

**O/0326/26**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION NO. UK00004019796**

**IN THE NAME OF RORY'S STAYCATIONS LTD**

**FOR THE TRADE MARK:**

**RORY'S TRAVEL CLUB**

**IN CLASSES 35, 39 AND 43**

**AND**

**IN THE MATTER OF OPPOSITION THERETO**

**UNDER NO. 448244 BY**

**HAVEN LEISURE LIMITED**

## BACKGROUND AND PLEADINGS

1. On 28 February 2024 (“the relevant date”), Rory’s Staycations Ltd (“the applicant”) applied to register the trade mark shown on the cover page of this decision, in the UK. The application was published for opposition purposes on 22 March 2024, and protection is sought for the services set out in Annex 1 to this decision, which include, for instance, advertising services, travel and transport reservation services and arranging accommodation.

2. On 24 June 2024, the application was opposed by Haven Leisure Limited (“the opponent”) based upon sections 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994 (“the Act”). Under sections 5(2)(b) and 5(3) of the Act, the opponent relies upon the following trade mark:



(series of 2)

UKTM no. 2583441

Filing date: 3 June 2011

Registration date: 4 November 2011

3. The opponent relies upon its class 41 and 43 services only, as set out in Annex 2 to this decision, which feature, for instance, tourist accommodation and holiday camp services.

4. Under section 5(2)(b) of the Act, the opponent claims that the marks are similar, and the services are identical or similar, with the result that there is a likelihood of confusion.

5. Under section 5(3) of the Act, the opponent claims to have had, at the relevant date, a reputation for all the services set out in Annex 2 to this decision. The opponent claims that use of the applicant's mark would, without due cause, take unfair advantage of, and/or be detrimental to, the distinctive character and/or repute of the earlier mark.

6. Under section 5(4)(a) of the Act, the opponent relies upon the sign RORY, which it claims to have used throughout the UK since 2011 in relation to the following:

“Toys, games and playthings; entertainment services; hotel, motel and boarding house services; provision of tourist house and accommodation services, café, cafeteria, canteen, bar, coffee shop, snack-bar and restaurant services; catering services; provision of holiday camp and camp ground services, facilities and amenities; operation of nurseries and creches; provision of exhibition facilities and amenities; provision of facilities and amenities, all for conferences, seminars and banquets; provision of holiday accommodation; provision of caravan, mobile home, camp and camp ground services.”

The opponent claims that use of the applicant's mark would be contrary to the law of passing off.

7. The applicant filed a counterstatement as follows:

- a. The section 5(2)(b) claim is denied in its entirety.
- b. It is admitted that the opponent has a reputation under section 5(3), but the rest of the 5(3) claim is denied in its entirety.<sup>1</sup>
- c. It is admitted that the opponent has goodwill and that the sign RORY is distinctive of that goodwill, but the particular goods/services to which the goodwill attaches are not admitted. The rest of the 5(4)(a) claim is denied in its entirety.

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<sup>1</sup> I will return to the scope of the reputation that is admitted below.

8. Neither party requested a hearing, but both filed written submissions in lieu. This decision is taken following a careful consideration of the papers on file.

## **REPRESENTATION**

9. The applicant is represented by MKB Law Limited.

10. The opponent is represented by Potter Clarkson LLP.

## **EVIDENCE AND SUBMISSIONS**

11. The opponent filed evidence in chief in the form of the witness statement of Sarah Talland dated 4 November 2024, which is accompanied by 12 exhibits (ST1 to ST12). Ms Talland is a Partner and Chartered Trade Mark Attorney acting on behalf of the opponent in these proceedings.

12. The applicant filed evidence in the form of the witness statement of James Boyd dated 23 December 2024, which is accompanied by 6 exhibits (JB1 to JB6). Mr Boyd is a solicitor acting on behalf of the applicant in these proceedings.

13. The opponent filed evidence in reply in the form of the second witness statement of Ms Talland dated 24 February 2025, which is accompanied by 4 exhibits (ST13 to ST16).

14. The applicant filed undated written submissions on 24 March 2025.

15. The opponent filed written submissions dated 25 March 2025.

## **RELEVANCE OF EU LAW**

16. 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)**

17. Section 5(2)(b) of the Act 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.”

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

“5A Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only.”

19. 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 completed its registration process more than 5 years before the filing date of the application in issue, it is subject to the use provisions of section 6A. However, the applicant did not request that the opponent provide proof of use in its Form TM8 and, consequently, the opponent can rely upon all of the services identified.

