

BL O/0382/26

**TRADE MARKS ACT 1994
ON APPEAL TO THE APPOINTED PERSON**

IN THE MATTER OF:

UK Trade Mark Application No:
WO0000001686416 VALOTX
in the name of Valo Therapeutics Oy

And

Opposition No OP000438879 thereto
by Valo Health, LLC

DECISION

1. This is an appeal from the decision of, Ms. L Fayer, the Hearing Officer, dated 12 September 2025 (the "Decision").
2. I shall refer to Valo Health LLC as the "Appellant" and Valo Therapeutics Oy as the "Respondent".
3. The Decision concerns the Respondent's Trade Mark Application for VALOTX in classes 1, 5, 10, 40, 42 and 44 (the "Mark").
4. The Appellant opposed registration of the Mark, relying on its earlier marks UK00004115585 and WO000001570555 for VALO (the "Earlier Marks"), pursuant to section 5(2)(b) Trade Marks Act 1994 ("TMA"). It contended that:
 - a. the marks in issue are similar (VALO v. VALOTX); and
 - b. the goods/services in issue are identical or similar; and
 - c. in consequence of the above-mentioned similarity of marks and identity/similarity of goods and/or services there is a likelihood of confusion (including a likelihood of association).

5. The Hearing Officer held the marks to be similar and that in large part there was identity/similarity of goods and/or services but, notwithstanding, there were no goods or services for which there was a likelihood of confusion.

SCOPE OF THIS APPEAL

6. The following aspects of the Decision were not in issue on appeal:
 - a. the test to be applied under section 5(2)(b) TMA (at paragraphs 13 – 24 of the Decision).
 - b. the Hearing Officer's 24 separate findings as to identity, similarity and dissimilarity (paragraphs 24 - 64 of the Decision). In respect of the comparisons of goods and services she made, she found:
 - (a) 9 were identical;
 - (b) 1 was highly similar;
 - (c) 2 were of high to medium similarity;
 - (d) 6 were of medium similarity;
 - (e) 3 were of low similarity, and
 - (f) 3 were dissimilar.
 - c. the mark of the Application is pronounced VAY-LOW-TEE-EX (paragraph 78 of the Decision). I should note here that this was a point that the Respondent tried to challenge on appeal, but as it had no respondent's notice it was not entitled to.
 - d. the Appellant's mark, VALO, is inherently distinctive to a high degree (paragraph 98 of the Decision).
7. There are two grounds of appeal. They are in summary that the Hearing Officer erred because she:

- a. failed to apply the interdependency principle (Ground 1), and
 - b. failed to find (and therefore failed to take into account) that TX had a descriptive meaning in a medical context (Ground 2).
8. There was, as I have said, no respondent's notice.

APPROACH TO THE APPEAL

9. There was no dispute about how I should approach this appeal. The principles are well understood and are discussed in detail in *Axogen v Aviv Scientific* [2022] EWHC 95 (Ch), *Lifestyle Equities v Amazon* [2024] UKSC 8 and *Iconix v Dream Pairs* [2025] UKSC 25. For present purposes it is sufficient for me to remind myself of the summary of the approach given by Mr. Thomas Mitcheson KC, sitting as the Appointed Person, in SOCIAL WORK NEWS (O/00/50/24) at [13]:

To paraphrase, an appeal should only be allowed where the decision of the lower court was "wrong". 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". In the case of a multifactorial assessment and in the absence of a distinct error of principle, the appeal court should show a real reluctance, but not the very highest degree of reluctance, to interfere.

GROUND 1

10. The Appellant's case on this ground is set out succinctly at paragraphs 2.1 and 2.2 of its Grounds of Appeal as follows:

2.1 The Hearing Officer correctly identified the well-established interdependency principle for the purposes of assessing a likelihood of confusion: "a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa". However, the Hearing Officer failed to apply the interdependency principle when assessing the likelihood of confusion. The Hearing Officer held that the goods and services in dispute ranged from

being "identical to similar to a low degree". This covers the full (and wide) spectrum of product similarity under section 5(2)(b) TMA (on the basis that anything less than "low similarity" is presumably no similarity). Notwithstanding, the Hearing Officer held in two very short, conclusory passages – where no reference is made to the goods/services in issue – that there was no likelihood of direct or indirect confusion ([101] and [104] respectively of the Decision).

