

O/0653/26

TRADE MARKS ACT 1994

**IN THE MATTER OF THE UK DESIGNATION
OF THE INTERNATIONAL REGISTRATION
NO. WO0000001845229
IN THE NAME OF
NURTURELY SEZC
FOR THE TRADE MARK:**

ONARI

IN CLASSES 3, 14, 16, 18, 25, 28, 35, 41, 44 AND 45

AND

**OPPOSITION THERETO
UNDER NO. 454174
BY MONARI GMBH**

Background & Pleadings

1. Nurturely SEZC (“the holder”) has sought protection in the UK for the International Registration no. WO0000001845229 (“the contested mark”) in respect of the mark shown on the front page of this decision with a UK designation date of 9 December 2024 and a priority date of 13 June 2024 from New Zealand.¹ The contested mark was accepted and published in the Trade Marks Journal for opposition purposes on 28 March 2025. This partial opposition concerns the following goods and services:

Class 18: Bags, handbags, purses, wallets; bags, handbags, purses, wallets all made of leather or imitation leather.

Class 25: Clothing, footwear, headgear.

Class 35: Retail services relating to the sale of promotional merchandise.

2. On 13 May 2025, monari GmbH (“the opponent”) partially opposed the application on the basis of Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”)². The opponent is the proprietor of the following mark:

¹ Trade mark from which priority claimed 1266328.

² 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.

Trade Mark no.	WO0000001808038
Trade Mark	monari
Goods & Services for which the mark is registered	Classes 18, 25 and 35 ³
Dates	Date of protection of the international registration in UK: 21 November 2024 Designation date: 28 February 2024 Office of origin: Germany
Priority details	Priority date: 5 October 2023 Priority country: Germany TM from which priority claimed: 30 2023 013 118

3. As per the World Intellectual Property Organisation register, the competing marks are shown in a plain typeface, and there is no representation in the “image” field. For both marks, the official request for the extension of protection also indicates that “the applicant declares that they wish the mark to be considered as a mark in standard characters (only if word mark)”. Thus, the competing marks are considered to be word only marks and will be treated as such in this decision.
4. Under Section 6(1) of the Act, the opponent’s trade mark clearly qualifies as an earlier trade mark. Further, as registration of the opponent’s earlier mark was completed less than five years before the designation date of the contested mark, proof of use is not relevant in these proceedings as per Section 6A of the Act.
5. The opponent in its notice of opposition claims that the competing marks are highly similar, and the competing goods are either identical or similar.

³ The full specification is reproduced in paragraph 18 of this decision.

6. The holder filed a defence and counterstatement denying the grounds of the opposition. In particular, the holder asserted that the marks are dissimilar and the competing goods are “broadly dissimilar”. Thus, it requests that the opposition under Section 5(2)(b) be rejected, and the designation be accepted for protection in full and costs be awarded in favour of the holder.
7. Both parties filed submissions, and only the holder filed written submissions in lieu of a hearing. These will not be summarised but will be referred to as and where appropriate during this decision. A hearing was neither requested nor was it considered necessary, and so I have taken this decision following a careful consideration of the papers.
8. In these proceedings, the opponent is represented by Mitchiners and the holder is represented by Groom Wilkes & Wright LLP.

Decision

Section 5(2)(b)

9. Section 5(2)(b) of the Act is as follows:

“5(2) A trade mark shall not be registered if because-

[...]

(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”.

10. Section 5A states:

“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.”

11. 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:

(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, in certain circumstances, be dominated by one or more of its components;

(f) and beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite 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 greater 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; and

(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 and Services

12. When making the comparison, all relevant factors relating to the goods/services in the specifications should be taken into account. In *Canon Kabushiki Kaisha*, the Court of Justice of the European Union (“CJEU”) stated that:

“23. In assessing the similarity of the goods or services concerned, [...], all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter

alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or complementary.”

13. Guidance on this issue was also given by Jacob J (as he then was) in *British Sugar Plc v James Robertson & Sons Limited* (“*Treat*”) [1996] RPC 281. At [296], he identified the following relevant factors:

“(a) The respective uses of the respective goods or services;
(b) The respective users of the respective goods or services;
(c) The physical nature of the goods or acts of service;
(d) The respective trade channels through which the goods or services reach the market;
(e) In the case of self-serve consumer items, where in practice they are respectively found, or likely to be found, in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;
(f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.”