20. 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 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 services**

21. The applicant has filed evidence which goes to its own activities. However, the assessment that I must undertake is a notional one based upon the marks applied-for/registered and the services in the respective specifications. With that in mind, the competing services can be found in Annex 1 and Annex 2 to this decision.

22. 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 of its judgment that:

“In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary.”

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

- (a) The respective uses of the respective goods or services;
- (b) The respective users of the respective goods or services;
- (c) The physical nature of the goods or acts of service;
- (d) The respective trade channels through which the goods or services reach the market;
- (e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be, found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;
- (f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

24. Another factor in assessing similarity is to consider the extent to which the services at issue may be regarded as “complementary”, which case law describes as meaning that “... 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 the responsibility for those goods lies with the same undertaking.”<sup>2</sup>

25. Since services are inherently less precise than specifications of goods, specifications for services should be scrutinised carefully and they should not be given a wide construction covering a vast range of activities, but confined to the substance or core of their possible meanings.<sup>3</sup> For the purposes of assessing similarity, it is

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<sup>2</sup> *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06

<sup>3</sup> See, for instance, *Avnet Incorporated v Isoact Limited* [1998] FSR 16, Jacob J (as he then was) at [19].

permissible, to group specified terms together where they are sufficiently comparable in essentially the same way for essentially the same reasons.<sup>4</sup>

### Class 35

*Advertising and advertisement services; Advertising in the field of tourism and travel; Business administration and management; Promotion services; Promotion [advertising] of travel; Providing business directory information via a global computer network; Providing commercial information and advice for consumers in the choice of products and services; Providing a searchable online advertising guide featuring the goods and services of online vendors.*

26. These services differ in use to the opponent class 41 and 43 services. This is because the applicant's above services in class 35 will predominantly be used by businesses (particularly those in the tourism and travel sector, where identified in the specification). By contrast, the user of the opponent's services in classes 41 and 43, is the general public. The nature, method of use and purpose of the services are plainly different. Whilst I bear in mind that businesses in the tourism and travel industry might, for example, advertise their own services, this is not the same as providing those services commercially (which is what protection in class 35 covers). Consequently, there is no overlap in trade channels. There is no competition, given the differing purposes. There is no complementarity because you would not expect the same undertaking to be responsible for both parties' services. Consequently, even where the user does overlap, the services are dissimilar.

### Class 39

*Travel information; Travel guide and travel information services; Provision of information relating to travel routes; Provision of travel information by computer; Computerised information services relating to travel; Provision of tourist travel information; Computerised information services relating to travel reservations.*

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<sup>4</sup> See *Separode* Trade Mark (BL O/399/10)

27. The opponent has filed evidence to show holiday accommodation/resort providers also offering travel information.<sup>5</sup> Even without this evidence, it is plain that the above travel information services are likely to be provided through the same trade channels as the opponent's *hotel services*, to the same user. The method of use, purpose and nature of the services differ. There is no competition, given the differing purposes. The services are important or indispensable for each other, and you would expect the same undertaking to provide both. This is because it is often the case that hotels will offer information about transportation to and from the hotel to their guests and/or about local information that guests may need (such as day trip options etc.). Consequently, I find them to be complementary. In my view, the services are similar to a medium degree.

*Arranging of travel tours; Tour reservation services; Planning of journeys; Provision of tours; Travel agency; Travel reservation; Computerised reservation services for travel; Booking of sea passages; Ticketing services for travel; Reservation services for airline travel; Arranging of business travel; Arranging of air travel; Travel arrangement services; Arranging of travel by coach; Chartering of vehicles for travelling; Travel and transport reservation services; Travel booking agencies; Organising and arranging travel; Organising of foreign travel; Arranging travel tours; Tour [...] organising; Services for the arranging of tours; Travel agency services relating to travel by omnibus; Trip planning services; Organisation of holiday travel; Agents for arranging travel; Travel agents services for arranging travel; Issuing of tickets for travel; Supplying tickets to enable holders to travel; Booking of seats for travel; Ticket booking services for travel; Services for arranging the transportation of travellers; Arranging the escorting of travellers; Seat reservation services for travellers; Tourist travel reservation services; Arranging of tours and cruises; Travel agency services for arranging holiday travel; Travel services; Holiday travel reservation services; Travel agency and booking services; Reservation of seats for travel; Booking agency services relating to travel; Organisation of travel and boat trips; Arranging of overseas travel for cultural purposes; Reservation services for travel by land; Travel and tour ticket reservation service; Arrangement of travel to and from hotels; Itinerary travel advice services; Providing driving directions for travel purposes; Timetable enquiry services relating to travel; Reservation of berths for travel; Services for the booking of travel;*

