

o/0663/25

TRADE MARKS ACT 1994

CONSOLIDATED PROCEEDINGS

IN THE MATTER OF APPLICATION NO. UK00003906440 AND UK00003909675

BY MOBEEN FAROOQ

TO REGISTER THE TRADE MARKS:

AK Trading

IN CLASSES 17 AND 40

AND

AK TRADING CO.

IN CLASS 17

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. 442460 AND 442673

BY NAEEM RASOOL

BACKGROUND AND PLEADINGS

1. On 28 April 2023, Mobeen Farooq (“the applicant”) applied to register the **AK Trading** mark (“**440 Mark**”) shown on the cover page of this decision in the UK. The application was published for opposition purposes on 12 May 2023, and the applicant seeks registration for the following goods and services:

Class 17 Flexible foam; flexible polyurethane foam; flexible foam materials; cut to size foam; upholstery foam; foam for use in upholstery; foam in the form of cumb; shredded foam; foam materials cut to size; foam materials for use in manufacture; foam materials in the form of blocks, sheets, rolls, blanks; shredded polyurethane foams; ether foams; closed cell foams; closed cell polyethylene foams; closed cell cross-linked polyethylene foam; closed cell cross-linked polyethene foam; Flower arrangements (Foam supports for -) [semi-finished products]; Foam for use as heat insulation; Foam for use as heat shields; Foam for use as motor compartment linings; Foam for use in sound absorption; Foam for use in sound insulation; Foam glass for use as an insulating materials; Foam in the form of blocks for use as heat insulation; Foam insulation for use in building and construction; Foam insulation materials for use in building and construction; Foam rubber; Foam sheeting for use as a building insulation; Foam supports for floral arrangements; Foam supports for flower arrangements [semi-finished products].

Class 40 Foam converting services, cutting and fabricating foam from bulk; processing of goods by cutting, namely converting bulk stock into products of a required shape and size; processing of foam materials by cutting, namely converting bulk stock into products of a required shape and size.

2. On 9 May 2023, the applicant also applied to register the **AK TRADING CO.** mark (“**675 Mark**”) shown on the cover page of this decision in the UK. The application was published for opposition purposes on 19 May 2023, and the applicant seeks registration for the following goods:

Class 17 Flower arrangements (Foam supports for semi-finished products); Foam for use as heat insulation; Foam for use as heat shields; Foam for use as motor compartment linings; Foam for use in sound absorption; Foam for use in sound insulation; Foam glass for use as an insulating materials; Foam in the form of blocks for use as heat insulation; Foam insulation for use in building and construction; Foam insulation materials for use in building and construction; Foam rubber; Foam sheeting for use as a building insulation; Foam supports for floral arrangements; Foam supports for flower arrangements (semi-finished products).

3. The applications were both opposed by Naeem Rasool (“the opponent”) on 9 August 2023. The opposition against the **440 Mark** is based upon sections 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994 (“the Act”). The opposition against the **675 Mark** is based upon sections 5(2)(a), 5(2)(b), 5(3) and 5(4)(a) of the Act.

4. Under sections 5(2)(a), 5(2)(b) and 5(3), the opponent relies upon the following trade mark:

AK TRADING CO

UK registration no. UK00003879501

Filing date 17 February 2023.

Registration date 7 July 2023.

Relying upon all of the goods and services for which it is registered, namely:

Class 17 Flower arrangements (Foam supports for semi-finished products); Foam for use as heat insulation; Foam for use as heat shields; Foam for use as motor compartment linings; Foam for use in sound absorption; Foam for use in sound insulation; Foam glass for use as an insulating materials; Foam in the form of blocks for use as heat insulation; Foam insulation for use in building and construction; Foam insulation materials for use in building and construction; Foam rubber; Foam sheeting for use

as a building insulation; Foam supports for floral arrangements; Foam supports for flower arrangements (semi-finished products).

Class 40 Foam converting services, cutting and fabricating foam from bulk; processing of goods by cutting, namely converting bulk stock into products of a required shape and size; processing of foam materials by cutting, namely converting bulk stock into products of a required shape and size.

5. Under sections 5(2)(a) and 5(2)(b), the opponent claims that there is a likelihood of confusion because the marks are identical or highly similar, and the goods are identical or similar.

