

IN THE MATTER OF THE TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00003966502 IN THE NAME OF NNAMDI B C UCHE TO REGISTER THE FOLLOWING TRADE MARK

Something Blue

IN CLASS 14

AND

IN THE MATTER OF OPPOSITION THERETO UNDER NO. OP000445599 BY SOMETHING BLUE LTD

AND IN THE MATTER OF AN APPEAL FROM THE DECISION OF O. ROSE'MEYER (O/1216/25) DATED 24 DECEMBER 2025.

DECISION

Introduction

1. This is an appeal by Nnamdi B C Uche ("**Appellant**") from decision O/1216/25 of Oliver Rose'Meyer ("**Decision**") concerning the opposition by Something Blue Ltd ("**Respondent**") to the Appellant's application No. UK00003966502 for the trade mark "Something Blue" ("**Application**"). The Application was filed on 11 October 2023 and published on 27 October 2023 in respect of *Jewellery* in Class 14.
2. The Respondent relied upon UK Trade Mark registration No. UK00003557589 ("**Earlier Mark**"), details of which are set out below:

| Mark | Filing date | Registration date | Goods relied upon |
|-------------------------|--------------------|--------------------------|------------------------------|
| Something Blue by Ostro | 18/11/2020 | 16/04/2021 | Class 14 only ¹ . |

3. The Respondent initially based its opposition on ss. 5(2)(b), 5(3) and 5(4)(a), but later discontinued the latter two grounds. It submitted that the Mark is highly similar to the Earlier Mark and was applied for in respect of identical goods.
4. The Appellant filed a counterstatement within which it denied that the marks and goods concerned are similar. The Appellant also filed evidence. Neither party requested a hearing in the Registry, and both filed submissions in lieu.
5. Mr O. Rose'Meyer for the Registrar held that the opposition succeeded in full. On 20 January 2026 the Appellant filed a Notice to Appeal to the Appointed Person against the Decision under Section 76 of the Trade Marks Act 1994.

¹ A full list of the Class 14 goods is set out at Annex 1 of the Decision.

The Hearing Officer's decision

6. The Hearing Officer held as follows (in summary, and insofar as is relevant to this appeal):
 - a. The average consumer is the general public at large, paying a level of attention from somewhere around medium to relatively high. The selection process is primarily visual, although an aural component via word of mouth recommendations or advice from sales assistants cannot be discounted;
 - b. The elements 'Something Blue' and 'by Ostro' are co-dominant, however the 'by Ostro' element is the more distinctive element, with 'Something Blue' being somewhat allusive as jewellery is commonly bought or worn when getting married. Both elements contribute equally to the overall impression of the Earlier Mark;
 - c. The marks are visually similar to between a medium and high degree, aurally similar to a medium degree and conceptually similar to between a medium and high degree;
 - d. The Earlier Mark as a whole is inherently distinctive to a high degree, but that stems from the 'by Ostro' element, with the 'Something Blue' element being of medium distinctive character;
 - e. The term *Jewellery* appears in both marks' specifications, and accordingly the goods are identical;
 - f. There is no likelihood of direct confusion, but there is a likelihood of indirect confusion. The opposition therefore succeeded.

Grounds of Appeal

7. The Appellant's Grounds of Appeal are as follows:
 - a. **Error of principle / insufficient "proper basis" for indirect confusion:** Whereas the Hearing Officer directed himself that indirect confusion is not a "consolation prize" and requires a "proper basis", his finding of indirect confusion contains an error of principle and/or is inadequately reasoned;
 - b. **Misapplication of L.A. Sugar categories for indirect confusion:** The case does not properly fall within any of the L.A. Sugar categories;
 - c. **Failure to give proper effect to "by Ostro" as a qualifying origin indicator:** The conclusion that consumers will assume an economic link even though the additional element 'by Ostro' is distinctive fails to reflect the qualifying effect of 'by Ostro' and/or overstates the likelihood that consumers will assume corporate connection merely because the two marks share the allusive phrase 'Something Blue';
 - d. **Inconsistency between the finding that "by Ostro" is more distinctive and the outcome of indirect confusion:** The Hearing Officer held that the high distinctiveness of the Earlier Mark stems from the 'by Ostro' element, with 'Something Blue' being only of medium distinctiveness. It was not reasonably open to him to conclude that the shared element is strong enough that consumers would assume an economic connection.

8. The Appellant expanded upon the above in his skeleton argument and at the appeal hearing, and I set out below further details as are necessary to understand my overall conclusions. The Respondent filed a skeleton argument in response and its representative, Matthew Hiscox, made oral submissions at the appeal hearing. I thank both advocates for their clear written and oral submissions, which I found very helpful.

