O/0290/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00004056350
IN THE NAME OF
GUANGZHOU CHINCHY COSMETICS CO., LTD.
TO REGISTER THE FOLLOWING TRADE MARK:

Kersaall

IN CLASS 3

AND

IN THE MATTER OF OPPOSITION THERETO
UNDER NO. OP000449506
BY ADVANTICE HEALTH, LLC

Background and pleadings

1. On 27 May 2024, Guangzhou Chinchy Cosmetics Co.,Ltd. ("the Applicant") applied to register the trade mark shown on the cover page of this decision in the UK. The application was accepted and published in the Trade Marks Journal on 07 June 2024 in respect of the following goods:

   Class 3: Shampoo; Hair conditioner; Skin cleansing lotion; Cleaning preparations; Nail polish; Hair permanent wave kit; Hair dye; Cosmetics; Beauty masks; Air fragrancing preparations.

2. On 06 September 2024, ADVANTICE HEALTH, LLC ("the Opponent") opposed the application under Section 5(2)(b) of the Trade Marks Act 1994 ("the Act"). The opposition was initially directed against all of the goods in the application, however for reasons that I will deal with below, the goods now identified as being opposed are found within the table of goods below in paragraph 21 of this decision.

3. The Opponent relies upon the following mark:

KERASAL

UK Registration no. UK00003921707
Filing date: 12 June 2023
Date of registration: 17 November 2023
Relying upon the following goods:

Class 3: Nail care preparations; nail care preparations, namely, non-medicated liquid nail treatment for improving the appearance of fungal nails, lotions for strengthening the nails, nail softeners, nail buffing preparations, nail cream, nail treatment gel, nail hardeners, cuticle cream; non-medicated exfoliating skin and foot care preparations; non-medicated foot creams, lotions, moisturizers, wash, masks and scrubs; general purpose mentholated ointments, creams, lotions, not for medical use; non-

medicated ointments for use on the skin and nails; non-medicated skin care creams, lotions, moisturizers, wash, scrubs, masks and ointments; non-medicated foot soaks.

Class 5: Pharmaceutical preparation for the treatment of various skin and nail conditions; foot care preparations for medical use; pain relief preparations for foot and skin care; medicated exfoliating skin and foot care preparations; medicated foot creams, lotions, moisturizers, wash, masks and scrubs; medicated ointments for use on the skin and nails; medicated skin care creams, lotions, moisturizers, wash, scrubs, masks and ointments; medicated foot soaks.

4. By virtue of its earlier filing date, the Opponent's mark 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.

5. The Opponent submits that the marks are similar, and that the goods at issue are identical or similar.

6. The Applicant filed a counterstatement within which it denied the grounds of opposition.

7. The Opponent filed evidence during proceedings. Neither party requested a hearing, however both parties filed written submissions in lieu of a hearing. This decision is taken following a careful consideration of the papers.

8. The Applicant is represented by Paweł Wowra; the Opponent is represented by Appleyard Lees IP LLP.

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.

Evidence

10. The Opponent filed evidence in the form of the witness statement of David Moy, of Appleyard Lees IP LLP, signed and dated 03 June 2025. The witness statement is accompanied by exhibits DM1EX1 – DM1EX15.

11. The evidence seeks to show that the marks are similar and would be confused and that the goods are similar.

PRELIMINARY ISSUES

ChatGPT responses

12. I note within the Opponent's evidence that it has provided ChatGPT responses that it seeks to rely on to show that the competing marks are similar and that as a result there would be a likelihood of confusion.[1] However, this evidence does not take the Opponent's case any further. I note in *Ayinde, R (On the Application Of) v London Borough of Haringey*, it was said:

> "In the context of legal research, the risks of using artificial intelligence are now well known. Freely available generative artificial intelligence tools, trained on a large language model such as ChatGPT are not capable of conducting reliable legal research. Such tools can produce apparently coherent and plausible responses to prompts, but those coherent and plausible responses may turn out to be entirely incorrect. The responses may make confident assertions that are simply untrue. They may cite sources that do not exist. They may purport to quote

[1] Exhibits DM1EX3A and DM1EX3B

passages from a genuine source that do not appear in that source."[2] (*My emphasis added.*)

I observe that the questions asked are vague and the responses provided include as well as the contested mark, brands that would clearly not result in any likelihood of confusion. I further note that this evidence fails to show any actual market place confusion between the respective marks and their goods; rather, it simply represents hypothetical scenarios generated by artificial intelligence. For these reasons, no reliance can be placed on these responses, so I shall say no more about them, instead I shall conduct an assessment of the competing marks having regard to the applicable legal principles and case law.