6. Under section 5(3), the opponent claims that the “public recognition of the opponent’s mark in the UK is substantial” and that they enjoy “an extensive reputation in the UK”, and that use of the applicant’s mark on the applied for goods “would cause detriment to the earlier mark by way of degradation”, because the applicant may use its mark “in a manner that is adverse to the reputation of the earlier mark”. Moreover, the opponent claims that “the calling to mind of the opponent’s well known mark “AK TRADING CO.” when faced with the applicant’s goods would be unfair” and there would also “be a clear link between the marks due to the identity between [the] goods and in view of the fact that the dominant and distinctive word “AK TRADING” is fully encompassed in the mark applied for”. Lastly, the opponent claims that as a link would be made, “the distinctiveness of the earlier mark would be eroded”, which will “affect the economic behaviour of the relevant public because it will reduce the ability of the public to distinguish goods offered under the earlier mark”, resulting in a loss of sales to the opponent.

7. Under section 5(4)(a), the opponent relies upon its **AK TRADING CO** sign which it claims to have used throughout the UK since “February 2023” for all of the class 17 goods and class 40 services listed in paragraph 4 above. The opponent claims that use of the applicant’s mark would be contrary to the law of passing off.

8. The applicant filed counterstatements denying the claims made.

9. The opponent is represented by Mr Muhammad Nadeem of Lincoln Solicitors and the applicant is unrepresented. Both parties filed evidence in chief. Neither party requested a hearing but the opponent filed submissions in lieu. This decision is taken following a careful perusal of the papers.

RELEVANCE OF EU LAW

10. 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.

EVIDENCE

11. The opponent's evidence consists of the witness statement of Naeem Rasool dated 12 February 2024 and his statement is accompanied by 1 exhibit (NR-01).

12. The applicant's evidence consists of the witness statement of Mobeen Farooq dated 10 June 2024 and his statement is accompanied by 1 exhibit (EXH).

13. Whilst I do not propose to summarise it here, I have taken all of the parties' evidence and submissions into consideration in reaching my decision and will refer to them where necessary below.

PRELIMINARY ISSUE

14. In the opponent's submissions in lieu dated 21 August 2024, under the heading "other grounds for opposition", the opponent has listed section 3(6) of the Act. However, section 3(6) was never pleaded in its Notice of Oppositions (Form TM7s), nor did the opponent request to add the ground via a Form TM7G. Consequently the opponent cannot rely upon section 3(6) and any reference to it in its submissions will be ignored.

DECISION

15. Section 5(2) reads as follows:

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

(a) it is identical with an earlier trade mark and is to be registered for goods or services similar to those for which the trade mark is protected

(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.”

16. The opponent’s earlier mark has not completed its registration process more than five years before the relevant date (the filing date of the mark in issue). Accordingly, the use provisions at section 6A of the Act do not apply.

17. The opponent may rely on all of the goods and services it has identified without demonstrating that it has used the mark.

Section 5(2) - case law

18. In making this decision, I bear in mind the following principles gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P:

- (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 and services

19. The competing goods and services are as follows:

Opponent's goods and services	Applicant's goods and services
<p><u>Class 17</u> Flower arrangements (Foam supports for semi-finished products); Foam for use as heat insulation; Foam for use as heat shields; Foam for use as motor compartment linings; Foam for use in sound absorption; Foam for use in sound insulation; Foam glass for use as an insulating materials; Foam in the form of blocks for use as heat insulation; Foam insulation for use in building and construction; Foam insulation materials for use in building and construction; Foam rubber; Foam sheeting for use as a building insulation; Foam supports for floral arrangements; Foam supports for flower arrangements (semi-finished products).</p>	<p>440 Mark <u>Class 17</u> Flexible foam; flexible polyurethane foam; flexible foam materials; cut to size foam; upholstery foam; foam for use in upholstery; foam in the form of cumb; shredded foam; foam materials cut to size; foam materials for use in manufacture; foam materials in the form of blocks, sheets, rolls, blanks; shredded polyurethane foams; ether foams; closed cell foams; closed cell polyethylene foams; closed cell cross-linked polyethylene foam; closed cell cross-linked polyethene foam; Flower arrangements (Foam supports for -) [semi-finished products]; Foam for use as heat insulation; Foam for use as heat</p>

Class 40

Foam converting services, cutting and fabricating foam from bulk; processing of goods by cutting, namely converting bulk stock into products of a required shape and size; processing of foam materials by cutting, namely converting bulk stock into products of a required shape and size.

shields; Foam for use as motor compartment linings; Foam for use in sound absorption; Foam for use in sound insulation; Foam glass for use as an insulating materials; Foam in the form of blocks for use as heat insulation; Foam insulation for use in building and construction; Foam insulation materials for use in building and construction; Foam rubber; Foam sheeting for use as a building insulation; Foam supports for floral arrangements; Foam supports for flower arrangements [semi-finished products].