Standard of review

9. The approach to be adopted in an appeal hearing has been laid down a number of times in case law, most recently in *Iconix Luxembourg Holdings SARL v. Dream Paris Europe Inc* [2025] UKSC 25 at §§94-95:

“94. It is perhaps obvious, and certainly an inevitable conclusion drawn from experience, that reasonable minds, and in particular reasonable judicially trained minds, each faithfully applying the relevant law and principles, will come to different conclusions about the answer to these multifactorial questions. While of course the decision of an appellate court trumps that of the court below, the law has imposed structured constraints designed to prevent a free for all in a higher court whenever a party (with the necessary resources) wishes to challenge the first instance decision of the trial judge. The reasons for these constraints are set out in a string of well-known authorities including, in the intellectual property context, *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5; [2014] FSR 29, per Lewison LJ at para 114. The reasons there set out relevantly include the following:

- (i) The trial is not a dress rehearsal. It is the first and last night of the show.
- (ii) Duplication of the trial judge's role on appeal is a disproportionate use of the limited resources of an appellate court.
- (iii) In making his decisions the trial judge will have regard to the whole of the sea of evidence presented to him, whereas an appellate court will only be island hopping.

95. In *Lifestyle Equities CV v Amazon UK Services Ltd* [2024] UKSC 8; [2024] Bus LR 532 this court reviewed those constraints in a trade mark context. After citing from the *Fage* case this court in a joint judgment said, at paras 49- 50:

"49. That does not, however, mean the appeal court is powerless to intervene where the judge has fallen into error in arriving at an evaluative decision such as whether an activity was or was not targeted at a particular territory. It may be possible to establish that the judge was plainly wrong or that there has been a significant error of principle; but the circumstances in which an effective challenge may be mounted to an evaluative decision are not limited to such cases. Many of the important authorities in this area were reviewed by the Court of Appeal in *In re Sprintroom Ltd* [2019] 2 BCLC 617, paras 72–76. There, in a judgment to which all members of the court (McCombe, Leggatt and Rose LJJ) contributed, the court concluded, at para 76, in terms with which we agree, that on a challenge to an evaluative decision of a first instance judge, the appeal court does not carry out the balancing exercise afresh but must ask whether the decision of the judge was wrong by reason of an identifiable flaw in the judge's treatment of the question to

be decided, such as a gap in logic, a lack of consistency, or a failure to take into account some material factor, which undermines the cogency of the conclusion.

50. On the other hand, it is equally clear that, for the decision to be 'wrong' under CPR r 52.21(3), it is not enough to show, without more, that the appellate court might have arrived at a different evaluation.""

10. Further guidance was provided in *Axogen v Aviv* [2022] EWHC 95 (Ch) at §24-25:

"24. Although I was referred to numerous cases on the subject (including *English v Emery Demibold & Struck Ltd* [2002] 1 WLR 2409, *REEF Trade Mark* [2003] RPC 5, *Fine & Country Ltd v Okotoks Ltd* [2014] FSR 11, *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5, *Shanks v Unilever Plc* [2014] RPC 29, *TT Education Ltd v Pie Corbett Consultancy* [2017] RPC 17, *Apple Inc v Arcadia Trading Limited* [2017] EWHC 440 (Ch), *Actavis Group PTC v ICOS Corporation* [2019] UKSC 1671 and *NINEPLUS O/039/21*), the approach of the appeal court to a statutory appeal under section 76(1) of the TMA is uncontroversial. I bear the following principles, relevant to the issues before me, firmly in mind:

- i) The appeal is by way of a review, not a rehearing (see *TT Education Ltd v Pie Corbett Consultancy Ltd* (O/017/17) at [52(i)]);
- ii) The appeal court will allow an appeal where the decision of the lower court was "wrong" (see CPR 52.11). Neither surprise at a Hearing Officer's conclusion, nor a belief that he or she has reached the wrong decision suffices to justify interference (*NINEPLUS O/039/21* at [14]);
- iii) The decision of the lower court will be "wrong" if the judge makes an error of law, which might involve asking the wrong question, failing to take account of relevant matters or taking into account irrelevant matters. Absent an error of law, the appellate court would be justified in concluding that the decision of the lower court was wrong if the judge's conclusion was "outside the bounds within which reasonable disagreement is possible" (*Actavis Group* at [81]);
- iv) The approach required by the appeal court depends on a number of variables including the nature of the evaluation in question (*REEF Trade Mark* [2003] RPC per at [26]). There is a "spectrum of appropriate respect for the Registrar's determination depending on the nature of the decision" (*TT Education* at [52(ii)]), with decisions of primary fact at one end of the spectrum and multi-factorial decisions (of the type which the parties agree were made in this case by the Hearing Officer) being further along the spectrum.
- v) In the case of a multifactorial assessment or evaluation, involving the weighing of different factors against each other, the appeal court should show a real reluctance, but not the very highest degree of reluctance, to interfere in the absence of a distinct and material error of principle. Special caution is required before overturning such decisions (*TT Education* at [52(iv)], *REEF* at [28] and *Fine & Country* at [50]-[51]).
- vi) An error of principle is not confined to an error as to the law but extends to certain types of error in the application of a legal standard to the facts in an evaluation of those facts. The evaluative process is often a matter of degree upon which different judges can legitimately differ and an appellate court ought not to