State of the register evidence

13. I note from the Opponent's evidence and the parties' submissions that both parties have referred to other marks on the UKIPO register. The Applicant refers to other marks on the register using the prefix 'KERA' to demonstrate its use is common,[3] whilst the Opponent's evidence refers to marks that include a leaf device.[4]

14. Setting aside for a moment the fact that the Applicant is trying to give evidence within its counterstatement/submissions which is not the proper forum and should be disregarded, in *Zero Industry Srl v OHIM*, Case T-400/06, the General Court ("GC") stated that:

> "*73. As regards the results of the research submitted by the applicant, according to which 93 Community trade marks are made up of or include the word 'zero', it should be pointed out that the Opposition Division found, in that regard, that '… there are no indications as to how many of such trade marks are effectively used in the market'. The applicant did not dispute that finding before the Board of Appeal but none the less reverted to the issue*

[2] [2025] EWHC 1383, paragraph 6
[3] Applicant's counterstatement, paragraph 12, and applicant's submissions in lieu, paragraph 7.
[4] Opponent's submissions in lieu, paragraph 19, and witness statement of David Moy at paragraphs 17, 18 and 19 and the corresponding exhibits DM1EX12, DM1EX13A and DM1EX13B.

of that evidence in its application lodged at the Court. 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). "

15. The fact that there are a number of trade marks that contain the prefix 'KERA' by itself does not assist the applicant. The same applies to the Opponent's reliance on state of the register evidence to support the submission that a leaf device is commonly used.

16. I observe that the Opponent also refers to trade marks that are produced when using the search criteria 'search type similar' on the UK IPO Register and entering the Applicant's mark.[5] The Opponent stresses that one of the results provided as being similar to the Applicant's mark is the Opponent's earlier mark. However, in my view, this does not take the Opponent's case any further. This is merely a search tool with a potentially wide criteria that allows the public to see what marks appear on the Register and may theoretically be considered as similar; it is not intended as a legal tool or basis on which to determine similarity under section 5(2)(b) of the Act.

17. Instead, the outcome of this opposition will be determined after making a global assessment whilst taking into account all the relevant factors.[6]

DECISION

Sections 5(2) and 5A

18. Sections 5(2)(b) and 5A of the Act state:

[5] Opponent's submissions in lieu, paragraph 17, referred to in the witness statement of David Moy at paragraph 11 and the corresponding exhibit DM1EX5.
[6] *O2 Holdings Limited, O2 (UK) Limited v Hutchison 3G UK Limited,* Case C-533/06.

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

(a) …

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

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

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."

19. 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*, [2025] UKSC 25:

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

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, 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

20. Whilst initially in its pleadings the Opponent indicated that it wished to oppose all of the applied for goods in class 3, I observe from the Opponent's submissions in lieu[7] that it now appears to oppose only the goods identified in the table below.

[7] At paragraphs 6 and 31

21. The goods for comparison are as follows:

Opponent's goods	Applicant's goods
Class 3: Nail care preparations; nail care preparations, namely, non-medicated liquid nail treatment for improving the appearance of fungal nails, lotions for strengthening the nails, nail softeners, nail buffing preparations, nail cream, nail treatment gel, nail hardeners, cuticle cream; non-medicated exfoliating skin and foot care preparations; non-medicated foot creams, lotions, moisturizers, wash, masks and scrubs; general purpose mentholated ointments, creams, lotions, not for medical use; non-medicated ointments for use on the skin and nails; non-medicated skin care creams, lotions, moisturizers, wash, scrubs, masks and ointments; non-medicated foot soaks. Class 5: Pharmaceutical preparation for the treatment of various skin and nail conditions; foot care preparations for medical use; pain relief preparations for foot and skin care; medicated exfoliating skin and foot care preparations; medicated foot creams, lotions, moisturizers, wash, masks and scrubs; medicated ointments for use on the skin	Class 3: Shampoo; Hair conditioner; Skin cleansing lotion; Cleaning preparations; Nail polish; Cosmetics; Beauty masks;

and nails; medicated skin care creams, lotions, moisturizers, wash, scrubs, masks and ointments; medicated foot soaks.	