14. In *YouView TV Ltd v Total Ltd*, [2012] EWHC 3158 (Ch), paragraph 12, Floyd J (as he then was) gave the following guidance on construing the words used in specifications:

“[...] Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks)* (IP TRANSLATOR) [2012] ETMR 42 at [47]-[49]. Nevertheless, the principle should not be taken too far. *Treat* was decided the way it was because the ordinary and natural, or core, meaning of ‘dessert sauce’ did not include jam, or because the ordinary and natural description of jam was not ‘a dessert sauce’.

Each involved a straining of the relevant language, which is incorrect. Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question.”

15. In *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1)* [2024] UKSC 36, Lord Kitchin set out the proper approach to considering terms in specifications:

“365. [...] The correct approach, as a matter of principle, in considering a specification of services which is defined by terms which are not clear or precise, is to confine the terms used to the substance or core of their possible meanings: see, for example, *Reed Executive plc v Reed Business Information Ltd* [2004] EWCA Civ 159; [2004] RPC 40, at para 43. So too, if a specification of goods is defined by terms which are ambiguous, then it should be confined to those goods which are clearly covered. These principles are consistent with first, the requirement that the specifications of goods and services must be clear and precise so that others know what they can and cannot do; and secondly, general fairness because any ambiguity is the responsibility of the owner of the mark. If despite this, the words used are still unclear so that they cannot be interpreted, then it is permissible to disregard them. But, in my opinion, that will rarely be the case.”

16. The General Court (“GC”) confirmed in *Gérard Meric v OHIM*, Case T-133/05, paragraph 29, that, even if goods or services are not worded identically, they can still be considered identical if one term falls within the scope of another, or vice versa:

“In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 *Institut für Lernsysteme v OHIM- Educational Services (ELS)* [2002]

ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark.”

17. In *Avnet Incorporated v Isoact Limited*, [1998] F.S.R. 16, Jacob J. (as he then was) stated that:

“In my view, specifications for services should be scrutinised carefully and they should not be given a wide construction covering a vast range of activities. They should be confined to the substance, as it were, the core of the possible meanings attributable to the rather general phrase.”

18. The competing goods and services to be compared are shown in the following table:

Earlier Goods & Services
Class 18: Bags; reusable shopping bags; handbags; hipsacks; briefcases; trunks and suitcases; travelling sets [leatherware]; travelling bags; bags for sports; rucksacks; briefcases for documents; slings for carrying infants; beach bags; pocket wallets; bags for campers; attaché cases; cases and boxes made of leather or leather cardboard; net bags for shopping; shopping bags; purses; hat boxes of leather; game bags [hunting accessories]; card cases [notecases]; children's carrier bags; boxes of leather or leather board; garment bags for travel; umbrellas; parasols; key cases [leather goods]; school knapsacks; school bags; shoulder belts [straps] of leather; roller bags; shoulder strap; bags [envelopes, pouches] of leather, for packaging; tool bags of leather, empty; umbrellas and parasols. Class 25: Clothing; footwear; headgear; one-piece suits; blouses; t-shirts; blouse shirts; blazers; skirts; dresses; jackets [clothing]; coats; waistcoats; sweaters; slipovers; sweat shirts; trousers; bathing suits; bathing trunks; bikinis; bath robes; bathing caps; underwear; disposable underwear; lingerie; foundation garments; tights; stockings; socks; waist belts; kerchiefs [clothing];

gloves [clothing]; braces [suspenders] for clothing; scarves; headbands [clothing]; layettes [clothing]; bibs, not of paper; neckties.

Class 35: Retail and wholesale services, including via the internet, relating to goods from the fashion and textile sectors, namely clothing, footwear and headgear, belts, bibs not made of paper, ties, suspenders, fashion clothing and fashion accessories as well as goods from the field: textile goods, glasses and sunglasses, fragrances, bags, travel accessories, namely luggage, bags, wallets, purses, children's carrier bags, umbrellas and parasols, key cases and other carrying cases as well as goods from the field of: luggage goods, watches and jewelry, body and beauty care, perfumery and cosmetics, consumer electronics, stationery, leather and small leather goods, household goods, sports and toys as well as furnishings and decorative goods; business consultancy and advisory services; development of business organization strategies; business advice for franchising concepts; arrangement, organization of exhibitions and trade fairs for commercial and advertising purposes; arranging contracts for third parties for the purchase and sale of goods or the provision of services, also via the internet, an online shop or a teleshopping channel; presentation of goods and services on a website accessible via networks; sales promotion for third parties; presentation of goods and services for third parties on the internet; business management of stores; business and organizational advice for franchising concepts; mediation of trade business for third parties; arranging of contracts, for others, for the providing of services; business consulting for sales systems in retail; providing information about all the aforesaid goods through advertising in magazines, brochures and newspapers.

Contested Goods & Services

Class 18: Bags, handbags, purses, wallets; bags, handbags, purses, wallets all made of leather or imitation leather.