interfere unless it is satisfied that the judge's conclusion is outside the bounds within which reasonable disagreement is possible (*Actavis Group* at [80]).

- vii) Another variable to be taken into account will be "the standing and experience of the fact-finding judge or tribunal" (*REEF* at [26], *Actavis Group* at [78]). Expert tribunals are charged with applying the law in the specialised fields and their decisions should be respected unless it is quite clear that they have misdirected themselves in law. Appellate courts should not rush to find such misdirections simply because they might have reached a different conclusion on the facts (*Shanks* at [28] citing the warning given by Baroness Hale in *AH (Sudan) v Secretary of State for the Home Department* [2007] UKHL 49).
- viii) The appellate court should not treat a judgment as containing an error of principle simply because of its belief that the judgment or decision could have been better expressed; "The duty to give reasons must not be turned into an intolerable burden" (see *REEF* at [29]). The reasons need not be elaborate. There is no duty on a judge, in giving her reasons, to deal with every argument presented by counsel in support of his case. It is sufficient if what she says shows the basis on which she has acted (*English* at [17], *Fage* at [115]). The issues the resolution of which were vital to the judge's conclusions should be identified and the manner in which she resolved them explained (*English* at [19]).
- ix) In evaluating the evidence, the appellate court is entitled to assume, absent good reason to the contrary, that the first instance judge has taken all of the evidence into account (*TT Education* at [52(vi)])."

11. To the above should be added the judgment of the Court of Appeal in *Lidl Great Britain Ltd v. Tesco Stores Ltd* [2024] EWCA Civ 262, where Arnold LJ said at §110 "It is common ground that, in so far as the appeals challenge findings of fact made by the judge, this Court is only entitled to intervene if those findings are rationally insupportable".

12. I shall bear all the above in mind when reviewing the Decision.

Discussion

(1) Error of principle / insufficient "proper basis" for indirect confusion

13. The Hearing Officer cited the law relating to indirect confusion at §§42-44. At §43 he said:

"In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ 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". Arnold LJ agreed, pointing out that there must be a "proper basis" for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion".

14. The Hearing Officer's analysis at §45 reads:

"In this instance, I consider the words 'Something Blue' to be inherently distinctive, possessing an average degree of distinctiveness. It is therefore considered that the shared use of this element would not be perceived as a mere coincidence by the relevant consumer, but instead they would assume there is an economical connection between

the marks, even though the additional element of the Opponent's mark (by Ostro) is, of itself, distinctive. This is even more the case where the goods are identical. Further, I also remind myself that I have found the two elements in the Opponent's mark to be co-dominant, with the words 'Something Blue' retaining an independent distinctive role. Consequently, I find there to be a likelihood of indirect confusion".

15. The Appellant contends that, notwithstanding his citation of the relevant principles, the Hearing Officer failed in §45 to identify a "proper basis" for his finding of indirect confusion in circumstances where i) the additional element 'by Ostro' was held to be highly distinctive; and ii) he held that consumers would be able to differentiate the marks in practice.
16. At the hearing, Mr Hiscox for the Respondent, whilst maintaining that the finding of likelihood of indirect confusion was correct and fully supported by the Decision as a whole, conceded that the Hearing Officer's discussion of indirect confusion at §45 "could be better expressed".
17. It seems to me that, looking at §45 in isolation, the Appellant is correct. The Hearing Officer rejected a likelihood of direct confusion on the basis that:
 - The common element of the marks, 'Something Blue', is somewhat allusive and only of medium distinctive character;
 - The additional words in the Earlier Mark - 'by Ostro' - are highly distinctive; and
 - Those additional words create a difference that is unlikely to be overlooked.
18. Given the above, it was incumbent on the Hearing Officer to provide an explanation of why he believed there to be a likelihood of indirect confusion. I do not regard the brief reasoning at §45, in and of itself, as being sufficient to provide a "proper basis" for his finding.
19. The Respondent contended in its skeleton argument that a proper basis "is plainly articulated in the Decision when read as a whole, even if not set out in a single concentrated passage". I remind myself of the principle cited at §10(viii) above that "The appellate court should not treat a judgment as containing an error of principle simply because of its belief that the judgment or decision could have been better expressed". Accordingly, I shall consider whether the Decision taken as a whole provides a "proper basis" for the finding of indirect confusion. Before doing so, however, I first address the other grounds of appeal.