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<sup>5</sup> Exhibit ST15

*Agency services for arranging travel; Booking agency services for airline travel; Booking and reservation services for tours; Reservation and booking of seats for travel; Consultancy for travel planning of routes; Travel agency services, namely, making reservations and bookings for transportation; Coordinating travel arrangements for individuals and for groups; Travel reservation and booking services; Package holiday services for arranging travel; Agency services for arranging the transportation of travellers; Agency services for arranging the transportation of travellers' luggage.*

28. These are all services that would be offered by travel agencies. In my view, they are likely to share trade channels in some circumstances with the opponent's *hotel services*, which could also be booked through travel agencies. Plainly, there will be an overlap in user. There may be a modest degree of competition, where someone might choose to book their holiday through an agency (thus utilising the above services) or book a hotel break directly. In my view, the services are similar to between a low and medium degree.

*Travel courier services; Escorting of travellers; Travel and passenger transportation; Transportation of travellers' baggage; Transport of travellers by land.*

29. These services could all include the transport of travellers (and their baggage) from an airport (or port etc.) to a hotel. To my knowledge, these services are usually provided by standalone service providers and so there would be no overlap in trade channels with the opponent's services. The method of use, nature and purpose clearly differs and there is no complementarity or competition. Consequently, I find them to be dissimilar. However, if I am wrong in that finding and some hotels do offer this service to their customers, any similarity with the opponent's *hotel services* would be at a low degree. I can see no other point of similarity which puts the opponent in a stronger position.

*Air travel services; Transport of passengers by air.*

30. These are air travel services. They are offered by airlines to the general public. Consequently, the user will overlap with the opponent's *hotel services*, but the trade

channels will differ. The method of use, nature and purpose will clearly differ. There is no competition, given the differing purpose. I consider it unlikely that the average consumer would expect the same undertaking to be responsible for both the air travel and the hotel services and, consequently, there is no complementarity. I find the services to be dissimilar. If I am wrong in this finding, they are similar to only a low degree. I can see no other point of similarity which puts the opponent in a stronger position.

*Tour conducting; Tour operating [...].*

31. These services involve the actual operating of tours, rather than the organising/arranging of them. I can see no point of overlap with the opponent's services in terms of trade channels. The user would plainly overlap as both could be used by members of the general public. The method of use, purpose and nature of the services differs. There is no competition, given the differing purpose and no complementarity. In my view, the services are dissimilar. If I am wrong in this finding, then they are similar to a low degree.

*Transportation of passengers by coach; Transport of travellers by taxi; Transport of travellers by tram.*

32. These services all involve the transportation of passengers. In my view, these services are even more distant from the opponent's services than those discussed in paragraph 29 above, because the specific nature of the travel in these instances (by coach, taxi or tram) is not such that you would expect a hotel or other accommodation provider to provide to its customers; they are clearly offered by specialist undertakings. The nature, purpose and method of use plainly differ. The user will clearly overlap as both could be used by the general public. There is no competition, given the differing purpose. I do not consider that the average consumer would expect the same undertaking to be responsible for both, and so there is no complementarity. Consequently, I find the services to be dissimilar.

*Cruise ship services.*

33. These services have an overlapping purpose with the opponent's *hotel services*, both being for the purpose of providing holiday accommodation. The user will also be the same as both could be purchased by the general public. There may also be competition, as a user might choose to go on a cruise or book a hotel-based holiday. Consequently, I find these services to be similar to a medium degree.

#### Class 43

*Accommodation reservations; Booking of hotel accommodation; Providing travel lodging information services [...]; Temporary accommodation information, advice and reservation services.*

34. These services are likely to be provided through the same trade channels to the same users as the opponent's *hotel services*. They are also complementary, as one is important or indispensable for the other and you would expect the same undertaking to be responsible for both. The services are similar to a medium degree.

*[...] travel lodging booking agency services for travelers; Travel agencies for arranging accommodation; Travel agency services for booking accommodation; Travel agency services for booking restaurants; Travel agency services for booking temporary accommodation; Travel agency services for making hotel reservations; Travel agency services for reserving hotel accommodation.*

35. These services are specifically those provided by an agency. Consequently, there will be an overlap in trade channels (to a degree) and user with the opponent's *hotel services*, as both could be accessed through a travel agent. However, there is no complementarity as the average consumer would not expect the same undertaking to be responsible for both. There may be a degree of competition as discussed above, as the average consumer might choose to book their holiday through a travel agent or book a hotel break directly. I find the services to be similar to be similar to between a low and medium degree.