Class 40

Foam converting services, cutting and fabricating foam from bulk; processing of goods by cutting, namely converting bulk stock into products of a required shape and size; processing of foam materials by cutting, namely converting bulk stock into products of a required shape and size.

675 Mark

Class 17

Flower arrangements (Foam supports for semi-finished products); Foam for use as heat insulation; Foam for use as heat shields; Foam for use as motor compartment linings; Foam for use in sound absorption; Foam for use in sound

	insulation; Foam glass for use as an insulating materials; Foam in the form of blocks for use as heat insulation; Foam insulation for use in building and construction; Foam insulation materials for use in building and construction; Foam rubber; Foam sheeting for use as a building insulation; Foam supports for floral arrangements; Foam supports for flower arrangements (semi-finished products).
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20. When making the comparison, all relevant factors relating to the goods and services in the specifications should be taken into account. In the judgment of the CJEU in *Canon*, Case C-39/97, the court stated at paragraph 23 that:

“In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, 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 are complementary.”

21. Guidance on this issue has come from Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, where he identified the factors for assessing similarity as:

- (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.

22. In *Gérard Meric v OHIM*, Case T- 133/05, the General Court (“GC”) stated that:

“29. 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.”

23. For the purposes of considering the issue of similarity of goods and services, it is permissible to consider groups of terms collectively where they are sufficiently comparable to be assessed in essentially the same way and for the same reasons (see *Separode Trade Mark* (BL O/399/10) and *BVBA Management, Training en Consultancy v. BeneluxMerkenbureau* [2007] ETMR 35 at paragraphs 30 to 38).

24. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v OHIM*, Case T-325/06, the GC stated that “complementary” means:

“... there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think the responsibility for those goods lies with the same undertaking.”

25. In *Sanco SA v OHIM*, Case T-249/11, the GC indicated that goods and services may be regarded as ‘complementary’ and therefore similar to a degree in circumstances where the nature and purpose of the respective goods and services are very different, i.e. chicken against transport services for chickens. The purpose of examining whether there is a complementary relationship between goods/services is to assess whether the relevant public are liable to believe that responsibility for the goods/services lies with the same undertaking or with economically connected undertakings. As Mr Daniel Alexander Q.C. (as he then was) noted, as the Appointed Person, in *Sandra Amalia Mary Elliot v LRC Holdings Limited*, BL-0-255-13:

“It may well be the case that wine glasses are almost always used with wine – and are, on any normal view, complementary in that sense – but it does not follow that wine and glassware are similar goods for trade mark purposes.” Whilst on the other hand: “... it is neither necessary nor sufficient for a finding of similarity that the goods in question must be used together or that they are sold together.”

Whilst on the other hand:

“... it is neither necessary nor sufficient for a finding of similarity that the goods in question must be used together or that they are sold together.”

440 Mark

Class 17

Foam for use as heat insulation; Foam for use as heat shields; Foam for use as motor compartment linings; Foam for use in sound absorption; Foam for use in sound insulation; Foam glass for use as an insulating materials; Foam in the form of blocks for use as heat insulation; Foam insulation for use in building and construction; Foam insulation materials for use in building and construction; Foam rubber; Foam sheeting for use as a building insulation; Foam supports for floral arrangements; Foam supports for flower arrangements [semi-finished products].

26. All of the above terms appear identically in both parties' class 17 specifications.

Flower arrangements (Foam supports for -) [semi-finished products].

27. Although expressed slightly differently, the applicant's above goods are self-evidently identical to "foam supports for flower arrangements [semi-finished products]" in the opponent's specification.

Foam materials for use in manufacture.

28. I find that the opponent's term "foam rubber" in its class 17 specification can be used for multiple purposes, including for manufacture, and thus falls within the applicant's above broader category. The goods are identical on the principle outlined in *Meric*.

Closed cell foams; closed cell polyethylene foams; closed cell cross-linked polyethylene foam; closed cell cross-linked polyethene foam.

29. The applicant's above foams can be used for both heat insulation and sound proofing. On this basis, I find that these terms fall within the broader categories of "foam for use as heat insulation", "foam for use in sound insulation", "foam insulation for use in building and construction" and "foam insulation materials for use in building and construction" in the opponent's class 17 specification. The goods are identical on the principle outlined in *Meric*.

Flexible foam; flexible polyurethane foam; flexible foam materials; cut to size foam; upholstery foam; foam for use in upholstery; foam in the form of cumb; shredded foam; foam materials cut to size; foam materials in the form of blocks, sheets, rolls, blanks; shredded polyurethane foams; ether foams.