2.2 The Opponent submits that the Hearing Officer made a clear error of principle in failing to properly apply the interdependency principle when assessing the likelihood of confusion; specifically, the Hearing Officer failed to consider the extent to which the goods and services of the Application are identical or similar (and the degree of such similarity) to the goods and services protected by the Opponent's earlier marks, and how such identity or similarity impacted upon the assessment of the likelihood of confusion. If the Hearing Officer had undertaken the proper assessment she would have determined that the goods and services of the Application she held to be identical or similar to the goods and services protected by the Opponent's earlier marks, should be refused.

Or put shortly, the Hearing Officer was not entitled to deal with interdependency in the compendious way that she did.

Analysis

11. It is settled law that the tribunal must assess, amongst other things, whether the goods/services of the earlier mark or marks are identical, similar or dissimilar to each of the goods/services of the challenged application. It is also settled law that when considering the likelihood of confusion, a lesser degree of similarity between goods or services can be offset by a higher degree of similarity between the marks themselves, and vice versa. This principle is commonly referred to as the “interdependency principle”.
12. It is frequently the case that a Hearing Officer will be faced with a large and burdensome task, both in relation to the comparison of goods and services and thereafter in relation to assessing a likelihood of confusion. That is the case here, where the specification of goods and services in the Application is made up of 804 words spread across six classes and includes several very broad terms.
13. It is the settled practice of the UKIPO that it is not always necessary to assess similarity in respect of every good or service individually, instead “comparable goods/services” may be grouped together (see *Separode* Trade Mark BL O/399/10

and *Isdin SA C-597/12*). That is what happened in this case which is why the decision made by the Hearing Officer made only 24 (and not 804) comparisons when assessing similarity. That approach and the decisions she reached (see paragraph 6(b) above) are not challenged on this appeal.

14. The Hearing Officer addressed the likelihood of direct confusion at paragraphs 100-101 of her decision as follows:

100. The following factors must be considered to determine if a likelihood of confusion can be established:

- *I have found the marks to be visually similar to a medium degree.*
- *I have found the marks to be aurally similar to a medium degree.*
- *I have found the marks to be conceptually neutral.*
- *I have found the opponent's First Earlier IR and Second Earlier Mark to be inherently distinctive to a high degree.*
- *I have identified the average consumer as the general public and medical professionals (human and veterinary), who will select the goods and services primarily by visual means, although I do not discount an aural component.*
- *I have concluded that a high degree of attention will be paid during the purchasing process for all of the goods and services which improve the user's end health. For the "cloud computing" services, a medium degree of attention will be paid.*
- *The parties' goods and services range from being identical to similar to a low degree.*

101. Taking all of the factors listed in paragraph 100 into account, even bearing in mind the principle of imperfect recollection, I am satisfied that the parties' marks are unlikely to be mistakenly recalled as each other. Notwithstanding the high level of inherent distinctive character possessed by the opponent's marks, I do not consider that a consumer paying a medium or high degree of attention during the purchasing process will overlook the letters "Tx"/"TX" at the end of the holder's IR. Moreover, I bear in mind that where the length of the parties marks are short, the differences are more likely to be noticed. Consequently, I do not consider there to be a likelihood of direct confusion between the parties marks.

15. It follows that the Hearing Officer has treated all 24 groups of goods and services compendiously. It is important to note that her approach lumps together comparisons which:
- a. range from dissimilar to identical, and

- b. involve (just considering the goods and services found to be other than dissimilar) a wide range of goods and services including animal albumen, drugs for medicinal purposes, veterinary apparatus and instruments, cloud computing, contract manufacturing, research and development of new processes for others, cell therapy and gene therapy.

Furthermore, the Hearing Officer failed to explain whether, and if so how, she felt able to address all 24 groups compendiously rather than individually.