## The average consumer and the nature of the purchasing act

36. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purposes 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 services in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97.

37. 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 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.

38. The average consumer for the services will typically be members of the general public, although some of the services might also attract business users. The services are likely to entail reasonably substantial costs and will be purchased with varying degrees of frequency (with business travellers perhaps using services more frequently, and members of the general public perhaps only using the services once or twice a year). The average consumer is likely to consider factors such as location and customer service standards when purchasing the services. In my view, the average consumer will pay at least a higher than medium degree of attention (and it may be high where a particularly high cost is involved).

39. The services are likely to be purchased following perusal of signage on physical premises, advertisements and websites. Consequently, visual considerations will dominate the selection process. However, I do not discount an aural component to the purchase given that advice may be sought from travel representatives and word-of-mouth recommendations may play a part.

### **Comparison of trade marks**


40. It is clear from *Sabel* that the average consumer normally perceives a trade 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 trade marks must be assessed by reference to the overall impression created by the trade marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

“... it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means

of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

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

42. The respective trade marks are shown below:

Opponent’s registration	Applicant’s trade mark
 <p data-bbox="408 1285 580 1319">(series of 2)</p>	<p data-bbox="922 965 1273 999">RORY’S TRAVEL CLUB</p>

43. The opponent’s registration is a series of 2 marks. As nothing will turn on the difference between the two marks in the series, I will use the greyscale version of the mark for the purposes of my comparison.

44. The opponent’s mark consists of the letters R-ry in a stylised font. Between the two letter “R’s” is a paw device; because of its circular nature and the anticipation that a word will contain a vowel, the paw device will be understood by the average consumer as representing the letter ‘O’. The overall impression of the mark will, therefore, be understood as the name RORY, with the paw device playing a slightly lesser role. The font used plays a much lesser role. The applicant’s mark consists of the words RORY’S TRAVEL CLUB. I agree with the opponent’s submission that the

words TRAVEL CLUB are plainly non-distinctive and so the word RORY'S (being the possessive of the name, RORY) will play the greater role in the overall impression.

45. Visually, the marks coincide in the presence or representation of the name RORY. They differ in the use of the paw device as the letter O in the opponent's mark and the words TRAVEL CLUB in the applicant's mark. I bear in mind that the beginning of marks tend to make more of an impact than the ends.<sup>6</sup> I bear in mind that the applicant's mark is a word only mark and could be used in any font. In my view, the marks are visually similar to a medium degree.

46. Aurally, the opponent's mark is likely to be articulated as the name RORY. That name is the first aural element of the applicant's mark. The words TRAVEL CLUB will be a point of aural difference. I bear in mind that the beginning of marks tend to make more of an impact than the ends. In my view, the marks are aurally similar to a slightly higher than medium degree.

47. Conceptually, the name RORY will be identified in both marks; this will be recognised as a fairly common male forename. This is an identical concept in both marks. The paw device in the opponent's mark suggests some connection with animals, which is a concept absent from the applicant's mark. Similarly, the applicant's mark in its totality refers to a TRAVEL CLUB owned by RORY. Consequently, I consider the marks to be conceptually similar to a medium degree overall.

### **Distinctive character of the earlier mark**

48. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 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

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<sup>6</sup> *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

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-2779, 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).”

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

50. The opponent’s mark consists of the representation of the name RORY, in a stylised font, with the letter O represented by a paw device. The name RORY is relatively common and, in my view, is inherently distinctive to between a low and medium degree. The particular presentation of it in the opponent’s mark, with the paw device, means the distinctiveness of the mark as a whole is at a medium (or average) degree inherently.

51. The opponent is a provider of award-winning holiday parks, which it offers under the mark HAVEN (or a logo variant of the same).<sup>7</sup> It is plainly successful and in the

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<sup>7</sup> Exhibit ST1

year ending December 2023 it turned over in excess of £800,000,000.<sup>8</sup> It appears that RORY is a mascot character that appears at the opponent's holiday parks; I note that it is described as being the first mascot to entertain guests.<sup>9</sup> He was first debuted in the 1980s.<sup>10</sup> Whilst the opponent has clearly used the name RORY at its holiday parks for a long period of time, and given the scale of the opponent's business, that use is likely to be reasonably well known, it is not clear to me from the evidence that there has been trade mark use. Even if there has, it seems to me that (at best) this must relate to entertainment services. There is nothing in the evidence before me that the earlier mark has been used in a trade mark sense in relation to the services that I have found to be similar to the applicant's services. Consequently, I do not consider that the distinctiveness of the earlier mark has been enhanced through use.

