O/0325/26

CONSOLIDATED PROCEEDINGS

TRADE MARKS ACT 1994

IN THE MATTER OF
TRADE MARK APPLICATIONS NO. UK4096532 & NO. UK4096534
IN THE NAME OF FLORETTEE LIMITED
TO REGISTER AS A SERIES OF TWO TRADE MARKS

FLORETTEE/ FLORETTÉE

AND

FLORETTEE

FLORETTEE

EACH IN CLASS 3

AND

IN THE MATTER OF OPPOSITIONS THERETO
UNDER NUMBERS 451464 & 451476
BY ZOE TRIGWELL ACADEMY LTD

BACKGROUND AND PLEADINGS

1. On 6 September 2024, FLORETTEE LIMITED ("the applicant") applied to register trade mark numbers UK4096532 for the series of two marks **FLORETTEE** and **FLORETTÉE** ("the '532 mark"), and UK4096534 for the series of two figurative marks as shown on the cover page of this decision ("the '534 mark"), in the United Kingdom. Both the applications were accepted and were published for opposition purposes on 20 September 2024. Both applications were made in respect of identical goods in class 3, as listed in the table under paragraph 12 of this decision.

2. The applications are opposed by Zoe Trigwell Academy Ltd ("the opponent"). The oppositions were filed on 19 December 2024, and are both based upon Section 5(2)(b) of the Trade Marks Act 1994 ("the Act"). The oppositions are directed against all of the goods in the applications. The opponent relies upon the following mark in both oppositions, which have been consolidated:[1]

FRECKLE FLORET
UK trade mark registration number 4033561
Filing date: 2 April 2024
Registration date: 28 June 2024
Registered in Classes 3 and 21.
Relying on all goods, as listed in the table under paragraph 12 of this decision.

3. The above mark qualifies as an earlier mark under section 6(1) of the Act. As it had not completed its registration procedure more than five years before the application dates for the contested marks, it is not subject to the use provisions contained in section 6A of the Act.

4. The opponent submits that as each of the marks of the contested applications are highly similar and cover identical, similar and complementary goods to those of the earlier registration, there exists a strong likelihood of confusion on the part of the

[1] As confirmed in the official letter dated 20 March 2025, issued to the parties by the Tribunal.

public. As such, the opponent requests the refusal of both applications and seeks an award of costs in its favour.

5. The applicant filed a counterstatement denying the claims. It requests that the oppositions be rejected, that the applications be allowed to proceed to registration, and that an award of costs be made in favour of the applicant.

6. Neither party elected to file evidence. Neither party requested a hearing; both parties filed written submissions in lieu of a hearing. This decision is taken following careful consideration of the papers on file.

7. In these proceedings, the opponent is represented by Adamson Jones, the applicant is represented by Trade Mark Wizards Limited.

DECISION

8. 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.

Section 5(2)(b)

9. Section 5(2)(b) is relied on and reads as follows:

> "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".

10. Section 5A states:

> "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."

11. 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, 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;

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

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

(i) mere association, in the strict sense that the later mark brings to mind the earlier mark, 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

12. The goods to be compared are:

Opponent's goods	Applicant's goods
Class 3 *Cosmetics; cosmetics for use on skin and hair; makeup; false eyelashes; cosmetic preparations for false eyelashes; strip lashes; adhesives for false lashes; eye shadows; eye shadow palettes; eye liner pencils; eyebrow pencils; eyebrow makeup; eyebrow pomade; lip cosmetics; lip preparations and moisturisers; lip glosses, oils, balms, sticks and scrubs; bronzers; blushers; powder blushers; cream blushers; lip liner pencils; face blushers; face and eye concealers; make-up foundation; makeup powders pressed or loose; make-up kits; make-up pencils; make-up powder; make-up primer; make-up setting sprays and powders; mascara; skin and body preparations; skin moisturisers; fake tanning gels, mousses, sprays and foams; skin oils; skin cleansers; skin scrubs and exfoliators; skin gels; face masks; body masks; face and body lotions; body butters; soaps; bath bombs; shower gel; bath oils and washes; hair and body washes; hair care treatments and products; hair cosmetics; hair mousse, gels, sprays, masks and straightening preparations; hand and foot lotions, moisturisers and scrubs.*	Class 3 *Non-medicated cosmetics and toiletry preparations; beauty preparations; cosmetics; make-up; make-up preparations; make-up kits comprised of cosmetics; liquid make-up; cream make-up; powder make-up; lip cosmetics; lipsticks; cream lipsticks; liquid lipsticks; matte lipsticks; lip glosses; lip liner pencil; lipstick pencil; mascara; eyebrow gel; eyebrow pomades; eyebrow pencils; eyebrow powder; eye shadow; eye shadow pencil; liquid eye shadow; eye liner; liquid eye liner; eye liner pencil; gel and cream eye liner; pearl powder shadow; bronzing and highlighting makeup; highlighter powder; highlighter drops; body bronzer powder; body bronzer lotion; body bronzer cream; powder blush; cream blush; face powder for cosmetic purposes; solid powder for compacts (cosmetics); compact powder; loose powder; setting powder (cosmetics); make-up foundations; foundation (cosmetics); concealer (cosmetics); false eyelashes; glue for false eyelashes; nail polish; nail polish remover; cuticle cream; make-up removing preparations; facial cleansing pads; skincare preparations; eye*