Class 25: Clothing, footwear, headgear.

Class 35: Retail services relating to the sale of promotional merchandise.

19. The opponent in its submissions provided a comparison table between the competing goods and services, claiming that they are identical. It also submitted that:

“With regard to the Application in class 35, we note that the term “promotional merchandise” is unclear and imprecise. However, the primary services are ‘retail services’ and assuming that the term “promotional merchandise” is interpreted broadly and the Earlier Mark is protected for a wide range of ‘retail services’, including goods in classes 3, 9, 14, 16, 18, 25, 28. We contend that these include goods that could be considered “promotional merchandise” and therefore the services in class 35 of the Application are identical.”

20. On the other hand, the holder in its counterstatement asserted that:

“(b) Furthermore, the Opponent's earlier mark covers specific goods and services in classes 18, 25 and 35 which are broadly dissimilar to those covered by the Applicant's mark in these classes. The respective goods and services will be used in different trade channels and the target customer/end user will exist in a different commercial sector.”

However, I note that the holder did not explain further in its submissions why it considers the competing goods and services to be “broadly dissimilar” to the earlier terms.

21. Whilst I have considered the holder's claims, I note that differences, for example, between the market sectors, are irrelevant, except to the extent that those differences are apparent from each party's specification. Thus, the assessment I must make is based on a notional and fair consideration

of the terms as registered against all the potential or intended uses of those goods and services.⁴

22. Further, the earlier specification contains the word “*namely*” in more than one instance. Guidance on how to treat this word is contained in the addendum to the Trade Mark Registry’s Classification Guide, which reads as follows:

“Note that specifications including “namely” should be interpreted as only covering the named Goods, that is, the specification is limited to those goods. Thus, in the above “dairy products namely cheese and butter” would only be interpreted as meaning “cheese and butter” and not “dairy products” at large. This is consistent with the definitions provided in Collins English Dictionary which states “namely” to mean “that is to say” and the Cambridge International Dictionary of English which states “which is or are”.” (emphasis added)

23. For the purpose of considering the issue of similarity of goods, it is permissible to consider groups of terms collectively where they are sufficiently comparable to be assessed in essentially the same way for the same reasons.⁵

Class 18

Bags, handbags, purses, wallets; bags, handbags, purses, wallets all made of leather or imitation leather

24. The terms “*bags, handbags, purses*” are self-evidently identical as they appear on the earlier specification.

⁴ See *Compass Publishing BV v Compass Logistics Ltd* [2004] RPC 41 at paragraph 22 and *Roger Maier v ASOS* [2015] EWCA Civ 220 at paragraphs 78 and 84.

⁵ *Separode Trade Mark* BL O-399-10 and *BVBA Management, Training en Consultancy v BeneluxMerkenbureau* [2007] ETMR 35 at paragraphs 30 to 38.

25. In relation to the contested term “*wallets*”, I consider this to be broad enough to cover the earlier term “*pocket wallets*”. Thus, they are identical as per the principles set out in *Meric*.
26. I also consider that the earlier terms “*bags; handbags; purses; pocket wallets*” would encompass the narrower contested terms “*bags, handbags, purses, wallets all made of leather or imitation leather*”. Therefore, they will be *Meric* identical.

Class 25

Clothing, footwear, headgear

27. The contested terms appear identically in the earlier specification, and as a result, they are self-evidently identical.

Class 35

Retail services relating to the sale of promotional merchandise

28. I have noted the opponent’s submissions in relation to the meaning of the wording “*promotional merchandise*” in the contested term. I also note that the holder did not provide any submissions on this point. In accordance with the case law cited earlier in this decision, I will consider the contested term based on its ordinary and core meaning. In the absence of any evidence, I consider that the term relates to the retailing of goods bearing, for example, a promotional message or a branding (e.g. a logo, slogan, and/or other promotional indicia). In light of this, the earlier retail services, as limited by the word ‘namely’ to the goods identified in the specification, are the closest comparator. To that extent, I consider that the earlier retail services in relation to “*clothing, footwear and headgear, [...] glasses and sunglasses, [...] bags, [...] wallets, purses, [...] umbrellas [...] key cases and other carrying cases [...] consumer electronics, stationery, leather and small leather goods, household goods, sports and toys*” would also cover

the retailing of such promotional goods in the contested specification, resulting in identity as per *Meric*.