30. Whilst the applicant's above foam goods have a wide range of uses, I note that they could be all used in the manufacture of, or for the upholstering of, furniture. I find that whilst these goods do not overlap in nature and method of use with the opponent's class 40 "processing of foam materials by cutting, namely converting bulk stock into

products of a required shape and size” services, I find that these goods and services will overlap in trade channels, i.e. the same undertaking may provide both the foam goods and the foam processing service. The purpose of the goods and services is to provide the same users with foam based goods. I also find that the goods and services are complementary, being important and indispensable to one another, with its users also believing that the goods and services originate from the same undertakings. I therefore find that the goods and services are similar to a medium degree.

Class 40

Foam converting services, cutting and fabricating foam from bulk; processing of goods by cutting, namely converting bulk stock into products of a required shape and size; processing of foam materials by cutting, namely converting bulk stock into products of a required shape and size.

31. All of the applicant’s above terms appear identically in the opponent’s class 40 specification.

657 Mark

Class 17

Flower arrangements (Foam supports for semi-finished products); Foam for use as heat insulation; Foam for use as heat shields; Foam for use as motor compartment linings; Foam for use in sound absorption; Foam for use in sound insulation; Foam glass for use as an insulating materials; Foam in the form of blocks for use as heat insulation; Foam insulation for use in building and construction; Foam insulation materials for use in building and construction; Foam rubber; Foam sheeting for use as a building insulation; Foam supports for floral arrangements; Foam supports for flower arrangements (semi-finished products).

32. All of the applicant’s above terms appear identically in the opponent’s class 17 specification.

The average consumer and the nature of the purchasing act

33. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties' goods and services. I must then determine the manner in which the goods and services are likely to be selected by the average consumer. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J (as he then was) described the average consumer in these terms:

“60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The words “average” denotes that the person is typical. The term “average” does not denote some form of numerical mean, mode or median.”

34. The average consumer of the goods and services is likely to be a business or a tradesperson, as well as members of the general public. I bear in mind that the goods cover a number of different trades, such as the motor manufacturing industry, floristry, furniture manufacturing, and construction, but whichever trade they practise, the professional consumer would be keen to use materials that are fit for purpose. For all of the average consumers, their level of attention paid during the purchasing process will depend on the purpose for which they are buying the goods or services. For example, they will pay a slightly higher degree of attention when purchasing insulating foam or foam for motor vehicle parts than when buying foam for flower arranging. Even so, the level of attention is unlikely to rise above a medium degree.

35. The goods and services will mostly be purchased from specialist suppliers, although I note that insulating materials, for example, will be available in DIY stores, and upholstery materials and foam for flower arranging may be purchased from craft retailers. The goods and services may be purchased following perusal of advertisements, and will likely be purchased in physical stores or via their online

equivalents. The purchasing process is, therefore, likely to be predominantly visual. However, I do not discount that there may also be an aural component to the purchase through advice sought from sales assistants or via word-of-mouth recommendations.

Comparison of the trade marks

36. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade 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 trade marks must be assessed by reference to the overall impressions created by the trade 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.”

37. 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.

Identity of the marks

38. Firstly, it is a prerequisite of section 5(2)(a) that the trade marks are identical. *In S.A. Société LTJ Diffusion v. Sadas Verbaudet SA*, Case C-291/00, the Court of Justice of the European Union (“CJEU”) 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 the average consumer.”

39. Only the opposition against the **675 Mark** is based upon section 5(2)(a). I note that the **675 Mark** is composed of the words “AK TRADING CO.” and the opponent’s earlier mark is composed of the words “AK TRADING CO”. Therefore the only difference between these marks is the full stop at the end of the **675 Mark**. The full stop is an insignificant element which would go unnoticed by the average consumer and therefore I consider that these marks are identical.

40. I will now proceed with comparing the opponent’s mark with the applicant’s **440 Mark**. The respective trade marks are shown below:

Opponent’s trade mark	Applicant’s 440 Mark
AK TRADING CO	AK Trading

41. The opponent’s mark consists of the words “AK TRADING CO”. The words “TRADING CO” will be recognised by the average consumer as shorthand for “trading company” which is a common way of designating a company. I therefore consider that “TRADING CO” are non-distinctive elements which play a lesser role in the overall impression, with “AK” being the dominant and distinctive element, which plays a greater role in the overall impression of the mark.

42. The applicant’s **440 mark** consists of the words “AK Trading”. The ordinary dictionary word “Trading” denotes the act of commerce in goods and services. As such, it is non-distinctive and therefore plays a lesser role in the overall impression of the mark. I find that “AK” at the beginning of the mark is the dominant and distinctive element which plays a greater role in the overall impression.