(2) Misapplication of *L.A. Sugar* categories for indirect confusion

20. The Appellant contends that the case does not properly fall within any of the *L.A. Sugar* categories, and accordingly the Hearing Officer's finding of indirect confusion does not properly arise.
21. I can deal with this ground briefly. The three categories identified by Iain Purvis QC (as he then was), sitting as the Appointed Person in *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, are not exhaustive. That much is clear from §17 where he said "Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories: ..." (my underlining). Furthermore, in *Liverpool Gin* Arnold LJ said at §22:

"[*L.A. Sugar*] is a helpful explanation of the concept of indirect confusion, which has frequently been cited subsequently, but as Mr Purvis made clear it was not intended to be an exhaustive definition. For example, one category of indirect confusion which is not mentioned is where the sign complained of incorporates the trade mark (or a similar sign)

in such a way as to lead consumers to believe that the goods or services have been co-branded and thus that there is an economic link between the proprietor of the sign and the proprietor of the trade mark (such as through merger, acquisition or licensing)".

22. The fact that a case does not neatly fall into one of the *L.A. Sugar* categories is accordingly not fatal to a finding of indirect confusion. I dismiss the second ground of appeal.

(3) Failure to give proper effect to "by Ostro" as a qualifying origin indicator

23. At §44 the Hearing Officer said:

"Additionally, in *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271 (Ch), Arnold J. (as he then was) considered the impact of the CJEU's judgment in *Bimbo*, Case C-591/12P, on the court's earlier judgment in *Medion v Thomson*. The judge said:

"18 The judgment in *Bimbo* confirms that the principle established in *Medion v Thomson* is not confined to the situation where the composite trade mark for which registration is sought contains an element which is identical to an earlier trade mark, but extends to the situation where the composite mark contains an element which is similar to the earlier mark. More importantly for present purposes, it also confirms three other points.

19 The first is that the assessment of likelihood of confusion must be made by considering and comparing the respective marks — visually, aurally and conceptually — as a whole. In *Medion v Thomson* and subsequent case law, the Court of Justice has recognised that there are situations in which the average consumer, while perceiving a composite mark as a whole, will also perceive that it consists of two (or more) signs one (or more) of which has a distinctive significance which is independent of the significance of the whole, and thus may be confused as a result of the identity or similarity of that sign to the earlier mark.

20 The second point is that this principle can only apply in circumstances where the average consumer would perceive the relevant part of the composite mark to have distinctive significance independently of the whole. It does not apply where the average consumer would perceive the composite mark as a unit having a different meaning to the meanings of the separate components. That includes the situation where the meaning of one of the components is qualified by another component, as with a surname and a first name (e.g. BECKER and BARBARA BECKER).

21 The third point is that, even where an element of the composite mark which is identical or similar to the earlier trade mark has an independent distinctive role, it does not automatically follow that there is a likelihood of confusion. It remains necessary for the competent authority to carry out a global assessment taking into account all relevant factors.""

24. The Appellant contends that the Hearing Officer, having found at §27 that "the 'by Ostro' element suggests the entity responsible for the 'Something Blue' range", erred by not finding that the Earlier Mark will be perceived as a qualified phrase, which points away from indirect confusion and towards differentiation between undertakings, consistent with the reasoning in *Whyte and Mackay*.

25. I do not agree. In terms, the Appellant is contending that ‘by Ostro’ qualifies ‘Something Blue’ in the same way that ‘Barbara’ qualifies ‘Becker’ in the example used in *Whyte and Mackay*, such that the composite mark is perceived as a unified whole rather than as ‘Something Blue’ (with independent role) plus ‘by Ostro’. That is not the case, for at least the following reasons:
- In contrast to the impact of ‘Barbara’ when added to ‘Becker’, ‘by Ostro’ does not change the meaning of ‘Something Blue’ – rather it is an attribution to the maker of ‘Something Blue’.
 - The construction “Brand Name by Maker” is a standard commercial usage. The Respondent’s skeleton argument gave the examples “Love by Roja Dove”, DoubleTree by Hilton” and “Bluebell by Penhaligon’s”. I agree, and accept that members of the public are well-used to seeing marks constructed along the lines of the Earlier Mark, and will understand their meaning.
26. Accordingly, the qualification at §20 of *Whyte and Mackay* does not apply in the current case, as the meaning of ‘Something Blue’ is not qualified by ‘by Ostro’ – the latter phrase merely tells the consumer who made the ‘Something Blue’ product. ‘Something Blue’ accordingly retains an independent distinctive role in the Earlier Mark.
27. I dismiss this third ground of appeal.

