

BL O/0608/26

TRADE MARKS ACT 1994

TRADE MARK APPLICATION
NO. UK00003961995

ETT HEM

IN THE NAME OF
ETT HEM LTD

Applicant/Respondent

AND

OPPOSITION NO. OP000445311

BY
ETT HEM SVERIGE AB

Opponent/Appellant

AND

IN THE MATTER OF AN APPEAL TO THE APPOINTED PERSON
BY

ETT HEM SVERIGE AB
AGAINST DECISION BL O/0787/25
DATED 28th August 2025

Mr. Matthew Harris of Pinsent Masons LLP appeared for the Appellant.

The Respondent was represented by JA Kemp. Mr James Fysh of that firm attended the Hearing in the capacity of an observer.

CORRECTED APPEAL
DECISION

Introduction

1. On 1st July 2026 I issued my Decision in this case to the parties under No. O-0573-26. I denied the Appeal but on the basis that the Respondent had not, as I then understood it, taken any steps in the appeal I made no award of costs.
2. Before that Decision was published, on the 5th July 2026 the Respondent's representatives wrote to the Appointed Person Secretariat pointing out that the Decision made no mention of a Respondent's Notice which had been filed on 17th October 2025. They requested this omission be corrected, with commensurate changes to the order for costs.

3. I obtained the electronic file of the case from the IPO on 2nd October 2026 and at that time no Respondent's Notice was included, the same not having been filed. When the Respondent's Notice was subsequently filed it did not come to my attention, nor did either party make any further reference to it. I therefore remained unaware of it. The omission of any consideration of the Respondent's Notice was entirely accidental.
4. Upon being made aware of the error I proposed to the parties that I would issue a corrected decision taking these matters into account and inviting their comments. They did not demur.
5. I have reviewed the Respondent's Notice and do not consider it goes beyond denying the Appellant's Grounds of Appeal or seeking maintenance of the original decision for the reasons given by the Hearing Officer, save that it seeks costs in the usual way. The Respondent did not appear at the Appeal Hearing to make submissions on the Respondent's Notice or the Appeal. There is nothing within the Respondent's Notice that would require any substantive re-appraisal of the matter or for the Parties to have any further opportunity to make submissions.
6. I therefore issue this corrected Decision under the "slip rule".

Background

7. This is an appeal by Ett Hem Sverige AB from decision BL O/0787/25 of Ms. June Ralph, sitting as a Hearing Officer acting for the Registrar of Trade Marks, dated 28th August 2025.
8. Ett Hem Ltd applied to register the trade mark **Ett Hem** on 28 September 2023 in relation to

Class 21: Vases; Urns being vases; Flower vases; Glass vases; Earthenware floor vases; Bud vases; Floor vases; Ritual flower vases; Glass floor vases; Clay floor vases; Flower vases of precious metal; Porcelain flower pots; Pots for flowers; Figurines [statuettes] of porcelain, ceramic, earthenware or glass; Bowls for floral decorations; Stone floor vases; Glass flowerpots; Figurines of porcelain, ceramic, earthenware, terra-cotta or glass for cakes; Saucers for flower pots; Figurines of earthenware; Goblets; Vases of precious metal; Commemorative statuary cups of porcelain, ceramic, earthenware, terra-cotta or glass ;Urns; Earthenware jars; Glass pots; Figurines of glass; Figurines of porcelain, ceramic, earthenware, terra-cotta or glass ;Candlesticks of glass; Glass candlesticks; Statuettes of earthenware; Statuettes of porcelain, ceramic, earthenware, terra-cotta or glass; Statuettes of porcelain, ceramic, earthenware or glass; Statues of porcelain, ceramic, earthenware, terra-cotta or glass; Statues of earthenware; Statues of porcelain, ceramic, earthenware or glass; Planters of pottery; Sculptures of earthenware; Containers for flowers; Busts of porcelain, ceramic, earthenware, terra-cotta or