16. It is not necessary for a Hearing Officer to record all his/her thought processes. However, it is necessary for them to record sufficient of those processes for the decision to be understood. That is not the case here. It follows that either (a) the Hearing Officer failed to apply the interdependency principle as she was required to do so or (b) that she did so, but failed to explain the basis of her conclusion. In either case I consider that the Decision does not properly address the question of interdependency and therefore contains an error of principle.
17. It follows that the Hearing Officer's decision on the likelihood of direct confusion at paragraph 101 must be set aside. Neither party addressed mthe e specifically on the Hearing Officer's decision on issue of indirect confusion, but it is clear to me that given the flaws in the analysis of direct confusion I have already addressed, that too must be set aside.
18. It follows that Ground 1 of the appeal succeeds. I will address what should happen in respect of a re-consideration of the likelihood of confusion, after addressing Ground 2.

GROUND 2

19. Ground 2 concerns whether the Hearing Officer's assessment of the TX aspect of the Mark was correct.
20. The Hearing Officer held, and this finding was not the subject of a cross-appeal, that the Mark would be pronounced VAY-LOW-TEE-EX.
21. Before the Hearing Officer the Appellant contended that the "TX" element was not

only aurally separate from VALO, but that "TX" is "a well-recognised synonym for treatment in a medical or pharmaceutical context". The Hearing Officer addressed the evidence and submissions on this point and rejected this submission as follows:

81. Exhibit DR2 of Mr Rose's statement also contains printouts containing the definition of the abbreviation of "Tx". I note that this exhibit contains:

- 1. A printout from merriam-webster.com, which is dated 12 May 2017. It states that the medical definition of Tx is "treatment".*
- 2. A printout from ressourcepharm.com dated 4 December 2019 which shows a table of medical abbreviations and their meaning, including "Tx." which means "treatment".*
- 3. A printout from openmd.com dated 15 January 2021, which again shows a list of medical abbreviations, including "Tx" standing for treatment.*
- 4. A printout from medical-dictionary.thefreedictionary.com dated 17 October 2021. It shows "Tx" as being an abbreviation for treatment. It also shows "TX", the capitalised version, as being the "abbreviation for individual thromboxanes, designated by capital letters with subscripts indicating structural features". Under another section it lists TX as meaning 1) thromboxane, 2) treatment and 3) traction.*
- 5. A printout from acronymfinder.com which states that "TX stands for treatment (medical)". However, I also note that it states it has "10 other meanings of TX in its Acronym Attic", but these are not provided in the evidence.*

*82. Firstly, I note that all of the above printouts are from .com websites which means it can be accessed all over the world. I am therefore unable to determine whether the abbreviation of TX is specifically known to UK professionals or consumers. Secondly, the majority of the printouts assign the meaning of treatment to the upper-case letter "T" followed by a lower-case letter "x". I also bear in mind that the opponent has provided evidence from the holder's website, which was referred to at the hearing, contained in **exhibit DRI**, which shows that on the holder's website, the IR is presented as "ValoTx" as follows:*



83. At the hearing, Mr Rose also drew my attention to the following part of the holder's website:

Valo Therapeutics (ValoTx)

is a spin-out company from the IVTlab at the University of Helsinki, Finland. ValoTx has assembled a uniquely talented team of oncolytic virus and immunotherapy experts, who together with the founding scientist have the necessary expertise to take its patented technology through clinical development and make it available to patients. The management team has a proven track record of developing successful companies from a laboratory idea to a full stock exchange listing.

84. He stated at the hearing that "Valo Therapeutics" implicitly suggests that Valo Therapeutics when abbreviated, is ValoTx, and therefore the "Tx" means therapeutics or, as he submitted in his evidence, a treatment. He also stated that treatment and therapeutics are "pretty synonymous terms".

85. Ms Burchell also made submissions on the meaning of "Tx", and for the sake of completeness, I include the following dialogue from the hearing:

MS. BURCHELL: I would also like to reference at this point the letters "TX" and my learned friend's discussion about his belief that it comes from the word therapeutics; "TX". Yes, I can imagine that it might, I do not know the answer, but I would say that that also homes in on the average consumer and who the average consumer would be in this case. That would be somebody very specialised, in a highly professional field, connected with therapeutic products and their administration and use, so people working in hospitals, who would use great care and would know exactly what it is that they were intending to use. It is a very specialised market.

