

O/0599/26

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. UK00004142614
IN THE NAME OF LENATA LTD
TO REGISTER THE FOLLOWING TRADE MARK:**



IN CLASSES 29, 30 & 31

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER NO. OP000454293
BY DRAGSBAEK A/S**

Background and pleadings

1. On 31 December 2024, Lenata Ltd (“the Applicant”) applied to register the trade mark shown on the cover page of this decision in the UK. The application was accepted and published in the Trade Marks Journal on 31 January 2025 in respect of the goods set out in paragraph 17 of this decision.
2. On 30 April 2025, Dragsbaek A/S (“the Opponent”) opposed the application under Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opposition is directed against all goods in the application. The Opponent relies upon the following mark:

AMA

UK Registration no. UK00811041787

Filing date: 19 August 2019

Date of registration: 28 May 2020

Relying upon all its registered goods, as set out under paragraph 17 of this decision.

3. Under Article 54 of the Withdrawal Agreement between the UK and the EU, the UK IPO created comparable UK trade marks for all right holders with an existing registered EUTM or International Registration designating the EU. As a result, the Opponent’s mark was converted into a comparable UK trade mark. Comparable UK marks are now recorded in the UK trade mark register, have the same legal status as if they had been applied for and registered under UK law, and the original filing dates remain the same.¹
4. By virtue of its earlier filing date, the above registration constitutes an earlier mark within the meaning of section 6 of the Act. As the Opponent’s mark had not completed its registration process more than five years before the filing date of the application in issue, it is not subject to the use provisions contained in section 6A of

¹ See also Tribunal Practice Notice (“TPN”) 2/2020 End of Transition Period – impact on tribunal proceedings.

the Act. In view of this, the Opponent can rely upon all of its goods without having to demonstrate use.

5. The Opponent submits that the marks are highly similar and that the goods at issue are identical or highly similar.
6. The Applicant filed a counterstatement within which it denies the grounds of opposition.
7. Neither party filed evidence during proceedings, however the Opponent filed written submissions.² Neither party requested a hearing, and neither party filed submissions in lieu of the same. This decision is taken following careful consideration of the papers.
8. The Applicant is represented by Hatef Tahmasebi; the Opponent is represented by Patrade A/S.
9. 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.

Preliminary issues

10. The Applicant raised points in its counterstatement that I intend to address as preliminary issues. Before going any further into the merits of this opposition it is necessary to explain why, as a matter of law, the points raised will have no bearing on the outcome of this opposition.

² Opponent's written submissions were filed on 10 October 2025.

State of the register

11. The Applicant submits that there are multiple trade marks incorporating “ANNA” and similar variations already on the register, which are phonetically and visually closer to “ANA” than “AMA” but have not opposed the Applicant’s mark.³ Although I acknowledge these comments, the existence of other trade marks on the register and whether or not their proprietors have chosen to file opposition proceedings is not relevant to the decision I must make. The outcome of this opposition will be determined based on the merits of the case and the assessment of similarity between the marks and their respective specifications at issue, amongst other considerations. Thus, this argument is of little assistance to the Applicant.

Examination search

12. The Applicant submits that the Opponent’s mark did not appear in the Examination Report and that “this confirms that, even by UKIPO’s own criteria, “AMA” is not considered confusingly similar to “ANA.””.⁴ However, whether or not an earlier right is raised in an Examination Report is not a consideration which is determinative in these proceedings. In this decision I will make a notional and objective assessment based upon the Opponent’s mark as registered and the Applicant’s mark as applied for.

Absence of actual confusion

13. The Applicant states that they are not aware of any instances of actual confusion between the marks.⁵ However, I must clarify that the absence of actual confusion will not have any bearing on whether there exists a likelihood of confusion between the Applicant’s mark and the Opponent’s mark. Whilst evidence of actual confusion may be persuasive where it exists, the absence of confusion in the marketplace is rarely significant.⁶ This is because the absence of confusion may

³ Applicant’s form TM8 and counterstatement, paragraph 4.