### **Likelihood of confusion**

52. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between them and the services down to the responsible undertakings being the same or related. 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. The first is the interdependency principle i.e. a lesser degree of similarity between the services may be offset by a greater degree of similarity between the marks, and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the earlier marks, the average consumer for the services 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.

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<sup>8</sup> Exhibit ST3

<sup>9</sup> Exhibit ST5

<sup>10</sup> Exhibit ST6

53. I have found as follows:

- a. The services vary from being similar to a low degree to similar to a medium degree (except where I have found them to be dissimilar).
- b. The average consumer for the services will be a member of the general public or, in some cases, business users, who will pay a higher than medium degree of attention during the purchasing process (although in some cases it might be high).
- c. The purchasing process for the services will be predominantly visual, although I do not discount an aural component.
- d. The marks are visually and conceptually similar to a medium degree and aurally similar to a slightly higher than medium degree.
- e. The earlier mark is inherently distinctive to a medium degree, although the common element (being the name RORY, excluding a paw device) is distinctive to only between a low and medium degree.

54. The applicant has filed evidence which includes reviews of its own services.<sup>11</sup> The applicant notes that none of these reviews make any reference to the opponent. I bear in mind that the absence of evidence of confusion may be relevant to the question of whether there is a likelihood of confusion.<sup>12</sup> However, the applicant's evidence shows that customers pay for the applicant's services in euros. This evidence suggests that the applicant has (at least predominantly) been trading in the Republic of Ireland. Consequently, it is not clear to me whether there has been parallel trade within the relevant jurisdiction or, if there has been, how long this has been ongoing for. Consequently, I do not consider that this line of argument assists the applicant.

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<sup>11</sup> Exhibit JB3

<sup>12</sup> O/078/22

55. Bearing in mind the differences between the marks, particularly the visual differences in the context of a predominantly visual purchasing process, and where the average consumer is paying an above average level of attention, I do not consider that the marks are likely to be mistaken one for the other. In my view, there is no likelihood of direct confusion.

56. I will now consider whether there is a likelihood of indirect confusion. In *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, Mr Iain Purvis Q.C., as the Appointed Person, explained that:

“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)".

57. Where the services are similar to a medium degree, I consider it likely that the average consumer will perceive the common use of, or representation of, the name RORY to be indicative of the services being offered by the same (or connected) undertaking(s). This is because the addition of the words 'S TRAVEL CLUB are likely to be perceived as indicating a travel club operated under the opponent's brand and the use of the stylisation/device in the opponent's mark (and the absence thereof in the applicant's mark) is consistent with business practice of using logos in some scenarios and word only marks in others. However, where the services are similar to below a medium degree, the common use of the name RORY is likely to be perceived as a coincidence rather than indicating an economic connection.

58. The opposition based upon section 5(2)(b) is partially successful in respect of the following services, for which registration will be refused:

Class 39      Travel information; Travel guide and travel information services; Provision of information relating to travel routes; Provision of travel information by computer; Computerised information services relating to travel; Provision of tourist travel information; Cruise ship services; Computerised information services relating to travel reservations.

Class 43      Accommodation reservations; Booking of hotel accommodation; Providing travel lodging information services; Temporary accommodation information, advice and reservation services.

## Final Remarks

59. For the avoidance of doubt, even if I had proceeded on the basis that the opponent benefitted from enhanced distinctiveness in relation to entertainment services (which is the opponent's best possible case on the evidence before me), these services are sufficiently distant from the applicant's services that have survived the section 5(2)(b) ground that I would have found no likelihood of confusion in any event. In my view, this distance would offset the enhanced distinctiveness of the opponent's mark. Consequently, this would not have put the opponent in any stronger position.

### **Section 5(3)**

60. Section 5(3) of the Act states:

“5(3) A trade mark which -

(a) is identical with or similar to an earlier trade mark, [...] shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or repute of the earlier trade mark.”

61. Section 5(3A) of the Act states:

“Subsection (3) applies irrespective of whether the goods and services for which the trade mark is to be registered are identical with, similar to or not similar to those for which the earlier trade mark is protected.”

62. As noted above, there has been an admission on the part of the applicant that the opponent benefits from a reputation. In its form TM7, the opponent states as follows:

“8. The Opponent further submits that it has acquired a reputation as a result of extensive use of its Earlier Mark throughout the UK, such that the use of the

Applicant's mark, without due cause, will take unfair advantage of and/or be detrimental to the distinctive character and repute of the Earlier Trade Mark.