29. If I am wrong, I consider that the competing services are highly similar insofar as they concern the retailing of overlapping goods, sharing the same nature (both being retail services), purpose (enabling consumers to purchase goods through retail channels), users and trade channels, while also being in competition. For completeness, in the case where the contested term covers promotional items other than those listed in the retail services of the earlier specification, I find that they will still be similar to between a medium and high degree. This is because they will share the same nature, purpose, users, and trade channels, and there may be a degree of competition.

Average Consumer and the Purchasing Act

30. 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 or services in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97.
31. 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."

32. The average consumer of the goods will be a member of the general public. The goods can be selected from outlets, stores, brochures, catalogues, and online. In retail premises, the goods will be displayed on shelves, where they will be viewed and self-selected by consumers. Therefore, visual considerations will dominate the selection of the goods in question, but aural considerations will not be ignored in the assessment.⁶ The cost of the goods may vary, but in any case, and irrespective of the cost, the average consumer may examine the products

⁶ The General Court highlighted this in *New Look Ltd v OHIM Cases T-117/03 to T-119/03* and *T-171/03*, at paragraph 50: "Generally, in clothes shops customers can themselves either choose the clothes they wish to buy or be assisted by the sales staff. Whilst oral communication in respect of the product and the trade mark is not excluded, the choice of the item of clothing is generally made visually. Therefore, the visual perception of the marks in question will generally take place prior to purchase. Accordingly, the visual aspect plays a greater role in the global assessment of the likelihood of confusion."

to ensure that they select the correct type, quality, size and/or aesthetic appearance. In this regard, the average consumer is likely to pay a medium degree of attention when selecting the goods at issue.

33. The average consumer for the retail services at issue will be a member of the general public without excluding business users/professionals. The consumers will select such services by looking through brochures, websites or signs on a physical property, so the visual element will be important. However, I do not discount the aural element, as word-of-mouth recommendations may influence consumers' decisions. I consider that the average consumer will pay a medium degree of attention in choosing the service provider.

Comparison of Trade Marks

34. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

“[...] it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

35. It would be wrong, therefore, to artificially dissect the trade marks, although, it is necessary to take into account the distinctive and dominant components of the marks and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

36. The marks to be compared are:

Earlier Mark	Contested Mark
monari	ONARI

Overall Impression

37. Both of the competing marks are word only marks. Registration of a word mark protects the word itself.⁷ The overall impression of the competing marks lies in the words themselves.

Visual comparison

38. The opponent submits that the “*preceding letter ‘M’ of the Earlier Mark is visually of limited impact to the longer identical word element*”.⁸ On the other hand, the holder submits that the marks are visually dissimilar. However, it further submits that despite the marks sharing similar elements, the ‘M’ letter “*is distinct and gives completely different visual emphasis [...]*”, with the marks sharing “*only a low degree of visual similarity when compared side by side*”.⁹

39. The earlier mark “monari” is six letters long, whilst the contested mark “ONARI” is five. I bear in mind, as a rule of thumb, that the beginnings of words tend to have more impact than the ends.¹⁰ Visually, the marks

⁷ See *LA Superquímica v EUIPO*, T-24/17, para 39; and *Bentley Motors Limited v Bentley 1962 Limited*, BL O/158/17, paragraph 16.

⁸ See paragraph 7 of the opponent’s submissions.

⁹ See paragraph 6 of the holder’s submissions in lieu.

¹⁰ See *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02.

overlap in that the entirety of the contested mark “ONARI” is incorporated into the earlier mark. However, the marks differ insofar as the earlier mark begins with a letter ‘M’. In making my visual comparison of the marks, I bear in mind that notional and fair use of the marks would include use in both upper and lower case, so letter case is irrelevant to the comparison. Taking into account the above factors, I find that the marks are visually similar to a high degree.

Aural comparison

40. The opponent submits that the ‘M’ letter is “*aurally ‘soft’*” and that “*the ‘mon’ remains mainly composed of the vowel sound ‘-on’*”; as a result, “*there is nothing in the rest of the marks to distinguish them.*”¹¹ However, the applicant submits that the marks will be pronounced very differently due to the additional ‘M’ letter, which it claims is a hard consonant.¹²
41. The competing marks consist of three syllables. The contested mark will be articulated as “O-NA-RI” and the earlier mark as “MO-NA-RI”. Although the earlier mark begins with an ‘M’ sound and the contested mark does not, the articulation of the rest of the marks will be identical. Thus, I find them to be aurally similar to a high degree.

Conceptual comparison

42. The opponent submits that the earlier mark “*may be recognised by a consumer as an Italian surname, however, we submit that English consumers would not ascribe a particular meaning or origin to the mark and the later mark repeating a large part of it.*”¹³

¹¹ See paragraph 8 of the opponent’s submissions.

¹² See paragraph 7 of the holder’s submissions in lieu.