22. In *Gérard Meric v OHIM,* Case T-133/05, the 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".

23. 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, […], 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.

24. 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:

    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.

25. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v OHIM*, Case T-325/06, the GC stated that "complementary" means:

> "82. ...there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking".

26. For the purposes of considering the issue of similarity of the goods, it is permissible to consider groups of terms collectively where appropriate: *Separode Trade Mark*, BL O-399-10.

27. In *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1)* [2024] UKSC 36, Lord Kitchin set out the proper approach to considering terms in specifications:

> "365. […] The correct approach, as a matter of principle, in considering a specification of services which is defined by terms which are not clear or precise, is to confine the terms used to the substance or core of their possible meanings: see, for example, *Reed Executive plc v Reed Business Information Ltd* [2004] EWCA Civ 159; [2004] RPC 40, at para 43. So too, if

a specification of goods is defined by terms which are ambiguous, then it should be confined to those goods which are clearly covered. These principles are consistent with first, the requirement that the specifications of goods and services must be clear and precise so that others know what they can and cannot do; and secondly, general fairness because any ambiguity is the responsibility of the owner of the mark. If despite this, the words used are still unclear so that they cannot be interpreted, then it is permissible to disregard them. But, in my opinion, that will rarely be the case."

28. In *YouView TV Ltd v Total Ltd* [2012] EWHC 3158 (Ch), Floyd J. (as he then was) stated that:

> "… 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 or 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."

Nail polish

29. The above applied for term would clearly be encompassed by the Opponent's broader term "*Nail care preparations*". As such, I find that the competing terms are *Meric identical*.

Skin cleansing lotion; Cleaning preparations; Cosmetics; Beauty masks

30. The above goods would be included in the Opponent's broad term "*non-medicated skin care creams, lotions, moisturizers, wash, scrubs, masks and ointments*", or in the case of cosmetics the Opponent's term would be included in

such. Consequently, the above applied for terms are ***identical under the principle of Meric*** to the Opponent's goods.

Shampoo; Hair conditioner

31. I notice that within its submission,[8] the Opponent relies upon paragraphs 12 to 16 of the witness statement of David Moy and the corresponding exhibits (Exhibits 7, 8, 9, 10 and 11) to demonstrate that shampoo is identical or highly similar to its term "*non-medicated skin care creams, lotions, moisturizers, wash, scrubs, masks and ointments".* The evidence in those exhibits is of retailers such as Boots, Superdrug and Lidl displaying goods from certain brands for sale online. For example, there is evidence of *Dove*,[9] *Aveeno*,[10] *CIEN* (Lidl's own brand)[11], as well as *E45*[12] and *Herbal essence*[13] offering both shampoo (and sometimes conditioners) as well as body washes and/or moisturisers. Having considered the evidence, I find that the Applicant's shampoo and conditioner goods, overlap in trade channels with the Opponent's term which would include goods such as body wash and moisturisers. Further the competing goods coincide in nature, method of use and purpose as they are both products for the purpose of personal hygiene. Users may also overlap. Moreover, the goods are not complementary as one is not essential or important to the use of the other, neither are they in competition. Overall, I consider the respective goods to be similar to a ***medium degree.***

32. As discussed above, contrary to what the Opponent had pleaded within its Form TM7, i.e. that it opposes all of the applied for goods, later within its submissions[14] it identified as being opposed only the applied for goods found in the table above, which I have dealt with. However, for clarity, had I made a finding in relation to the remaining applied for terms, i.e. "*Hair permanent wave kit; Hair dye; Air fragrancing preparations*", I would have found these terms to be dissimilar to the Opponent's earlier goods.

[8] Opponent's written submissions, paragraph 18
[9] DM1EX7, top of page 20 of 66. "Home > Brand > Dove".
[10] DM1EX8
[11] DM1EX9
[12] DM1EX10
[13] DM1EX11
[14] See paragraph 6 and 31

Average consumer and the purchasing act

33. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties' goods. I must then determine the manner in which the goods and services are likely to be selected by the average consumer.

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:

> (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. With respect to the average consumer the Opponent contends:

"*Here, the relevant public is the average consumer of cosmetic, beauty and hygiene products, which is the public at large. The goods are items with a low purchase value, and the average consumer is accustomed to encountering a high number of available products to select from. As such, the average consumer's level of attention will be relatively low when purchasing the relevant goods and encountering any associated trade marks*."[15]

36. Whilst the Applicant has not expressly identified who it believes the average consumer to be, it does refer to the public.