THE HEARING OFFICER: Sorry, can I just confirm, you are saying that the "TX" element might be recognised as deriving from the word therapeutics to the specialised consumer who works in hospitals, et cetera?

MS. BURCHELL: I was just drawing that thread across from the comment that "TX" could mean that and it could come from the [holder's] name, in a sense. I do not know whether it does or not, but I think if it is something that is commonly used for "therapeutics" then, yes, that reference is who the user is and that is a professional in the medical field, probably, or the scientific and development medical field. (my emphasis)

86. Based on what Ms Burchell said before me, I do not find that the above amounts to a clear admission that "Tx" is known to a significant proportion of average UK consumers. Furthermore, I find that the evidence provided by the opponent is not compelling enough for me to find that "Tx" or "TX" would be known to a significant proportion of average UK consumers, including professionals and the general public, as meaning "treatment" or "therapeutics". I do not have

any evidence before me showing the use of “Tx” in practice in the UK medical field, or by UK medical professionals, which may have been persuasive. Instead, I find that the average consumer would not assign any conceptual meaning to the letters “Tx”, since these letters may stand for any number of word combinations. The letters on their own would not convey a particular concept over and above their existence as letters in the English alphabet to the UK average consumer.

22. Mr. Rose who appeared for the Appellant made the following submissions:
- a. the Hearing Officer’s conclusion “*I note that all of the above printouts are from .com websites which means it can be accessed all over the world. I am therefore unable to determine whether the abbreviation of TX is specifically known to UK professionals or consumers*” was unsupportable on the basis of the Appellant’s evidence. That, he submitted, demonstrated that the websites in the evidence were found by carrying out searches in the UK using a computer with a UK IP address;
 - b. the Hearing Officer ignored the fact that there was evidence of how the term "TX" was used in trade (being the evidence of use by the Respondent discussed at paras 81-82 of the Decision as set out above);
 - c. the Hearing Officer gave no weight to the fact that healthcare professionals would be familiar with standard medical abbreviations;
 - d. the Hearing Officer applied the wrong legal test: instead of assessing whether – on the balance of probabilities - “TX” would be understood as a treatment or therapy, the Hearing Officer considered it appropriate to apply a higher – “compelling” threshold, and
 - e. the Hearing Officer made the illogical finding that *"the average consumer would not assign any conceptual meaning to the letters “Tx”, since these letters may stand for any number of word combinations."*. The Appellant submitted this finding was wrong on the basis that "TX" is not a word and no alternative meaning was put forward by the Respondent. Moreover, the reasoning of the Hearing Officer is internally inconsistent: if "TX" might mean anything ("*any number of word combinations*"), it cannot simultaneously mean nothing (being the Hearing Officer's finding at

paragraph 92).

23 I do not accept that the criticism of the Hearing Officer's decision summarized paragraphs 22(b) – 22(e) above disclose any errors of principle on the part of the Hearing Officer.

Taking the points in turn, my reasons are as follows:

- a. it is clear that the Hearing Officer considered the evidence of use tended by the Respondent but decided to give it very little weight. That is in my view a matter for her;
- b. I do not accept that the Hearing Officer failed to take into account that healthcare professionals would be familiar with standard medical abbreviations. It is clear, from the wording of the passage set out above, that her finding was that it was not proven that Tx/TX was a standard medical abbreviation to such professionals;
- c. I do not accept that the Hearing Officer applied the wrong standard for proof. In my view her use of the phrase “not compelling enough” is no more or less than a statement that the evidence did not come up to proof (i.e. on the balance of probabilities), not a statement that the evidence had to meet a different, compelling, standard, and
- d. the criticism summarized at paragraph 22(e) above falls away once the sentence that follows immediately afterwards is taken into account. Here the Hearing Officer explains her decision by saying “*The letters on their own would not convey a particular concept over and above their existence as letters in the English alphabet to the UK average consumer*”. That is what I understand to be the basis of her finding and that, in my view, was a finding that was open to her.