¹³ See paragraph 15 of the opponent’s submissions.

43. The holder in its submissions states the following:

“Conceptually, neither of the marks have any conceptual meaning that will be clearly and easily understood by the relevant public and share no conceptual similarity. Therefore, It stands to all reason and logic that the respective marks are conceptually dissimilar.”¹⁴ (sic)

44. The competing marks will be seen as invented words having no identifiable meaning. However, I disagree with the holder that they are conceptually dissimilar. Given that no conceptual comparison is possible, the marks will be rendered conceptually neutral.

Distinctive Character of the Earlier Trade Mark

45. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97, paragraph 22 and 23, the CJEU stated that:

“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).

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

¹⁴ See paragraph 15 of the holder's submissions.

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).”

46. Registered trade marks possess varying degrees of inherent distinctive character from the very low, because they are suggestive of, or allude to, a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities.
47. The opponent has not shown use of its mark and, thus, it cannot benefit from any enhanced distinctiveness. In this respect, I have only the inherent distinctiveness of the earlier mark to consider. The earlier mark consists of the invented word “monari”, which has no allusive or suggestive significance in relation to the goods and services for which the mark is registered. Thus, I consider that the earlier mark is inherently distinctive to a high degree.

Likelihood of Confusion

48. In assessing the likelihood of confusion, I must adopt the global approach set out in the case law to which I have already referred above in this decision. Such a global assessment is not a mechanical exercise. I must also have regard to the interdependency principle, that a lesser degree of similarity between the goods or services may be offset by a greater degree of similarity between the marks, and vice versa.¹⁵ It is essential to keep in mind the distinctive character of the opponent’s trade mark since the more distinctive the trade mark, the greater may be the likelihood of confusion. I must also keep in mind that the average consumer rarely has the

¹⁵ See *Canon Kabushiki Kaisha*, paragraph 17.

opportunity to make direct comparisons between trade marks and must instead rely upon imperfect recollection.¹⁶

49. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other. Indirect confusion is where the consumer notices the differences between the marks but concludes that the later mark is another brand of the owner of the earlier mark or a related undertaking.

50. Earlier in this decision I have concluded that:

- the goods at issue are identical and the services range from identical to similar to between a medium and high degree;
- the average consumer for the goods and services at issue will be the general public, without excluding businesses/professionals, and the selection process is predominantly visual without discounting aural considerations. The level of attention paid for the goods and services will be to a medium degree;
- the competing marks are visually and aurally similar to a high degree, and conceptually neutral;
- the earlier mark has a high degree of inherent distinctiveness.

51. Taking all of the above into consideration, including the identical goods and services in play, the factors persuade me that there is a likelihood of confusion. Although the marks differ in the additional first letter, i.e. “monari”/“ONARI”, a position which is generally considered to be more impactful, the contested mark is reproduced in full within the earlier mark. Despite the earlier mark beginning with an additional ‘M’ letter, the words are otherwise identical. The highly distinctive character of the earlier word mark and the high visual and aural similarity of the marks will be sufficient for the marks to be imperfectly recalled or misremembered as one

¹⁶ See *Lloyd Schuhfabrik Meyer*, paragraph 27.

another.¹⁷ Additionally, the respective marks are conceptually neutral. The absence of conceptual meaning contributes to the effect of imperfect recollection, as there is no conceptual hook to aid recall. Therefore, the divergent letter between the competing marks will not be sufficient to distinguish the identical goods and services of the holder from those of the opponent or militate against imperfect recollection. Based on the principles of imperfect recollection and interdependence, I find that there is a likelihood of direct confusion against all of the holder's goods and services, even for those which are similar to any degree.

Outcome

52. The partial opposition on the basis of the claim under Section 5(2)(b) is successful. Therefore, subject to any successful appeal against this decision, the contested mark shall be refused protection in the UK for the goods and services in Classes 18, 25 and 35.
53. The unopposed goods and services in Classes 3, 14, 16, 28, 41, 44 and 45 of the contested mark proceed to be granted protection in the UK.

Costs

54. The opponent has been successful and is entitled to a contribution towards its costs. Awards of costs are governed by Annex A of Tribunal Practice Notice (TPN) 1/2023. I award costs as follows:

¹⁷ See *Bristol Global Co Ltd v EUIPO*, T-194/14.

Official opposition fee	£100
Preparing a statement and considering the counterstatement	£250
Preparing and filing submissions	£350
Total	£700

55. I, therefore, order Nurturely SEZC to pay to monari GmbH the sum of £700. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 24th day of July 2026

Dr Stylianos Alexandridis

For the Registrar,

The Comptroller General