Class 21 *Hand tools for the application of cosmetics; hand tools for the application of makeup; facial sponges for applying make-up; makeup sponges; powder puffs; applicator sticks for applying makeup; makeup brushes; cosmetic applicators; make-up removing appliances; containers for cosmetics; applicators for applying eye make-up except brushes; abrasive sponges for scrubbing the skin; exfoliating mitts and pads; nail brushes; hair brushes and combs; bath brushes; scrubbing brushes; body sponges; bath sponges.*	*cream; neck cream; body lotion; skin lotion; face lotion; creams, milks, lotions, gels and powders for the face, body and hands; facial mask sheets; beauty masks; blemish balm creams; sun-tanning milks, gels and oils and after-sun preparations (cosmetics); shampoos; gels, mousses and balms, preparations in aerosol form for hairdressing and haircare; hair shampoos; hair conditioners; soaps for personal use; shower gel; bath foam; massage cream; bath and shower gels and salts not for medical purposes; toilet soaps; deodorants for personal use; hair lacquers; hair-colouring and hair-decolorizing preparations; permanent waving and curling preparations; non-medicated dentifrices; perfumery; essential oils; perfumes; colognes; eaux de toilette; bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; cleaning preparations.*

13. Pursuant to section 60A of the Act, the goods are not to be automatically regarded as being similar to each other on the ground that they appear in the same class, nor are they automatically regarded as dissimilar from each other on the ground that they appear in different classes.

14. Where the goods in the specification of one party are included in a broader term from the other party's specification, those goods (or services) are considered to be identical: See *Gérard Meric v OHIM,* Case T-133/05 at [29].

15. I note that both the opponent's and the applicant's class 3 specifications include the term "*cosmetics*" at large. Further, the applicant's specification also includes many terms which I consider to be encompassed by this broad term, such as, inter alia, "*lipstick pencil; mascara; eyebrow gel;* and *make-up foundations"*. I note that there are other goods within the applicant's specification, such as "*bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; cleaning preparations"* which at first glance appear to be dissimilar to any of the opponent's goods in either class 3 or class 21.

16. I do not intend to undertake a full comparison of the competing goods at this stage of the decision but I will instead proceed on the basis that at least some of the contested goods are identical to those covered by the earlier mark. If the opposition fails even where the goods are identical, it follows that the opposition will also fail where goods are only similar.[2] However, if a likelihood of confusion is found, I will proceed to assess the goods at issue in full.

The average consumer and the nature of the purchasing act

17. The average consumer is a legal construct, deemed to be reasonably well informed and reasonably circumspect. 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, inter alia, the average consumer's level of attention is likely to vary according to the category of goods or services in question.

[2] Under section 5(2)(b), a degree of similarity between the goods is essential for there to be a finding of likelihood of confusion: see paragraph 49 of *eSure Insurance v Direct Line Insurance,* [2008] ETMR 77 CA.

18. In the respective written submissions in lieu of a hearing, the opponent submits that the average consumer of the goods is the general public and users of cosmetic and make-up products who will pay a low degree of attention during purchase due to the generally low cost of the goods; meanwhile the applicant submits that many users of cosmetic and make-up products are "increasingly particular" about the products and would pay a high degree of attention to the goods in question.