24 There is, however, more force in the Appellant's criticism that the Hearing Officer appeared to have ignored the evidence of how the searches were carried out (see paragraph 22(a) above). However, it is important to understand exactly what that evidence does and does not say. The passage in question is set out in the witness statement of Mr. David Rose at paragraph 2.2 as follows:

Under my supervision, colleagues in my team at Mishcon de Reya LLP undertook searches of various medical focused dictionaries to determine how the term "TX" was defined prior to the priority date of the Application (being 24 January 2022). This was done by searching online dictionaries using the website www.archive.org (also known as the 'WayBack Machine'). The searches were undertaken using a computer located in the UK and with a UK IP address.

25 The results of the searches themselves are set out in exhibit DR2. That shows the relevant webpages of the dictionaries relied upon. However, neither Mr. Rose's witness statement nor the exhibit explains the parameters of the search – i.e. what was input in the first place. It is therefore impossible to tell whether for example (a) the searches were made only for the specific dictionaries that were relied upon or (b) there was a general search for the meaning of Tx in medical dictionaries, and these were all the results that turned up.

26 Given this, whilst the Hearing Officer's conclusion at paragraph 82 could be better expressed, I see no reason to find that it was wrong in principle. The evidence was advanced to show that TX/Tx had the meaning "therapeutic" to UK professionals. All it shows is that a search, the method of which is not explained fully, shows that people in the UK could access online dictionary definitions relied upon. That in and of itself is not, in my view, sufficient to demonstrate the point that is trying to be made. Something more is required (e.g. that these dictionaries are regarded as standard UK texts, or that provably standard UK texts give the same definition).

27 I therefore reject Ground 2.

ASSESSMENT OF THE LIKELIHOOD OF CONFUSION

28 I must now determine whether I will go ahead here and assess the likelihood of confusion or whether it is better that the question be remitted.

29 Neither party had a strong view on whether I should remit:

- a. the Appellant expressed a "mild" preference that I decide the matter as there was a benefit in terms of procedural economy, and
- b. the Respondent expressed a preference that the matter be remitted given it amounted to a full rehearing on the point in question and given the experience of the UKIPO in

determining the likelihood of confusion.

30. I agree with the Appellant that there is a definite benefit in respect of procedural economy if I decide the likelihood of confusion. However, it seems to me on balance it would be wrong to do so. The primary reason that Ground 1 succeeded is failure of the Hearing Officer to carry out either any, or an adequately detailed, interdependency analysis. To that extent a vital part of the analysis that should have been done at first instance has not been done (for which see the Decision of Amanda Michaels sitting as the Appointed Person in **SWIFTPAY** O/542/0 at 31). I therefore believe the appropriate course is to remit this matter to another Hearing Officer to determine the issue of the likelihood of confusion. As I have overturned the Hearing Officer on no other issue than the likelihood of confusion, all her remaining findings stand. The question that is remitted is solely the determination of the likelihood of confusion based on the findings of the Hearing Officer that have not been disturbed on this appeal.
31. Ground 1 was the primary matter in issue on this appeal. On this the Appellant has succeeded and it is, overall, the winner of the Appeal. However, it (a) failed in respect of Ground 2 and (b) the likelihood of confusion remains to be determined. Given that, I shall make an award of costs in the sum of £1000, reduced from the sum of £1500 I would have made should the Appellant have succeeded on both grounds. As very little time was taken on a substantive analysis of the likelihood of confusion (as opposed to those matters I did consider under Ground 1) I make no separate discount in relation to this issue.
32. The Hearing Officer made an award of costs of £1200. If I make no further order this would have to be paid within 21 days of the date of this decision. As the matter has been remitted, it seems to me appropriate that these costs be reserved to be addressed by the Hearing Officer who hears the remitted case.
33. I will allow the parties to make submissions in writing about whether any directions, additional to those set out in paragraph 30, are required with the direction to remit. Such submissions are to be provided within 21 days of the date of this Decision.

GEOFFREY PRITCHARD KC

THE APPOINTED PERSON

1 May 2026