37. I accept that the average consumer of the goods at issue is likely to be predominately the relevant public, without excluding that a professional user, such as a beautician, may be included. However, I disagree with the Opponent that the level of attention that will be paid is low. On the contrary, although the goods themselves will be purchased fairly frequently and are likely to be relatively inexpensive, they are applied to the skin or scalp, and members of the public will be cautious of the ingredients used that may irritate their skin. Equally factors will be considered such as scent, cost and other ingredients that may enhance the appearance of one's skin, nails or hair. Overall, I consider that the average consumer will pay a *medium level of attention*.

38. The goods are likely to be sold in physical stores as well as their online equivalents where the goods will be viewed before they are purchased, as such, I consider that the purchasing process will be predominantly visual in nature, although I do not discount an aural component as they may be recommended through word of mouth.

[15] Opponent's submissions, paragraph 38

Distinctive character of the earlier trade mark

39. 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 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)."

40. Registered trade marks possess varying degrees of inherent distinctive character, being lower where they are suggestive of or allusive to a characteristic of the goods, to those with high inherent distinctive character, such as invented words which have no allusive qualities. Although the distinctiveness of a mark can be enhanced by virtue of the use that has been made of it, no evidence of use has been provided in this case, as such, I only have the inherent position to consider.

41. I observe that the Applicant submits the following:

> "*In the case of the Opponent's mark, the Applicant notes that this mark is composed of two parts: 'KERA' and 'SAL.' For marks related to cosmetics, the inclusion of the word 'KERA' in the mark suggests that the cosmetics under this mark consist of or include keratin which lowers the degree of distinctiveness of the Opponent's mark in relation to the offered goods. Many hair care and cosmetic products use "kera" in their branding or descriptions (e.g., keratin treatments, keratin-infused shampoos) to indicate that the product contains keratin or is designed to benefit keratin-rich structures, such as strengthening or smoothing hair. This can be substantiated by the number of marks registered solely in the UK that include the wording 'KERA' within their structure*."[16]

42. The Opponent challenges this submission arguing the following:

> "*At paragraph 11, the Applicant states that "For marks related to cosmetics, the inclusion of the word 'KERA' in the mark suggests that the cosmetics under this mark consist of or include keratin." This claim is wholly unsupported by evidence and should be disregarded*."[17]

There is some merit in the Opponent's submissions. For reasons I discussed under preliminary issues I do not place any weight on the submissions that the element 'KERA' is used in a number of marks that appear on the register. Further, the Applicant has not supported its assertion that the letters 'KERA' would be understood by the public as being short for Keratin, and therefore the word would be seen as allusive to Keratin. Without evidence to support this claim, I find that the earlier mark, "KERASAL", will be understood to be an invented word. As such, I find that the earlier mark enjoys a ***high level*** of distinctiveness.

Comparison of the marks

43. The respective trade marks are shown below:

[16] Applicant's written submissions, paragraph 6 and Counterstatement, paragraph 11.
[17] Opponent's written submissions, paragraph 14(ii)

Earlier trade mark	Contested trade mark
KERASAL	Kersaall

Overall impression

44. The earlier mark is a word only mark consisting of the word 'KERASAL',[18] as such the overall impression lies within the word only.

45. As for the contested mark, this contains the word 'Kersaall' in slightly stylised font with a small leaf device sprouting from the tip of the letter 'r'. The mark is presented in black and white. The overall impression rests in the word, with the leaf device which is fairly small, and the stylisation playing a much lesser role.

Visual similarity

46. The marks first three letters are identical which I bear in mind is a position where consumers attention is usually directed,[19] and they are highly similar in their respective endings 'SAL' and 'SAALL'. The respective marks are only different in length by one letter. However, the exact positioning and letter sequence differ after the first three letters. With the fourth and fifth letters in revers positions and an additional letter "L" found at the end of the contested mark. I.e "KERASAL" vs "Kersaall". The contested mark also contains a small leaf device sprouting from the tip of the letter 'r' and is presented in a stylised font. Overall, I find that the marks are *highly similar*.