19. In my view, the average consumer for the competing goods in common will most likely be a member of the general public. I acknowledge that the average consumer of haircare and cosmetic products could also be a professional such as a hairdresser or a beautician. The goods are sold through a range of outlets, being both physical stores and online. In physical retail and wholesale outlets, the goods will be displayed on shelves where they will be viewed and self-selected by the consumer. A similar process will apply to websites, where the consumer will select the goods having viewed an image displayed on a web page. Although visual considerations will dominate the process, I do not discount the aural element as the consumer may seek advice from sales staff. I would expect the price of the goods to vary somewhat, but overall I consider that the cost of the purchase is likely to be relatively low and the goods will be purchased reasonably frequently. The general public will want to ensure that the products and their ingredients are suitable for them and meet their specific personal needs. As such, I find that the overall level of attention will be medium when selecting the goods, although it is likely to be slightly higher for the most expensive cosmetic products. Meanwhile, the professional consumer is likely to base their selection on the suitability and performance of the goods, as well as the cost and the reputation of the brand. With their own reputation being paramount, they will pay a higher than average degree of attention to the selection process.

Comparison of marks

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

created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated in *Bimbo SA v OHIM* Case C-591/12P, that:

> "34. ....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."

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

22. The respective trade marks are shown below:

Opponent's trade mark	**Applicant's trade marks**
FRECKLE FLORET	The '532 marks **FLORETTEE/** **FLORETTÉE** The '534 marks FLORETTEE FLORETTEE

Overall impression

23. The opponent's mark consists of two dictionary-defined words, "FRECKLE" and "FLORET", presented in a standard typeface in capital letters. To my mind, neither word dominates, with the words forming a unit. As the mark contains no other elements, the overall impression therefore rests in the unit created by the combination of the words themselves.

24. Each of the contested applications have been accepted and published as a series of two marks, pursuant to section 41(2) of the Act. The '532 marks consist of the invented word FLORETTEE, presented in a standard black typeface in capital letters. The only difference between the marks is the additional acute accent above the penultimate letter "E" (É) on the second mark in the series only. As the marks contain no other elements, the overall impression therefore rests in the word itself. The '534 mark consists of the same word FLORETTEE, but presented in a stylised typeface. The first mark of the series is presented in black, while the second mark is presented in the same typeface but in the colour lilac/light purple. The applicant submits that the marks comprise of a single word "in a highly stylised, visually distinctive font, with a delicate, capitalised serif lettering…".[3] In my view, although the presentation of the marks would not be entirely overlooked, the marks are not *so* highly stylised that the font used detracts from the overall impression created by the word itself. As the marks contain no other elements, the overall impression rests in the word itself, the stylisation of which plays a secondary, but still important role.

25. For convenience, I will from this point refer to the series of each of the marks in the singular, though my comments should be taken as referring equally to both marks in the series, unless expressed otherwise.

26. In *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02, the General Court ("GC") noted that the beginning of words tend to have more visual and aural impact than the ends, although I accept that this is not always the case.

[3] At point 21 of its written submissions in lieu of a hearing.

Visual comparison

The ‘532 mark

27. The opponent’s mark comprises two distinct words, while the applicant’s mark consists of a single word. The marks share in common the letters “FLORET”. These letters form the second word in its entirety in the opponent’s mark, which is preceded by the word “FRECKLE”. In the applicant’s mark, the letters in common are positioned at the beginning of the word, which contains the additional letters “TEE/TEÉ”, creating a visual disparity between the marks. Overall, I consider the marks to be visually similar to a low degree.

The ‘534 mark

28. The applicant’s ‘534 mark is a stylised version of the ‘532 mark, as outlined above. Following the same analysis as for the ‘532 mark, due to the additional stylisation, I consider the ‘534 mark to be even further removed visually from the opponent’s mark. Notwithstanding that I did not consider the word element to be very highly stylised, neither is the stylisation insignificant, and it will not go unnoticed. Therefore, I consider the marks to be visually similar to a very low degree.

Aural comparison

29. The opponent’s mark will be articulated as four syllables, while the applicant’s ‘532 and ‘534 marks are each likely to be pronounced identically as three syllables. I note the applicant’s submission that the final syllable of each of its marks would be pronounced as “AY” rather than “TEE.” However, due to the double letters “T” and “E” at the end of the word, I consider this unlikely. To my mind, a significant proportion of the average consumer will articulate each of the applicant’s marks as FLOR-ET-TEE. Overall, given that the overlapping aural element FLOR-ET comes at the start of the applicant’s mark and the end of the opponent’s mark, I consider the marks to be aurally similar to a low degree.

Conceptual comparison

30. With regard to conceptual comparison, in *Luciano Sandrone v European Union Intellectual Property Office (EUIPO)*, Case T-268/18, the GC held:

> "8. … In that regard, it must be borne in mind that the purpose of the conceptual comparison is to compare the 'concepts' that the signs at issue convey. The term 'concept' means, according to the definition given, for example, by the Larousse dictionary, a 'general and abstract idea used to denote a specific or abstract thought which enables a person to associate with that thought the various perceptions which that person has of it and to organise knowledge about it."