⁴ Applicant’s form TM8 and counterstatement, paragraph 5.

⁵ Applicant’s TM8 and counterstatement, paragraph 8.

⁶ *The European Limited v The Economist Newspaper Ltd* [1998] FSR 283.

be attributable to the earlier mark having only been used to a limited extent, in relation to only some of the goods for which it is registered, or in such a way that there has been no possibility of the one being mistaken for the other.⁷

Decision

Section 5(2)

14. The opposition is based upon Section 5(2)(b) of the Act, which 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”.

15. Section 5A of the Act reads 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.”

16. 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 Pairs Europe Inc & Anor*, [2025] UKSC 25:

⁷ *Roger Maier and Another v ASOS*, [2015] EWCA Civ 220.

(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 be dominated by one or more of its components;

(f) however, it is also 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 great 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;

(k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically linked undertakings, there is a likelihood of confusion.

Comparison of goods

17. The goods for comparison are as follows:

Opponent's goods	Applicant's goods
<u>Class 29</u> : Fish; preserved, frozen, dried and cooked fruits and vegetables; jellies, jams, compotes; milk and milk products; margarine including liquid margarine.	<u>Class 29</u> : Meat-based snack food; Fish-based snack food; Vegetable-based snack food; Casseroles [food]; Oils for food; Lard [for food]; Suet for food; Agar-agar for food; Jellies for food; Fruit-based snack food; Snack food (Fruit-based -); Animal fats for food; Tofu-based snack food; Animal marrow for food; Marrow (Animal -) for food; Vegetable fats for food; Fruit snacks; Sliced fruit; Fruit chips; Fruit paste; Caviar; Salmon caviar; Black caviar; Roasted nuts; Salted nuts; Spiced nuts; Dried nuts; Shelled nuts; Cashew nuts (Prepared -); Flavored nuts; Roast nuts; Cashew nut butter; Nut oils; Prepared pistachio; Almond butter; Ground almond; Dried fruit; Dried fruits; Dried fruit products; Dried fruit mixes; Canola oil; Grapeseed oil; Olive oil; Coconut oil; Soybean oil; Sesame oil; Groundnut oil; Butter oil;

	Corn oil; Grapeseed oil for food; Cooking oil; Edible oil; Fish in olive oil; Olive oil [for food]; Linseed oil for food; Olive oil for food; Chilli oil; Soybean oil for cooking; Maize oil; Sunflower oil for food; Sunflower oil [for food]; Salad oil; Coconut oil for food; Flaxseed oil for food; Sesame oil [for food]; Sesame oil for food; Extra-virgin olive oil; Almond oil for food; Peanut oil [for food].
<u>Class 30:</u> Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery, ices; honey, treacle; yeast, baking-powder; salt, mustard; vinegar, sauces (condiments); spices; ice.	<u>Class 30:</u> Food seasonings; Starch for food; Food flavourings; Mustard for food; Turmeric for food; Honey [for food]; Rice-based snack food; Snack food (Rice-based -); Cereal-based snack food; Snack food (Cereal-based -); Flour for food; Syrup for food; Oat-based food; Wafers [food]; Rice; Rice tapioca; Rice noodles; Rice pasta; Flour of rice; Rice flour; Stir-fried rice; Cooked rice; Fried rice; Brown rice; Steamed rice; Rice salad; Husked rice; Rice cakes; Cakes (Rice -); Wholemeal rice; Rice crackers; Sauces for rice; Rice starch flour; Creamed rice; Rice snacks; Rice crisps; Puffed rice; Fruit sugar; Fruit cakes; Fruit teas; Tea; Chai tea; Chamomile tea; Tieguanyin tea; Herbal tea; Peppermint tea; Black tea [English tea]; Ginseng tea; Ginger tea; Jasmine tea; Tea cakes; Tea beverages; Green tea; Tea bags for making non-medicated tea; Tea bags;