(4) Inconsistency between the finding that “by Ostro” is more distinctive and the outcome of indirect confusion

28. The Appellant contends that, in light of the Hearing Officer’s finding that the ‘by Ostro’ element is highly distinctive, whereas the ‘Something Blue’ is only of medium distinctiveness, it was not reasonably open to him to conclude that the shared element is strong enough that consumers would assume an economic connection between the parties. Rather, the Appellant contends that the average consumer would perceive the shared phrase ‘Something Blue’ as either an allusive reference within the wedding/jewellery context, and/or an element used by different traders without any economic link.
29. Again, I disagree with the Appellant. The Hearing Officer held that ‘Something Blue’ is “somewhat allusive”, but by no means made a finding that it is descriptive. On the contrary, he held that it had a medium level of distinctive character. At §32 he said:
- “It is my view that the average consumer would identify the words ‘Something Blue’ as an allusion to the traditional wedding rhyme ‘something old, something new, something borrowed, something blue.’”
30. He further addressed the issue at §36:
- “‘Something Blue’ would be understood by the relevant consumer as a reference to the well-known traditional wedding rhyme. It is therefore considered that, in relation to the goods concerned, the phrase ‘Something Blue’ is somewhat allusive as jewellery is commonly bought or worn when getting married”.
31. It is clear from the above why he made a finding of a medium level of distinctiveness notwithstanding the allusive nature of ‘Something Blue’ – the average consumer would understand that weddings are only one example of an occasion on which jewellery is commonly purchased, and accordingly the phrase possesses an inherent distinctive character in respect of the goods in question.

32. Given the above findings, he was entitled to decide at §45 that the average consumer would not perceive the shared use of the 'Something Blue' element as mere coincidence.
33. Accordingly, I do not agree that the Hearing Officer was precluded from making a finding of likelihood of indirect confusion, and dismiss this fourth ground of appeal.

Likelihood of indirect confusion

34. I now assess the likelihood of indirect confusion for myself to see whether the Hearing Officer's finding can be supported.
35. Both at first instance and on appeal, the Respondent argued as follows:
 - The Application is wholly subsumed within the Earlier Mark;
 - The first two words in each mark are identical;
 - The average consumer will read the identical element first;
 - Both elements are co-dominant, contributing equally to overall impression;
 - The words 'Something Blue' will be considered as a standalone trade mark by the average consumer. They are of at least average distinctiveness and retain an independent distinctive role in the Earlier Mark;
 - The 'by Ostro' element simply denotes who the goods are made by;
 - The goods are identical.
36. Each of the above propositions was accepted by the Hearing Officer. Although the Hearing Officer held that 'by Ostro' is the more distinctive element of the Earlier Mark, he held that 'Something Blue' does retain its distinctive character. He also held at §27 that "the 'by Ostro' element suggests the entity responsible for the 'Something Blue' range".
37. In my view, taking all the above factors together, there is sufficient support to provide a "proper basis" for the Hearing Officer's finding. In particular, the Hearing Officer was entitled to consider that the combination in the Earlier Mark of 'Something Blue' with additional wording suggesting maker identification would lead the average consumer to infer, on seeing the words 'Something Blue' in the Application, that it is the Respondent's brand stripped of its maker attribution, or an associated brand of the Respondent.

Conclusion

38. Whereas the Hearing Officer did not provide sufficient explanation at §45 alone to support his finding of a likelihood of indirect confusion, when considering the Decision as a whole the finding was correct and fully supported. The appeal is dismissed.

Costs

39. Clearly, the Respondent has been the successful party in this appeal. In accordance with the scale costs in TPN 1/2023, I order that the Appellant should pay the Respondent the sum of £1,500 for preparing for and attending the appeal hearing.
40. The Hearing Officer ordered that the Appellant should pay the Respondent the sum of £800, which I do not disturb. Accordingly, the Appellant must pay the Respondent the sum of £2,300 within 21 days of this decision.

Dr. Brian Whitehead

1 May 2026

Representation

Mr Nnamdi B C Uche, the Appellant, in person

Mr Matthew Hiscox, trade mark attorney, of Trademark Eagle Limited, for the Respondent