31. Both parties agree that the applicant's marks "FLORETTEE/FLORETTÉE" consist of an invented word. In relation to the opponent's mark "FRECKLE FLORET", I consider that a significant proportion of the average consumer will recognise and understand the word "FRECKLE" as a small brown spot on the skin, and the word "FLORET", when taken solus, as referring to either a small flower or to the individual clusters of a cauliflower or broccoli which make up the vegetable as a whole.

32. I note the opponent's reference to *Usinor SA v OHIM*, Case T-189/05, where the GC found that while the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details, he will nevertheless, perceiving a verbal sign, break it down into verbal elements which, for him, suggest a concrete meaning or which resemble words known to him.[4] The opponent submits that "the closest word which could be attributed to the Contested Application is the word 'floret'. As a result, the average consumer will read the word 'FLORETTEE' and be forced to think about a floret and possibly the broccoli vegetable". The opponent submits that the marks at issue will be considered to have similar conceptual meaning that will be related to florets and that the marks are conceptually similar to a medium degree.[5]

[4] At [62].
[5] At point 6 of the statement of grounds.

33. Case law indicates that the assessment of the conceptual similarity of the marks is usually done without reference to the goods and services in question.[6] That being said, where there is a potential link between the conceptual meaning of the mark and the goods to which it is affixed, it is necessary to have the goods in mind to determine whether there is any conceptual allusion to them.[7] As such, given that the goods concerned relate to skin products, I consider that the average consumer will perceive the two words which make up the opponent's mark as a unit, which allude to a skin spot (freckle) in the shape of a small flower (floret). Meanwhile, I agree that the applicant's marks are likely to be seen as alluding to a small flower. I do not consider the stylisation applied to the '534 marks to affect the concept of the word itself. Consequently, although there is an overlap in the general concept of a small flower, for those consumers who recognise the opponent's mark as referring to a freckle or skin spot in the shape of a flower, I find the marks to be conceptually similar to a low degree. I also consider that there will be other consumers who will perceive the applicant's marks as either an invented word with no allusive qualities, or as a foreign word but without attributing any meaning to it. In such circumstances, the marks are conceptually dissimilar.

Distinctive character of the earlier marks

34. 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. The factors I must take into account in assessing the level of distinctive character were set out by the CJEU in *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97:

> "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

[6] *Viñedos Emiliana SA v Consorzio Tutela Vini Emilia, (2) Chiarli 1860 – Pr.I.V.I Srl And (3) Medici Ermete E Figli Srl* BL O/054/22.
[7] BL O/1174/25, at [30].

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)."

35. Registered trade marks possess varying degrees of inherent distinctive character, being lower where they are allusive or suggestive of a characteristic of the goods, ranging up to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use made of it. The opponent has not claimed that its mark has enhanced distinctiveness, and no evidence of use has been filed. Therefore, I only have the inherent characteristics of the mark to consider.

36. The earlier mark comprises two dictionary-defined words, "FRECKLE" and "FLORET", which in my view, as considered earlier in this decision, a significant proportion of the average consumer will see as a reference to a freckle, or skin spot in the shape of a flower. I note that the applicant submits that the opponent's social media and website display the term "FRECKLE FLORET" in relation to a floret-shaped tool used to apply make-up to mimic the appearance of freckles.[8] However, I have not been provided with any evidence to support this submission. Given the nature of the overlapping goods to which the earlier mark is applied, i.e. a range of cosmetics and hair products, I do not find the mark to be descriptive of such goods, nor directly allusive without having to apply a more in-depth analysis. Therefore, I find the earlier mark to be inherently distinctive to a medium degree.

Likelihood of confusion

37. There is no simple formula for determining whether there is a likelihood of confusion. It is clear that I must make a global assessment of the competing factors (*Sabel* at [22]), keeping in mind the interdependency between them i.e. a lesser

[8] At point 12 of the applicant's written submissions in lieu of a hearing.

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 (*Canon* at [17]). I must consider the various factors from the perspective of the average consumer, bearing in mind 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 he has retained in his mind (*Lloyd Schuhfabrik* at [26]).