	Rosemary tea; Tea leaves; Tea extracts; Lime tea; Black tea; White tea; Teas; Linden tea; Yellow tea; Herb tea [infusions]; Tea (Non-medicated -); Flour; Dough flour; Wheat flour; Rye flour; Corn flour; Cereal flour; Soya flour; Potato flour; Cake flour; Flour confectionery; Saffron; Saffron for use as a seasoning; Saffron [seasoning]; Saffron salt for seasoning food; Turmeric; Cardamom [spice]; Turmeric for use as a condiment; Sugar; Caramelised sugar; Castor sugar; Salt; Edible salt; Spiced salt; Cooking salt; Salt for cooking; Salt (Cooking -); Sea salt for cooking; Table salt; Seasoned salt for cooking.
<u>Class 31:</u> Live animals; foodstuffs for animals, malt.	<u>Class 31:</u> Citrus fruit; Seeds for fruit; Fruit seeds; Fruit, fresh; Fresh fruit; Fruit shrubs; Fresh noni fruit; Fruit plants; Fresh kiwi fruit; Raw fruit; Mandarins [fruit, fresh]; Berries, fresh fruits; Fresh citrus fruits; Almonds [fruits]; Coffee fruit, unprocessed; Fresh fruits and vegetables; Fresh passion fruit; Organic fresh fruit; Fresh hawthorn fruits; Nuts [fruits]; Raw nuts; Fresh cashew nuts; Fresh Brazil nuts; Fresh nuts; Fresh pistachio nuts; Hazelnuts; Hazelnuts, fresh; Fresh hazelnuts; Fresh almonds.

My Approach

I do not intend to undertake a full comparison of the competing goods at this stage of the decision, but I will instead proceed on the basis that at least some of the contested goods are identical to those covered by the earlier mark. For example, *tea, rice, sugar, flour and salt* are explicitly named in both the Applicant's and the Opponent's specifications. They are self-evidently identical. If the opposition fails even where the goods are identical, it follows that the opposition will also fail where the goods at issue are only similar. However, if a likelihood of confusion is found, I will proceed to assess the goods at issue in full.

Average consumer and the purchasing act

18. As the case law above indicates, it is necessary to determine who the average consumer is for the goods at issue. I must then determine the manner in which the goods are likely to be selected by the average consumer.

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

20. In *Iconix Luxembourg Holdings SARL v Dream Pairs 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.

21. The average consumer of the goods at issue will be a member of the general public. The goods are everyday foodstuffs which are likely to be purchased frequently, at low cost. Various factors are likely to be taken into consideration during the purchasing process, including the cost, taste, nutritional value and ingredients (including any allergens). Accordingly, I find that the average consumer will pay no more than a medium degree of attention during the purchasing process.

22. The goods will likely be self-selected from the shelves of retail outlets or their online equivalents. Given the process of selection the visual impact of the marks is likely to play the greater role, though I do not discount the opportunity for aural recommendations to be made, for example, by word-of-mouth or from a sales person, etc.

Comparison of the marks

23. The respective trade marks are shown below:

Opponent's trade mark	Applicant's trade mark
AMA	

24. The Applicant's mark consists of the word 'ANA' in a stylised typeface. Parts of the outer lines of the 'A' letters are missing however the letters remain recognisable. The word element is positioned in the centre of a symmetrical oval frame-like device, comprised of two lines with ornate spiral embellishments at either side. The word element plays the greatest role in the overall impression of the mark; while not negligible, I consider the framing device plays a lesser role.

25. The Opponent's mark consists of the word 'AMA' presented in a standard typeface. There are no other elements that contribute to the overall impression of the mark, which lies in the word itself.