Aural similarity

47. In relation to the aural assessment, the Opponent states:

[18] *LA Superquimica v EUIPO*, T-24/17, para 39. See also *Bentley Motors Limited v Bentley 1962 Limited*, BL O/158/17, paragraph 16.
[19] El Corte Inglés, SA v OHIM, Cases T-183/02 and T-184/02

"*Aurally, the Earlier Mark and the Opposed sound almost identical. Both the Earlier Mark and the Opposed Mark have a similar rhythm, intonation, and impression, particularly because of the common elements in the way the letters are arranged almost identically. It follows that the Earlier Mark and the Opposed Mark are phonetically similar to a high degree*."[20]

48. The Applicant's only submissions in relation to the aural similarity are:

"*The endings of the marks diverge significantly ("-SAAL(L)" vs. "-SAL"), creating different visual and phonetic impressions*."[21]

49. The Opponent's mark contains three syllables KE/RA/SAL whereas the Applicant's mark has two syllables KER/SAL. The marks coincide in their last syllables. Whilst the first syllable in the earlier mark and the first two syllables in the contested mark differ, they do overlap in their sounds given the use of the same first three letters. The leaf device in the Applicant's mark will not be articulated. Overall, I find that the marks are aurally similar to at least a medium degree.

Conceptual similarity

50. In relation to the competing marks conceptual meaning, the Applicant asserts that:

"*Conceptually, the Opponent's mark is associated with keratin, while the Applicant's is an invented expression with no meaning*."[22]

The Applicant also states that:

"*Although the stylisation is rather subtle, the Applicant highlights the very distinctive stylisation of the letter 'r', where the upper part is in the form of a leaf, evoking connotations of nature and natural cosmetics*".[23]

[20] Opponent's submission, paragraph 27
[21] Applicant's written submissions, paragraph 15
[22] Ibid, final sentence of paragraph 15
[23] Applicant's written submissions, paragraph 4

51. In contrast, the Opponent argues that neither mark has a meaning and that the marks are therefore conceptually neutral.[24]

52. I have taken into consideration both parties submission on the matter. In my view, the earlier mark, 'KERASAL" will be perceived by the average consumer (as discussed above in the distinctive character assessment) as an invented word, as will the contested mark. The leaf device within the contested mark will be seen as such giving the impression of the goods being naturally derived. The competing words within the respective marks will be conceptually neutral as they will both be perceived as invented words, however, due to the figurative element within the contested mark, there is some conceptual difference, albeit in a weakly distinctive concept.

Likelihood of confusion

53. 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 or services 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*).

54. I have found the marks to be highly similar visually, and aurally similar to at least a medium degree. The respective words within the competing marks will be conceptually neutral, however, due to the figurative element the marks differ conceptually but in a weakly distinctive concept. Furthermore, I have found the earlier mark to possess a high level of inherent distinctiveness. I have identified the average consumer to predominantly be the general public who will pay a

[24] Opponent's written submissions, paragraph 28

medium degree of attention, and the goods to be either identical or similar to a medium degree.

55. Taking into account imperfect recollection and the fact that the goods are either identical or at the least similar to a medium degree, I consider that consumers, paying a medium level of attention, and who rarely have the chance to compare marks side by side would overlook the differences between the marks and misremember them for one another. Particularly as there is no distinctive conceptual hook to help distinguish the marks from one another as the leaf device will also be overlooked as it plays a lesser role in the overall impression. As a result, I find there to be a direct likelihood of confusion.

CONCLUSION

56. The opposition based upon 5(2)(b) has been entirely successful and the application subject to any appeal, will be refused for all the goods, except for those that are no longer contested and which I have found in any event would be dissimilar.[25]

COSTS

57. The Opponent has been successful and is entitled to an award of costs. The relevant scale is contained in Tribunal Practice Notice ("TPN") 1/2023. Applying the guidance in the TPN, I consider the following to be fair:

Official fee	£100
Preparing a statement and considering the other side's statement	£250
Preparing evidence	£200[26]
Preparing written submissions in lieu	£350

[25] Namely: Hair permanent wave kit; Hair dye; Air fragrancing preparations.
[26] The award for this activity is lower than the proposed guidance under Annex A as not all of the evidence was relevant, for example, the state of the register evidence and the Chat GPT evidence.

Total	**£900**

58. I therefore order Guangzhou Chinchy Cosmetics Co.,Ltd. to pay ADVANTICE HEALTH, LLC the sum of £900. 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 31st day of March 2026

Sarah Wallace
For the Registrar