38. There are two types of possible confusion: direct, where the average consumer mistakes one mark for the other, or indirect, where the average consumer recognises that the marks are different, but assumes that the goods are the responsibility of the same or connected undertakings. The distinction between these was explained by Mr Iain Purvis Q.C. (as he then was), sitting as the Appointed Person, in *L.A. Sugar Limited v Back Beat Inc*, Case BL-O/375/10. He said:

> "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 recognized 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 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)."

39. The above are examples only which are intended to be illustrative of the general approach. These examples are not exhaustive but provide helpful focus.

40. As explained at paragraph 16 of this decision, I have proceeded on the basis that at least some of the competing goods are identical. I considered the average consumer of the goods in common to be the general public who overall would pay a medium degree of attention during the predominantly visual selection of those goods, although I did not discount the aural considerations. I also considered the professional buyer within the hair and beauty industry, where I found the level of attention paid during the selection process would be higher than average.

41. I found the competing '532 marks to be visually similar to a low degree, and the '534 marks to be visually similar to a very low degree. Aurally, I considered each of the marks to be similar to a low degree, and to be conceptually similar to a low degree, or dissimilar where the applicant's marks were perceived as an invented word with no allusive qualities. I found the earlier mark to be inherently distinctive to a medium degree.

42. I have made a multi-factorial assessment of the various considerations in play. I take into account that the average consumer is unlikely to see the marks side-by-side and will therefore be reliant on the imperfect picture of them they have kept in their mind. I bear in mind the predominantly visual nature of the selection process, as well as the low degree of aural and conceptual similarity between the marks and the

medium level of attention paid by the general public.[9] I consider the overall differences between the marks are such that they are unlikely to be mistakenly recalled as each other. I therefore find that there is no likelihood of direct confusion. I find this even where the respective goods are held to be identical, which offsets a lesser degree of similarity between the marks.

43. Taking into account the previously outlined guidance of Mr Iain Purvis Q.C. (as he then was) in *L.A. Sugar*, I will now consider whether there might be a likelihood of indirect confusion. In *Duebros Limited v Heirler Cenovis GmbH,* BL O/547/17, Mr James Mellor Q.C. (as he then was), as the Appointed Person, stressed that a finding of indirect confusion should not be made merely because the two marks share a common element. In this connection, he pointed out that it is not sufficient that a mark merely calls to mind another mark. This is mere association not indirect confusion.

44. In *Liverpool Gin Distillery Ltd and others v Sazerac Brands, LLC and others* [2021] EWCA Civ 1207, Lord Justice Arnold referred to the comments of James Mellor QC (as he then was) sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said (at [16]) that "a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion". Lord Justice Arnold added that there must be “a proper basis” for concluding that there is a likelihood of indirect confusion when there is no likelihood of direct confusion.

45. I acknowledge that the categories listed by Mr Iain Purvis Q.C. (as he then was), are not exhaustive. Keeping in mind the global assessment of the competing factors in my decision, while sight of one mark may bring to mind the other mark(s), in my view, there would be no logical reason for consumers (either members of the public or those in the trade) to believe that there is an economic connection between the undertakings. While consumers may consider that the marks coincidentally share some of the same letters, to my mind it would be highly unusual for a company to rebrand its mark or launch a sub-brand by adopting a different name to the original,

[9] I note that in relation to the assessment of the likelihood of confusion, it is the section of the public with the lowest level of attention which must be taken into consideration - Case T-247/12, *Argo Group International Holdings Ltd. v OHIM*.

other than some overlap in letters. Consequently, I find no likelihood of indirect confusion.

46. The oppositions fail under section 5(2)(b).

FINAL REMARKS

47. Earlier in this decision, I explained that I did not intend to undertake a full comparison of the competing goods, but I would instead proceed on the basis that at least some of the opposing goods were identical. In light of my findings of no likelihood of confusion, it is unnecessary for me to return to undertake a comparison for the remaining goods as this would not improve the opponent's position.

CONCLUSION

48. The applicant has been successful. Subject to any successful appeal, trade mark application numbers **UK4096532** and **UK4096534** by FLORETTEE LIMITED may each proceed to registration in respect of all of the goods.

COSTS

49. The applicant has been successful and is therefore entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice ("TPN") 1/2023. Applying the guidance in that TPN, I consider the following to be fair:

Considering 2 x notices of opposition and preparing counterstatements:	£500
Preparing written submissions in lieu of a hearing:	£400
Total:	**£900**

50. I therefore order Zoe Trigwell Academy Ltd to pay FLORETTEE LIMITED 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 16th day of April 2026

Suzanne Hitchings
For the Registrar,
the Comptroller-General