26. Visually the marks coincide in two out of three letters, being the letter 'A' which appears at the beginning and end of both marks. While the presentation of the letters in each mark are a point of visual difference, I bear in mind that the Opponent's mark is a word-only mark and, as such, may be used in any standard typeface. The letters 'M' and 'N' at the centre of the Opponent's and Applicant's respective marks act as a point of visual difference. The framing device in the Applicant's mark acts as a further point of visual difference as it has no counterpart in the Opponent's mark. Bearing in mind that differences will be more noticeable

in short marks,⁸ I consider the marks to be similar to between a low and medium degree.

27. Aurally, I consider that the Opponent's mark will be pronounced 'AH-MA' and the Applicant's mark will be pronounced 'AH-NA'. The marks therefore coincide in their first syllable but diverge in their second syllable due to the letters 'M' and 'N' respectively. While the second syllables will be pronounced differently, they share the same ending vowel sound. The device element in the Applicant's mark will not be articulated. Overall, I consider the marks to be aurally similar to a medium degree.
28. Conceptually, I consider that the Opponent's mark has no obvious meaning and will be seen by the average consumer as an initialism or invented word.
29. The Applicant submits that in the Azeri language 'ANA' translates to 'Mother', giving the mark a distinct conceptual identity.⁹ On this point, the Opponent submits that the relevant public does not in general have any knowledge of the Azeri language.¹⁰
30. It is settled case law that for a conceptual message to be relevant it must be capable of immediate grasp by the average consumer.¹¹ In the absence of any evidence to the contrary, I do not consider that a significant proportion of consumers in the UK would know the Azeri meaning of the word 'ANA'. I consider it more likely that the Applicant's mark will be seen by a significant proportion of average consumers as an initialism or invented word, or as a misspelling or variation on the common female forename 'Anna'.
31. Where the average consumer perceives both marks as invented words, I consider them to be conceptually neutral as the average consumer will attribute no meaning

⁸ Mr Iain Purvis Q.C. (as he then was), acting as the Appointed Person in BL O/277/12, stated: "In considering visual similarity, it was clearly right to take into account the shortness of the marks, since a change of one letter in a mark which is only 4 letters long is clearly more significant than such a change in a longer mark."

⁹ Applicant's form TM8 and counterstatement, paragraph 2.

¹⁰ Opponent's written submissions, page 7.

¹¹ *The Picasso Estate v OHIM*, Case C-361/04 P.

to them. Where the average consumer perceives the Applicant's mark as a misspelling or variant of the name 'Anna', I consider them to be conceptually not similar.

Distinctive character of the earlier trade mark

32. The distinctive character of a trade mark can be appraised only, first, by reference to the goods in respect of which registration is sought and, secondly, by reference to the way it is perceived by the relevant public – *Rewe Zentral AG v OHIM (LITE)* [2002] ETMR 91. In *Lloyd Schuhfabrik*, 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 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-0000, 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).”

33. Registered trade marks possess varying degrees of inherent distinctive character, being lower where they are suggestive or allusive of a characteristic of the goods, to those with high inherent distinctive character, such as invented words which

have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use that has been made of it.

34. The Opponent has not filed any evidence to support that its mark's distinctive character has been enhanced through use, nor was it required for them to do so. Consequently, I have only the inherent position to consider.
35. The Opponent's mark consists of the word 'AMA' which will be perceived by the average consumer as an invented word or initialism with no obvious meaning.
36. The Applicant submits that the Opponent's mark is low in distinctive character as it consists of three common letters and that short acronyms and abbreviations are often given narrower legal protection.¹² Considering the Opponent's mark has no obvious descriptive or allusive qualities in relation to the goods at issue, I disagree that its inherent distinctiveness is low.
37. As previously mentioned, invented words are generally capable of having the highest degree of inherent distinctive character. However, as the mark is only three letters long, I do not consider its distinctiveness to be at the highest level. Consequently, I consider the mark to be inherently distinctive to a medium degree.

