of the mark, particularly where there is a link between the conceptual meaning of the mark and the goods to which it is affixed.[19] I find this to be the case here and, thus, I find that the average consumer will understand the word "Patches" in the contested mark to be a reference to adhesive patches applied to the skin.

50. In comparing the marks at issue, I find that the shared concept of the word "Blyss" will be considerable. However, the addition of the word "Patches" is a point of conceptual difference (but not considerably so given its descriptive nature), as it has no counterpart in the earlier mark. Overall, I consider that the marks are conceptually similar to a medium degree.

[16] [2006] ECR I-643; [2006] E.T.M.R
[17] https://www.collinsdictionary.com/dictionary/english/bliss
[18] EMILIANA, Case BL O/052/22.
[19] LIGHT VITAMIN, Case BL O/1174/25.

Distinctive character of the earlier trade mark

51. 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)
>
> 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)."

52. Whilst the distinctiveness of a mark may be enhanced as a result of it being used in the market, in this instance, I have been provided with no evidence of use of the earlier mark. Consequently, I only have the inherent position to consider.

53. Distinctiveness is a scale along which marks of various types sit. A mark which is allusive of the goods 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.

54. In this instance, the earlier mark is made up of the word "BLYSS". As outlined above, I have found that the average UK consumer would identify "BLYSS" as a misspelling of the word "Bliss", defined as a state of complete happiness. Whilst I do not consider this to be descriptive of the opponent's goods, it evokes the concept of complete happiness, which is allusive/suggestive of the state or feeling the consumer would be in using the opponent's goods. Noting all of the above, I consider the earlier mark to have no more than a medium level of distinctive character.

55. I note that the applicant has submitted that the words "BLYSS/BLISS/BLIS" are not unique in Class 5 and references three other registered marks which the applicant submits "coexist in Class 5". Evidence that third parties use similar signs may reduce distinctiveness of a trade mark.[20] However, I also note that in *Zero Industry Srl v OHIM*,[21] the GC stated that:

> "73. […] It must be found that the mere fact that a number of trade marks relating to the goods at issue contain the word 'zero' is not enough to establish that the distinctive character of that element has been weakened because of its frequent use in the field concerned (see, by analogy, Case T-135/04 *GfK v OHIM – BUS(Online Bus)* [2005] ECR II-4865, paragraph 68, and Case T-29/04 *Castellblanch v OHIM – Champagne Roederer (CRISTAL CASTELLBLANCH)* [2005] ECR II-5309, paragraph 71). "

56. I do not consider that the information provided by the applicant in its pleadings is sufficient for me to reach a finding that there has been sufficient use of the word "BLYSS" in relation to class 5 goods to reduce its distinctive character beyond that identified in paragraph 54 above. This is because the evidence consists of a reference to just three marks which may be perceived as variant spellings of the

[20] See *Lifestyle Equities CV & Ors v Royal County of Berkshire Polo Club Ltd & Ors* [2024] EWCA Civ 814 and *Enterprise Holdings Inc v Europcar Group UK Ltd* [2015] EWHC 17 (Ch)
[21] Case T-400/06

word “bliss” (albeit I have not been provided with any evidence of those mark which would allow me to make such a determination), and the applicant has failed to provide any evidence as to what goods in class 5 those marks are afforded protection.

Likelihood Of Confusion

57. 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.

58. 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*[22]). 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*[23]). It is necessary for me to keep in mind the distinctive character of the earlier mark, the average consumer for the goods, 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.

59. I have found the applicant’s “transdermal patches” to be similar to a medium degree to the opponent’s goods. I have also found that the marks are visually, aurally and conceptually similar to a medium degree, and that the earlier mark has no more than a medium level of inherent distinctive character.

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

60. I have identified that the average consumer of the goods in issue will be members of the general public, who will demonstrate a slightly higher than medium degree of attention during the purchasing process. I have also identified that the purchasing process for the goods will be primarily visual in nature, though I do not discount that there will be an aural component to the selection process.