9. As a result of the extensive use of the Earlier Mark, the Opponent has acquired a reputation among UK consumers for services relating to the travel and tourism industries, throughout the UK, and these services are highly regarded in the industry. Therefore, consumers are likely to associate the Contested Mark with the Opponent's well-established reputation and thus the Applicant would enjoy an advantage in the marketplace which is unfair." (my emphasis)

63. In response, the applicant states as follows in their Form TM8:

"The content of paragraph 8 is admitted save that the Applicant denies that the use of the Contested Mark would take unfair advantage and/or be detrimental to the character and repute of the Opponent's Earlier Mark. There is no intent by the Applicant to leverage the reputation of the Opponent's Earlier Mark. The Applicant selected the Contested Mark to reflect a personalised, member-based travel service, unrelated to the family entertainment and holiday park services offered by the Opponent. The selection of the name was made with the intention to cater to a different market segment, focusing on travel arrangements and accommodations rather than themed entertainment and activities. Moreover, the Applicant's marketing and branding materials make no reference to or association with "*Rory the Tiger*", thus indicating no intention to benefit from or dilute the distinctive character of the Opponent's Earlier Mark. any resemblance in the use of the word "Rory" is purely coincidental and is not intended to mislead the public or capitalise on the Opponent's established market position.

[...] The content of paragraph 9 is admitted save that the Applicant denies that consumers are likely to associate the Contested Mark with the Opponent's Earlier established reputation leading to the Applicant enjoying an advantage in the marketplace that would be considered unfair. The Applicant has not received or solicited any feedback indicating any confusion or

misrepresentation between the respective marks further supporting the assertion that the Applicant is not gaining an unfair market advantage through the use of the Contested Mark.” (my emphasis)

64. It appears, therefore, that it is accepted that the opponent’s earlier mark benefits from a reputation in relation to “services relating to travel and tourism”. However, the term “travel and tourism” does not appear in the opponent’s specification. The Tribunal wrote to the applicant on 19 March 2026 to ask whether there were any specific terms in the opponent’s specification in respect of which they admitted that the opponent had a reputation. The applicant responded as follows:

“The applicant cannot comment on any reputation attaching to individual goods/services listed as offered by the Earlier Mark [...]

The reference to the reputation garnered by the Opponent in the Earlier Mark in the Form TM8 refers solely to the reputation of the Earlier Mark itself.”<sup>13</sup>

65. I have considered whether this is an attempt by the applicant to resile from their admission. In my view, it is not. This is because the pleading put forward by the opponent was not specific to a claimed reputation in relation to any particular terms within its specification. The admission by the applicant related to the claim that the opponent had a reputation, specifically in the sphere of travel and tourism, but no more than that. Consequently, my primary finding is that there has been no admission by the applicant that the opponent has a reputation for any of the services relied upon. Whilst I acknowledge that enhanced distinctiveness and reputation are different, the factors relevant to both assessments are the same. Consequently, for the same reasons given above, I do not consider that the opponent has established the requisite reputation and the opposition under this ground falls at the first hurdle. Even if I had found a reputation for entertainment services (which is the best possible case on the evidence before me), these are sufficiently distant from the applicant’s services that have survived the 5(2)(b) ground that I would have found no link in any event.

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<sup>13</sup> The opponent responded claiming that this was an attempt by the applicant to reverse its “unqualified” admission.

66. Alternatively, if I am wrong in my primary finding, then the best case for the opponent is that the applicant's admission must relate only to those terms which fall clearly within the sphere of travel and tourism. I have underlined the broadest possible range of terms that I consider this could apply to in Annex 2 to this decision. The opponent did not specify the level of reputation that it claims to benefit from, and so no admission can have been made by the applicant in that regard. Consequently, the best possible case for the opponent based on the evidence filed is that it benefits from a very modest reputation. In my view, the distance between the terms underlined in Annex 2 to this decision and those that survived the 5(2)(b) ground of opposition are such that, combined with the very modest reputation of the opponent and the common element being fairly weak in distinctiveness, I do not consider that a link would be made by the relevant public. If a link was made, it would be too fleeting to give rise to damage.

67. The opposition based upon section 5(3) of the Act does not put the opponent in any stronger position than the 5(2)(b) ground.

#### **Section 5(4)(a)**

68. Section 5(4)(a) of the Act states as follows:

“5(4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented -

a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, where the condition in subsection (4A) is met,

aa)...

b) ...

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of “an earlier right” in relation to the trade mark.”

