

O/0508/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NUMBER 4221799

BY OWEN WILKINSON

TO REGISTER THE FOLLOWING TRADE MARK:

ASCEND

IN CLASSES 5, 25, 35, 41 & 44

AND

THE OPPOSITION THERETO UNDER NUMBER 600003862

BY JOSHUA SOLMAN

Background and pleadings

1. On 19 June 2025, Owen Wilkinson (“the applicant”) applied to register the trade mark shown on the cover page in the UK. It was accepted and published in the Trade Marks Journal on 1 August 2025. Registration is sought for goods and services in classes 5, 25, 35, 41 and 44.

2. On 31 October 2025, Joshua Solman (“the opponent”) partially opposed the trade mark under the Fast Track opposition procedure, based upon Section 5(1) of the Trade Marks Act 1994 (“the Act”). The opposition is directed at the following goods and services of the application:

Class 25: Clothing & Apparel Clothing; activewear; gym wear; sportswear; leggings; T-shirts; hoodies; caps; hats; jackets; footwear; headgear.

Class 41: Fitness Services namely physical fitness training and providing fitness facilities; gym services; personal training; fitness coaching; fitness education services; wellness programmes; online fitness training sessions; fitness studio services; health club services; lifestyle and health coaching.

3. For the purposes of the opposition, the opponent relies upon its earlier UK trade mark:

Ascend

UK registration number: UK00004184647

Filing date: 31 March 2025

Registration date: 4 July 2025

For the following goods and services:

Class 25: Clothing; Sports clothing; Clothes for sport; Clothing for leisure wear; Headwear; Footwear; Athletic clothing; Clothing for sports; Leisure clothing; Sportswear; Exercise wear; Gymwear.

Class 41: Personal coaching [training]; Personal training services; Personal trainer services [fitness training]; Personal fitness training services; Personal

trainer services; Physical fitness assessment services for training purposes; Life coaching (training); Physical fitness training services; Practical training; Education and training; Fitness training services; Coaching [training]; Exercise [fitness] training services; Fitness and exercise training services; Training services relating to fitness; Health and fitness training; Sports training; Exercise and fitness classes; Gym activity classes; Exercise classes; Conducting classes in exercise; Conducting classes in nutrition; Physical fitness instruction; Physical fitness tuition; Arranging of classes; Providing online training seminars; Provision of online training; Education services relating to physical fitness; Training of sports players.

4. By virtue of its earlier filing date, the opponent's above registration constitutes an earlier mark in accordance with section 6 of the Act. As the opponent's earlier mark had not been registered for five years or more at the filing date of the applicant's mark, it is not subject to the use provisions set out in section 6A of the Act.

5. Under section 5(1), the opponent claims that the applicant's mark is identical to its earlier mark, and that the opposed goods and services are identical to its goods and services, such that the application should be refused under section 5(1) of the Act.

6. The applicant filed a counterstatement denying the ground of opposition. Whilst the applicant does not deny that the parties' goods and services are identical, it denies that the marks are identical under section 5(1).

7. Rule 6 of the Trade Marks (Fast Track Opposition) (Amendment) Rules 2013 disapplies paragraphs 1 to 3 of rule 20 of the Trade Mark Rules 2008 but provides that rule 20(4) shall continue to apply. Rule 20(4) stipulates that "the Registrar may, at any time, give leave to either party to file evidence upon such terms as the Registrar thinks fit". The net effect of these changes is to require the parties to seek leave in order to file evidence in fast track oppositions. No leave was sought in respect of these proceedings.

8. Rule 62(5) of the Trade Mark Rules 2008 (as amended) states that arguments in fast track proceedings shall be heard only if (i) the Office requests it, or (ii) either party to the proceedings requests it and the Registrar considers that oral proceedings are

necessary to deal with the case justly and at proportionate cost; otherwise, written arguments will be taken. A hearing was neither requested nor considered necessary.

9. Only the opponent filed submissions in lieu. This decision is taken after careful consideration of the papers.

10. Both parties are litigants in person.

11. 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(1) legislation

12. Section 5(1) of the Act reads as follows:

“5(1) A trade mark shall not be registered if it is identical with an earlier trade mark and the goods or services for which the trade mark is applied for are identical with the goods or services for which the earlier trade mark is protected.”

13. 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.”


Identity of the marks

14. It is a prerequisite for section 5(1) of the Act that the trade marks at issue are identical.

15. In *S.A. Société LTJ Diffusion v. Sadas Vertbaudet SA*, Case C-291/00, the Court of Justice of the European Union held that:

“54... a sign is identical with the trade mark where it reproduces, without any modification or addition, all the elements constituting the trade mark or where, viewed as a whole, it contains differences so insignificant that they may go unnoticed by an average consumer.”

16. The marks at issue are as follows:

The opponent’s mark	The applicant’s mark
Ascend	

17. In its written submissions, the opponent states:

“[The applicant’s mark] is identical to the earlier mark relied upon in my opposition. There are no additional elements, stylisation or distinguishing features.”

18. In its counterstatement, the applicant denies that the marks are identical, citing that its mark is a figurative mark containing a “highly distinctive stylised A-device which forms the dominant visual element of the sign, together with the remaining letters “SCEND” presented in a bespoke geometric configuration that departs from standard typographical representation. The opponent’s mark, by contrast, is a plain word mark consisting solely of the word ASCEND without any stylisation, device element or graphic treatment”.

19. I disagree that the font used in the applicant’s mark is a “bespoke geometric configuration that departs from standard typographical representation”, in fact I consider the font use to be largely unremarkable. However, I do agree with the statement that the letter A is stylised; it is larger than the other letters in the word and contains a vertical line that crosses the horizontal line of the letter A, appearing to

create a cross shape. Although the most distinctive element of the mark is the word, which is the same as the opponent's mark, there is a clear modification made to the word. I do not consider that the vertical line creating the cross shape is a difference so insignificant that it would go unnoticed by the consumer, as required by the case law quoted above. As such, I cannot find the marks to be identical.

20. As noted above, it is a prerequisite for section 5(1) of the Act that the trade marks at issue are identical. I have found that the marks are not identical and, as such, irrespective of whether any of the parties' goods and services are identical, the opposition must fail.

Conclusion

21. The opposition under section 5(1) fails in its entirety. As the opposition was not brought under any further grounds, the applicant's mark may, subject to any successful appeal, proceed to registration in the UK in respect of all of the goods and services for which protection was sought.

COSTS

22. As the opposition has been unsuccessful, it would ordinarily be the applicant that would be entitled to an award of costs. However, as it has not instructed professional representatives, it was invited by the Tribunal to indicate whether it intended to make a request for an award of costs by filling out and returning a costs pro-forma. It was made clear by way of the Tribunal's correspondence dated 27 January 2026 that, if the pro-forma was not completed by 27 February 2026, costs, other than official fees arising from the action (excluding extensions of time), may not be awarded. The applicant did not return a completed pro-forma to the Tribunal and as it did not incur any official fees in these proceedings, I hereby make no order as to costs.

Dated this 15th day of June 2026

K HAZLEBACH

For the Registrar