glass; Busts of China, terra-cotta or glass; Figurines made of decorative glass; Flower bowls; Glass ornaments; Ornamental figurines made of glass; Flower pots; Pots (Flower -); Prize cups of porcelain, ceramic, earthenware, terra-cotta or glass; Boxes of earthenware; Statuettes of glass; Planters of earthenware; Decorative objects [ornaments] made of glass; Decorative boxes of glass; Ornaments [statues] made of porcelain; Glass jars; Flowerpots; Figurines of porcelain; Ceramic ornaments; Figurines of terracotta; Wall decorations of porcelain; Glass bowls; Bowls (Glass -); Ornamental figurines made of porcelain; Statues of glass; Glass decanters; Ornaments [statues] made of China; Candelabra [candlesticks]; Earthenware mugs; Statuettes of porcelain; Glass tableware; Teacups (yunomi); Teacups [yunomi]; Sculptures of glass; Works of art of porcelain, ceramic, earthenware, terra-cotta or glass; Enamelled jars; Pomanders [containers]; Candelabras; Ornamental figurines made of China; Holders for flowers and plants [flower arranging]; Ceramic figurines; Planters of glass; Decorative porcelain ware; Busts of earthenware; Figurines made of earthenware; Planters of porcelain; China ornaments; Wall decorations of terra-cotta; Candlesticks; Sculptures of porcelain; Decorative chinaware; Stained glass figurines; Ornamental sculptures made of glass; Ornaments made of earthenware; Statuettes of terracotta; Teapots; Bowls for plants; Statuettes of china; Flower baskets; Painted glassware; Glassware (Painted -); Statuettes made of earthenware; Figurines of china; China figurines; Decorative sand bottles; Statues of porcelain; Plaques of pottery; Vases not of precious metal; Ornamental sculptures made of porcelain; Sculptures of china; Porcelain cake decorations; Works of art of porcelain, ceramic, earthenware or glass; Ornamental sculptures made of China; Glass carafes; Plaques of earthenware; Statues made of earthenware; Glass flasks [containers]; Statues, figurines, plaques and works of art, made of materials such as porcelain, terra-cotta or glass, included in the class; Figurines made of glass; Decanters; Glass holders for candles; Sculptures of terracotta; Glass goldfish bowls; Pots; Pottery; Boxes of porcelain; Jars (Glass -) [carboys]; Glass jars [carboys]; Boxes of ceramics; Glass mugs.

Class 26: Bouquets of artificial flowers; Wreaths of artificial flowers; Artificial flowers; Flowers (Artificial -); Silk flowers; Artificial flower wreaths; Artificial flowers of paper; Artificial flowers of textile; Artificial flowers of plastics; Artificial fruit, flowers and vegetables; Artificial garlands and wreaths; Artificial flower arrangements; Garlands (Artificial -); Artificial garlands; Artificial wreaths; Artificial corsages; Artificial topiaries; Artificial Christmas garlands; Artificial Christmas wreaths; Decorative ribbons; Artificial foliage; Pre-lit artificial Christmas garlands; Paper ribbons [hair decorations]; Ornamental bows of textile for decoration; Pre-lit artificial Christmas wreaths; Artificial plants, other than Christmas trees; Artificial Christmas garlands incorporating lights; Artificial Christmas wreaths incorporating lights.

9. Ett Hem Sverige AB opposed the application in full on 15 January 2024 under sections 5(4)(a) and 3(6) of the Trade Marks Act 1994 (“the Act”).

10. Under section 5(4)(a), the Opponent, which operates a boutique hotel in Stockholm, Sweden having some UK customers, alleged that use of the contested mark for its goods amounted to passing off. It relied on the unregistered sign “Ett Hem” which it claimed to have used from 2013 for various hotel, accommodation and catering services and for certain related goods, namely *“Scented products such as candles, perfumes and cold candles; keyrings; pyjamas and cashmere socks; bed linen; alarm clocks; sheep skins; ceramics; stationery; notebooks and postcards.”*
11. Under S. 3 (6) the Opponent claimed that the Applicant had acted dishonestly/recklessly and that the applicant acted “below the standard of acceptable commercial behaviour judged by the ordinary standards of honest people” and therefore that the contested application was made in bad faith.
12. The Applicant defended the opposition in full.
13. Both sides filed evidence and both sides filed submission in lieu of an oral hearing. The Hearing Officer reached her Decision “on the papers”.

The Hearing Officer’s Decision

14. In brief, the Hearing Officer’s Decision was as follows:

S. 5 (4) (a)

- a) Although it was based in Sweden, the Opponent was possessed of a small UK goodwill for “hotel services including hotel restaurant services”.
- b) The Opponent had no UK goodwill for *“Scented products such as candles, perfumes and cold candles; keyrings; pyjamas and cashmere socks; bed linen; alarm clocks; sheep skins; ceramics; stationery; notebooks and postcards”*.
- c) There was no misrepresentation, given the difference between the Opponent’s hotel/hotel restaurant services and the Applicant’s class 21/26 goods.
- d) Absent misrepresentation, the Opponent suffered no damage.
- e) The opposition under S. 5 (4) (a) failed.

S. 3 (6)

- a) The Applicant was in business as an interior designer.