69. Subsection (4A) of section 5 of the Act states:

“(4A) The condition mentioned in subsection (4)(a) is that the rights to the unregistered trade mark or other sign were acquired prior to the date of application for registration of the trade mark or date of the priority claimed for that application.”

70. I have summarised the opponent’s evidence above. As I explained above, whilst the applicant accepts that the opponent benefits from goodwill (and that RORY is distinctive of that goodwill), it has made no admission regarding which goods/services this goodwill relates to. For the same reasons already given, the opponent’s evidence falls well short of establishing a protectable goodwill in relation to the good/services relied upon. Consequently, this ground of opposition falls at the first hurdle. Even if the opponent had established a goodwill, it would be in relation to a far narrower set of services than those which I considered under the 5(2)(b) ground. Consequently, this ground of opposition would not have put the opponent in any stronger position.

## **CONCLUSION**

71. The opposition is successful in respect of the following services, for which, subject to appeal, the application is refused:

Class 39      Travel information; Travel guide and travel information services; Provision of information relating to travel routes; Provision of travel information by computer; Computerised information services relating to travel; Provision of tourist travel information; Cruise ship services; Computerised information services relating to travel reservations.

Class 43      Accommodation reservations; Booking of hotel accommodation; Providing travel lodging information services; Temporary accommodation information, advice and reservation services.

72. The opposition is unsuccessful in respect of the following services for which, subject to appeal, the application may proceed to registration:

Class 35 Advertising and advertisement services; Advertising in the field of tourism and travel; Business administration and management; Promotion services; Promotion [advertising] of travel; Providing business directory information via a global computer network; Providing commercial information and advice for consumers in the choice of products and services; Providing a searchable online advertising guide featuring the goods and services of online vendors.

Class 39 Arranging of travel tours; Tour reservation services; Planning of journeys; Travel courier services; Provision of tours; Travel agency; Escorting of travellers; Travel reservation; Computerised reservation services for travel; Travel and passenger transportation; Air travel services; Booking of sea passages; Ticketing services for travel; Reservation services for airline travel; Tour conducting; Arranging of business travel; Arranging of air travel; Travel arrangement services; Arranging of travel by coach; Chartering of vehicles for travelling; Travel and transport reservation services; Travel booking agencies; Organising and arranging travel; Organising of foreign travel; Arranging travel tours; Tour operating and organising; Services for the arranging of tours; Travel agency services relating to travel by omnibus; Trip planning services; Organisation of holiday travel; Agents for arranging travel; Travel agents services for arranging travel; Issuing of tickets for travel; Supplying tickets to enable holders to travel; Booking of seats for travel; Ticket booking services for travel; Transportation of travellers' baggage; Transportation of passengers by coach; Services for arranging the transportation of travellers; Arranging the escorting of travellers; Seat reservation services for travellers; Transport of travellers by taxi; Tourist travel reservation services; Arranging of tours and cruises; Travel agency services for arranging holiday travel; Transport of travellers by tram; Travel services; Holiday travel reservation services; Travel agency

and booking services; Reservation of seats for travel; Transport of travellers by land; Transport of passengers by air; Booking agency services relating to travel; Organisation of travel and boat trips; Arranging of overseas travel for cultural purposes; Reservation services for travel by land; Travel and tour ticket reservation service; Arrangement of travel to and from hotels; Itinerary travel advice services; Providing driving directions for travel purposes; Timetable enquiry services relating to travel; Reservation of berths for travel; Services for the booking of travel; Agency services for arranging travel; Booking agency services for airline travel; Booking and reservation services for tours; Reservation and booking of seats for travel; Consultancy for travel planning of routes; Travel agency services, namely, making reservations and bookings for transportation; Coordinating travel arrangements for individuals and for groups; Travel reservation and booking services; Package holiday services for arranging travel; Agency services for arranging the transportation of travellers; Agency services for arranging the transportation of travellers' luggage.

Class 43      Travel lodging booking agency services for travelers; Travel agencies for arranging accommodation; Travel agency services for booking accommodation; Travel agency services for booking restaurants; Travel agency services for booking temporary accommodation; Travel agency services for making hotel reservations; Travel agency services for reserving hotel accommodation.