61. Weighing up all of the above, and whilst noting the principle of imperfect recollection, that consumers rarely have the opportunity to compare marks side by side, and that the beginnings of marks tend to have more visual and aural impact, I am satisfied that there are sufficient similarities between the marks in issue to result in a likelihood of direct confusion. This is particularly the case given my finding that the only differing element between the marks (the word "Patches") is descriptive of the applicant's goods, resulting in the dominant element of both marks (the word "Blyss") being identical, and the fact that all of the goods in issue are those in the vitamins and supplements markets. I make this finding with due consideration of my finding that the average consumer will pay a higher than medium level of attention during the purchasing process.

62. I now turn to consider whether there is a likelihood of indirect confusion. Indirect confusion was described in the following terms by Iain Purvis KC, sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*:[24]

> "16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognised that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: 'The later mark is different from the earlier mark, but also has something in common with it. Taking account of the

[24] BL O/375/10

common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark'.

17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:

> (a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right ("26 RED TESCO" would no doubt be such a case).
>
> (b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as "LITE", "EXPRESS", "WORLDWIDE", "MINI", etc.).
>
> (c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension ("FAT FACE" to "BRAT FACE" for example)."

63. These three categories are not exhaustive; rather, they were intended to be illustrative of the general approach.[25] I recognise that a finding of indirect confusion should not be made merely because the competing marks share a common element. In this connection, it is not sufficient that a mark merely calls to mind another mark; this is mere association not indirect confusion.[26] The Court of Appeal has also emphasised that, where there is no direct confusion, there must be a "proper basis" for finding indirect confusion.[27]

[25] Liverpool Gin Distillery and others v Sazerac Brands, LLC and others [2021] EWCA Civ 1207
[26] Duebros Limited v Heirler Cenovis GmbH, BL O/547/17
[27] Liverpool Gin Distillery and others v Sazerac Brands, LLC and others [2021] EWCA Civ 1207

64. I am of the view that these marks would fall within the second or third category identified by Iain Purvis KC. It is my view that the average consumer would consider the addition of the word “Patches” at the end of the contested mark to be an addition of a non-distinctive element (giving that it is descriptive of the applicant’s goods) and, therefore, to be entirely logical and consistent with a brand extension or a sub-brand of “Blyss”. This is particularly the case given that the opponent’s goods are supplements for ingesting and the applicant’s goods would include transdermal patches of supplements, i.e. the opponent’s goods in patch form. As a consequence, I do therefore consider that there is a likelihood of indirect confusion between the goods in issue.

CONCLUSION

65. The opposition succeeds in respect of the goods that I have found to be similar. Therefore, the contested mark is, subject to any successful appeal of my decision, refused registration for the following goods:

Class 5
Transdermal patches.

66. That being said, the contested mark may proceed to registration (again, subject to any successful appeal of my decision) for the following goods, which I have found to be dissimilar, and those that were not opposed:

Class 5
Skin patches for the transdermal delivery of pharmaceuticals; Transdermal patches for medical treatment; Adhesive skin patches for medical use; Adhesive patches for medical purposes

COSTS

67. Whilst the opposition has succeeded partially, I do consider that the applicant has achieved the greater degree of success overall. Accordingly, the applicant is

entitled to a contribution towards its costs. However, as the applicant is not legally represented, in its letter to the applicant of 20 September 2025, the Tribunal said:

"If you intend to make a request for an award of costs you must complete and return the attached pro-forma and send a copy to the other party. Please send these by e-mail to tribunalhearings@ipo.gov.uk on or before **22 October 2025**.

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. "

68. No cost pro forma has been received to date. Since the applicant did not file a cost pro forma by the deadline given in the Tribunal's letter of 20 September 2025, and has paid no statutory fees in these proceedings, I will make no costs order against the opponent in this matter.

Dated this 30th day of March 2026

B Hartland
For the Registrar