Likelihood of confusion

38. I must now feed all of my earlier findings into the global assessment of the likelihood of confusion, keeping in mind the following factors: i) the interdependency principle, whereby a lesser degree of similarity between the goods may be offset by a greater similarity between the marks, and vice versa (*Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*); ii) the principle that the more distinctive the earlier mark is, the greater the likelihood of confusion (*Sabel BV v Puma AG*), and; iii) the factor of imperfect recollection i.e. that consumers rarely have the opportunity to compare marks side by side but must rather rely on

¹² Applicant's form TM8 and counterstatement, paragraph 6.

the imperfect picture that they have kept in their mind (*Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V.*).

39. There are two types of confusion that may occur. Direct confusion is where the average consumer mistakes one mark for the other, while indirect confusion is where the average consumer recognises that the marks are different, but for some reason assumes that the later mark also identifies the goods of the owner of the earlier mark, or that the two undertakings are related: see *L.A. Sugar Limited v Back Beat Inc*, BL O/375/10, paragraph 16.

40. Earlier in this decision, I found that:

- At least some of the goods are identical.
- The average consumer for the goods is the general public who will pay no more than a medium degree of attention during the purchasing process. They will select the goods primarily by visual means, although I do not discount an aural component.
- The marks are visually similar to between a low and medium degree and aurally similar to a medium degree. The marks are either conceptually neutral or conceptually not similar dependent on how they are perceived.
- The earlier mark is inherently distinctive to a medium degree.

41. Taking all of the above into account, I consider it unlikely that the marks will be mistakenly recalled or misremembered as each other, even where the average consumer is paying no more than a medium degree of attention. I recognise that the marks share two out of three of their letters, however, I am of the view that the points of difference (being the device element and stylised letter 'A's in the Applicant's mark, and differing central letters 'M'/'N') are such that they will enable the consumer to differentiate between the marks. This is especially the case as the marks are short, both being three letters, meaning the differences between them are more likely to be noticed.¹³ Consequently, notwithstanding the medium inherent distinctive character of the Opponent's mark, I consider there to be no

¹³ *Dm-drogerie markt v OHMI EU*: T:2011:602, [43]

likelihood of direct confusion between the marks, even for the goods that I have found to be identical.

42. I now proceed to consider whether there exists a likelihood of indirect confusion. In doing so, I remind myself of the case of *L.A. Sugar Limited v By Back Beat Inc*, BL O/375/10, wherein 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)".

43. Furthermore, in *Liverpool Gin*,¹⁴ 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.

44. While I note the examples set out by Mr Purvis are not exhaustive, in this case I see no reason why, having noticed the differences between the marks, a consumer would believe the marks at issue are from the same or economically linked undertakings. This is because the later mark does not simply add a non-distinctive element to the earlier mark. I see no reason why the average consumer would see the use of 'N' instead of 'M' at the centre of the mark to be a logical indicator of a sub-brand or brand extension. I consider it more likely that the shared use of the common letter A at the beginning and end of the mark would be seen as coincidental, even where the goods are identical. Taking all of this into account I find that there exists no likelihood of indirect confusion between the marks at issue.

Conclusion

45. The opposition based upon 5(2)(b) is unsuccessful. Therefore, subject to any successful appeal against my decision, the application may proceed to registration.

¹⁴ *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207

Costs

46. The Applicant has been successful and would normally be entitled to a contribution towards their costs based upon the scale published in Tribunal Practice Notice 1/2023. However, as the Applicant is not professionally represented, at the conclusion of the evidence rounds the tribunal wrote to the Applicant and invited them to indicate whether they intended to make a request for an award of costs. The Applicant was informed that, if so, they should complete a Pro Forma, providing details of their actual costs and accurate estimates of the amount of time spent on various activities associated with the proceedings. They were informed that “if the pro-forma is not completed and returned, costs, other than official fees arising from the action (excluding extensions of time) may not be awarded”.
47. The Applicant did not file a completed Pro Forma and as the Applicant paid no official fees arising from the action, I make no award of costs.

Dated this 13th day of July 2026

Emma Rees

For the Registrar