- b) The Applicant had become aware of the Opponent's trade mark in Sweden during its development of its trade mark (but after its initial selection), but made a reasonable determination that there was no conflict given the parties' different interests.
- c) The applicant's behaviour, in making the contested application, did not amount to a dishonest intention nor had it departed from accepted standards of ethical behaviour or honest commercial and business practices.
- d) The opposition under S. 3 (6) also failed.

The Appeal & Respondent's Notice

15. An Appeal was filed by the Opponent on Form TM55P on 25th September 2025. The grounds of appeal were:

S. 5 (4) (a)

- 1) the Hearing Officer erred in describing the Opponent's goodwill as "small". On the evidence, she should have found that it was considerable and far from small.
- 2) The Hearing Officer erred in finding that there was no misrepresentation, because she placed undue weight on the fact that the evidence of the Appellant did not clarify whether relevant goods offered in its provision hotel services are branded **Ett Hem** and because she should have found that the parties' fields of activity were closely related.
- 3) The Hearing Officer failed to consider the issue of damage to the Opponent as a direct result of the errors above.

S. 3 (6)

- 4) Given the Respondent's actual knowledge of the Appellant, and even if the Respondent had a genuine commercial rationale for adopting the mark Ett Hem and believed that they could do so lawfully in the UK, they did so taking a calculated risk and with reckless and deliberate disregard for the Appellant's earlier rights in the mark Ett Hem. If the Hearing Officer had taken this properly into account, she would have found that the Respondent acted below the standards of acceptable commercial behaviour judged by ordinary standards of honest people, and for this reason, the Application should have been refused for bad faith.

16. The Respondent filed a Respondent's Notice dated 17th October by which, in effect, it denied the Grounds of Appeal and asked that the Hearing Officer's Decision be maintained for the reasons that she gave.

Standard of Review

17. I understood the Opponent to be in agreement with me as to the relevant standard, which has been repeated many times albeit in various restated forms. An appeal is by way of review, not a rehearing. It is well established that before I can interfere with the decision of the Hearing Officer I must be satisfied that there was a distinct and material error of principle in the decision or that the Hearing Officer was wrong.

18. For the Opponent Mr. Harris set out the following standard, which I adopt:

"In *Actavis Group PTC v. ICOS Corporation* [2019] UKSC 1671, [2019] RPC 9 dealt with the role of the appellate court at [78] to [81]. Lord Hodge said:

"78. ... Where inferences from findings of primary fact involve an evaluation of numerous factors, the appropriateness of an intervention by an appellate court will depend on variables including the nature of the evaluation, the standing and experience of the fact-finding judge or tribunal, and the extent to which the judge or tribunal had to assess oral evidence: *South Cone Inc v Bessant*, *In re Reef Trade Mark* [2002] EWCA Civ 763; [2003] RPC 5, paras 25-28 per Robert Walker LJ. [...]

80. What is a question of principle in this context? 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. What is the nature of such an evaluative error? In this case we are not concerned with any challenge to the trial judge's conclusions of primary fact but with the correctness of the judge's evaluation of the facts which he has found, in which he weighs a number of different factors against each other. This 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. [...]

81. Thus, in the absence of a legal error by the trial judge, which might be asking the wrong question, failing to take account of relevant matters, or taking into account irrelevant matters, the Court of Appeal would be justified in differing from a trial judge's assessment of obviousness if the appellate court were to reach the

view that the judge's conclusion was outside the bounds within which reasonable disagreement is possible. It must be satisfied that the trial judge was wrong ...”

10. Additional guidance can be drawn from Mr Iain Purvis QC sitting as the Appointed Person in *Rochester* BL O/049/17 at [33]:

“... the reluctance of the Appointed Person to interfere with a decision of a Hearing Officer on likelihood of confusion is quite high for at least the following reasons:

(i) The decision involves the consideration of a large number of factors, whose relative weight is not laid down by law but is a matter of judgment for the tribunal on the particular facts of each case.

(ii) The legal test ‘likely to cause confusion amongst the average consumer’ is inherently imprecise, not least because the average consumer is not a real person.

(iii) The Hearing Officer is an experienced and well-trained tribunal, who deals with far more cases on a day-to-day basis than the Appellate tribunal.

(iv) The legal test involves a prediction as to how the public might react to the presence of two trade marks in ordinary use in trade. Any wise person who has practised in this field will have come to recognize that it is often very difficult to make such a prediction with confidence. ... Any sensible Appellate tribunal will therefore apply a healthy degree of self-doubt to its own opinion on the result of the legal test in any particular case.”