## **COSTS**

73. The applicant has enjoyed the greater degree of success and is, therefore, entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice 1/2023. I have applied an appropriate reduction to account for the only partial success. With that in mind, I award the applicant the sum of **£1,150**, calculated as follows:

Preparing a counterstatement and considering the Notice of opposition	£200
Preparing evidence and considering the opponent's evidence	£650
Preparing written submissions in lieu	£300
<b>Total</b>	<b>£1,150</b>

74. I therefore order Haven Leisure Limited to pay Rory's Staycations Ltd the sum of **£1,150**. This sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

**Dated this 16<sup>th</sup> day of April 2026**

**S WILSON**  
**For the Registrar**

## ANNEX 1

### Class 35

Advertising and advertisement services; Advertising in the field of tourism and travel; Business administration and management; Promotion services; Promotion [advertising] of travel; Providing business directory information via a global computer network; Providing commercial information and advice for consumers in the choice of products and services; Providing a searchable online advertising guide featuring the goods and services of online vendors.

### Class 39

Travel information; Arranging of travel tours; Tour reservation services; Planning of journeys; Travel courier services; Provision of tours; Travel agency; Escorting of travellers; Travel reservation; Computerised reservation services for travel; Travel and passenger transportation; Travel guide and travel information services; Air travel services; Booking of sea passages; Ticketing services for travel; Reservation services for airline travel; Tour conducting; Arranging of business travel; Arranging of air travel; Travel arrangement services; Arranging of travel by coach; Provision of information relating to travel routes; Chartering of vehicles for travelling; Travel and transport reservation services; Travel booking agencies; Organising and arranging travel; Organising of foreign travel; Arranging travel tours; Tour operating and organising; Services for the arranging of tours; Travel agency services relating to travel by omnibus; Trip planning services; Organisation of holiday travel; Agents for arranging travel; Travel agents services for arranging travel; Issuing of tickets for travel; Supplying tickets to enable holders to travel; Booking of seats for travel; Ticket booking services for travel; Transportation of travellers' baggage; Transportation of passengers by coach; Services for arranging the transportation of travellers; Arranging the escorting of travellers; Seat reservation services for travellers; Transport of travellers by taxi; Tourist travel reservation services; Arranging of tours and cruises; Travel agency services for arranging holiday travel; Transport of travellers by tram; Travel services; Provision of travel information by computer; Holiday travel reservation services; Travel agency and booking services; Computerised information services relating to travel; Reservation of seats for travel; Transport of travellers by land;

Transport of passengers by air; Booking agency services relating to travel; Organisation of travel and boat trips; Arranging of overseas travel for cultural purposes; Provision of tourist travel information; Reservation services for travel by land; Travel and tour ticket reservation service; Arrangement of travel to and from hotels; Cruise ship services; Itinerary travel advice services; Providing driving directions for travel purposes; Timetable enquiry services relating to travel; Reservation of berths for travel; Services for the booking of travel; Computerised information services relating to travel reservations; Agency services for arranging travel; Booking agency services for airline travel; Booking and reservation services for tours; Reservation and booking of seats for travel; Consultancy for travel planning of routes; Travel agency services, namely, making reservations and bookings for transportation; Coordinating travel arrangements for individuals and for groups; Travel reservation and booking services; Package holiday services for arranging travel; Agency services for arranging the transportation of travellers; Agency services for arranging the transportation of travellers' luggage.

#### Class 43

Accommodation reservations; Booking of hotel accommodation; Providing travel lodging information services and travel lodging booking agency services for travelers; Temporary accommodation information, advice and reservation services; Travel agencies for arranging accommodation; Travel agency services for booking accommodation; Travel agency services for booking restaurants; Travel agency services for booking temporary accommodation; Travel agency services for making hotel reservations; Travel agency services for reserving hotel accommodation.

## ANNEX 2

### Class 41

Provision of entertainer, amusement, leisure and recreation facilities, services and amenities; nightclub, discotheque, music hall, concert, dance hall, ballroom, cabaret, cinema and theatre services; amusement park, amusement arcade and amusement centre services; gaming, gambling and casino services; snooker and pool club services; theme park services; leisure centre, boating lake and water-shute complex services; funfair, circus and bingo hall services; provision of public baths, aquatic recreation, swimming, windsurfing, water skiing and outdoor recreation facilities, services and amenities; health and fitness club services; tenpin bowling alley and bowling green services; sports instruction services; organisation of recreational activities, quizzes, games and competitions; production of shows and of cabarets; organisation of beauty competitions; instruction and tuition in association with all of the aforesaid; educational services; club membership services.

### Class 43

Hotel, motel and boarding house services; provision of tourist house and accommodation services, cafe, cafeteria, canteen, bar, coffee shop, snack-bar and restaurant services; catering services; provision of holiday camp and camp ground services, facilities and amenities; operation of nurseries and creches; provision of exhibition facilities and amenities; provision of facilities and amenities, all for conferences, seminars and banquets;