19. I also have regard to the later statements in *Axogen Corporation v Aviv Scientific Limited* [2022] EWHC 95 (Ch) at [24] and in particular that of Arnold LJ in *Lidl Great Britain Ltd v. Tesco Stores Ltd* [2024] EWCA Civ 262 at [110] where he said:

“The test on appeal

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: Volpi v Volpi [2022] EWCA Civ 464, [2022] 4 WLR 48 at [2] (v) (Lewison LJ). Equally, it is common ground that, in so far as the appeals challenge multi-factorial evaluations by the judge, this Court is only entitled to intervene if the judge erred in law or principle: compare Magmatic Ltd v PMS International Group plc [2016] UKSC 12, [2016] Bus LR 371 at [24] (Lord Neuberger of Abbotsbury) and Actavis Group PTC EHF v ICOS Corp [2019] UKSC 15, [2019] Bus LR 1318 at [78]-[81] (Lord Hodge), and see Re Sprintroom Ltd [2019] EWCA Civ 932, [2019] BCC 1031 at [72]-[78] (McCombe, Leggatt and Rose LJ), which was cited with approval by the Supreme Court in Lifestyle

Equities CV v Amazon UK Services Ltd [2024]UKSC 8 at [49] (Lord Briggs and Lord Kitchin)."

20. I bear these principles in mind.

Decision

21. Having reviewed the Decision and Mr. Harris's written and oral submissions, it seems to me that the Appeal does not identify any error of principle in the Hearing Officer's deliberations. Rather, the Opponent is simply identifying aspects of the Hearing Officer's evaluative Decision, particularly as regards the interpretation and weight of evidence, with which it disagrees, whether that is the extent of the Opponent's goodwill, the absence of misrepresentation, or the good or bad faith of the Applicant. It is not suggested the Hearing Officer misdirected herself on the law. All of these matters were conclusions reached after the Hearing Officer conducted an appropriate evaluation of the evidence and facts before her. In essence the appeal merely revisits the Opponent's case.

22. In BL O/0639/24 *LIFE 'S*, faced with a similar approach to appeal (albeit under S. 5 (2) (b) of the Act) Mr. Geoffrey Hobbs KC said:

"10...If the points raised by the Opponent's criticisms were all to be considered afresh, the Decision would end up being in large measure re- taken by this Tribunal under the guise of reviewing it for error.

11 However, it is necessary in order to maintain the required distance between the role of decision taker at first instance and the role of decision taker on appeal for this Tribunal to proceed on the basis that the Decision below should stand unless the matters on which the Opponent relies are by force of what they reveal sufficient to establish — to the standard indicated in para. [8] above — that the Decision is vitiated by error.

12 I have reviewed the Decision in the light of the Opponent's criticisms of the Hearing Officer's evaluations. Having done so, I am satisfied that none of the points relied on reveal any substantive mistakes on her part and therefore cannot be taken,

individually or together, to establish that the Decision under s.5(2)(b) is liable to be set aside.

.....

15 In Butler v Bankside Commercial Ltd [2020] EWCA Civ. 203 Lewison LJ (with whom David Richards and Asplin L.JJ agreed) repeated at para. [19] what Mummery LJ (with whom Rimer and Underhill L.JJ agreed) had said in Neumans LLP v Andronikou [2013] EWCA Civ. 916 at para. [38] (in the context of paras [36] to [40] under the heading “Lord Wilberforce and appeals from impeccable judgments”): “If the judgment in the court below is correct, this court can legitimately adopt and affirm it without any obligation to say the same things over again in different words. The losing party will be told exactly why the appeal was dismissed: there was nothing wrong with the decision appealed or the reasons for it.”

23. Adopting the same approach, I dismiss the Opponent’s Appeal against the Hearing Officer’s Decision, in full, on the basis that her Decision was correct for the reasons she gave. The Respondent’s Notice does not require further consideration.

Conclusion and Costs

24. The appeal has failed in its entirety. The Decision of the Hearing Officer stands and the Applicant’s mark will proceed to registration for all the applied-for goods.

25. The Respondent has been successful and is entitled to its costs. I award the Respondent £500 for considering the Appeal and the preparation of the Respondent’s Notice. Although the Respondent’s Representatives attended the Hearing they did so as observers, so I make no award for attendance or preparation.

26. The Hearing Officer awarded the Respondent £1600. The total payable, taking into account the costs award on this appeal, is £2100, this sum to be paid by ETT HEM SVERIGE AB to ETT HEM LTD within 21 days of the date of this decision.

27. I will make a separate formal order only if asked to do so.

Philip Harris

Appointed Person

13th July 2026