43. Visually, the applicant’s mark (“AK Trading”) is wholly encompassed at the beginning of the opponent’s mark, a position to which the average consumer usually

pays more attention.¹ While I note that the opponent's mark is presented all in upper-case, and the applicant's mark is presented in a combination of upper and lower-case, I bear in mind that both marks are word marks and therefore normal and fair use of these marks means that they can be used in any standard typeface, which covers all upper or lower-case lettering, as well as a combination of the two.² On this basis, the use of different cases does not act as a visual point of difference. However, the "CO" element at the end of the opponent's mark does. Therefore, I find that the marks are visually similar to a high degree.

44. Aurally, neither party has provided submissions on the pronunciation of the marks. However, I find that the "AK" elements at the beginning of both marks will be pronounced as AY-KAY, and the word "TRADING" in both marks will be given its ordinary pronunciation. The "CO" element at the end of the opponent's mark will also be given its ordinary pronunciation. Therefore, as the only aural difference between the marks lies in the pronunciation of "CO" at the end of the opponent's mark, I find that they are aurally similar to a high degree.

45. Conceptually, as noted above, applicant's mark, "AK Trading", is wholly encompassed at the beginning of the opponent's mark. I find that these elements evoke the same concept, that is an entity called "AK" which is trading. These elements are, therefore, conceptually identical. However, the word "CO" which appears at the end of the opponent's mark is shorthand for "company". Therefore, the applicant's mark as a whole evokes the concept of an entity called "AK" which is trading as a company. On the basis that the "CO" element acts as a conceptual point of difference, I find that the marks are, as a whole, conceptually similar to a high degree.

Distinctive character of the earlier trade mark

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

¹ *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

² I also bear in mind the case of *Mr Heron* BL O/954/22 where at paragraph 15 Mr Iain Purvis KC stated that the monopoly of a word mark is not limited by any features such as fonts or capitalisation appearing on the Register, listing MR HERON, mr heron, Mr Heron, Mr HERon, and Mr HERON (in a stylised typeface) as all being identical to the word mark "mr heron"

“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 C108/97 and C-109/97 Windsurfing Chiemsee v Huber and Attenberger [1999] ECR I-2779, 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 promotion of 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).”

47. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods and services, 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.

48. I will begin by assessing the inherent distinctive character of the opponents mark. As noted above, words “TRADING CO” at the end of the opponent’s mark will be recognised by the average consumer as shorthand for “trading company” which is a common way of designating a company. Thus, as a whole, I find that average consumer will understand the opponent’s mark to mean an entity called “AK” which is trading as a company. I note that “AK” is a two letter initialism, the type that the average consumer is used to seeing being used by companies and individuals. Consequently, I find that the mark is inherently distinctive to between a low and medium degree.

49. In his witness statement, Mr Rasool confirms that he is the sole director of Hafzar Site Ltd, which has been using the mark AK TRADING Co since “mid-2022” on cut to size foam, foam sheets, seat pads, seat cushions, inner bed cushions, mattress toppers, dog beds, dog bed mattresses, caravan seat pads, caravan mattresses, cut to size mattresses and baby cot mattress pads. To support this, in paragraph 4 of his witness statement, Mr Rasool states that “enclosed are supporting documents providing detailed information and evidence regarding the products within the context of Class 17 & 40” including “invoices rendered against AK Trading Co. products and listing details, marked as **exhibit RN-01**”. I note the following from this exhibit:

- a) The first 4 pages of this exhibit contains photos from Amazon which lists AK Trading Co. products as including foam cushions, upholstery foam and cushion craft foam. I note that there is nothing within these photos to show or confirm that any sales were made from these goods, it simply shows that the date these listings were created was on “18/10/2023”, that the number of these goods available range between 10 and 84 and the price of the goods vary from £15 to £130.
- b) 25 invoices from Hafzar Site Ltd dated between 27 January 2022 and 3 January 2023 show the sale of AK TRADING Co upholstery seat replacement foam, upholstery foam cushion (polyurethane foam sheet) and long regular density upholstery foam. I note that these invoices are addressed to customers in Huddersfield, Northumberland, Callander, Kinross, Donegal, Nottingham, Sheffield, Warwickshire, Northampton, Wisbech, Spalding, Argyll and Bute, Norwich, Lancashire, Banstead, Liverpool, Cambridgeshire, Edinburgh, Suffolk, Ivergordon, Milton Keynes, Tyne and Wear, London and Port Talbot. The invoices show the sale of one item per invoice, and the amounts vary between £24 and £108.

50. Whilst the opponent does not have protection specifically for the term “upholstery foam”, I note that it has protection for “rubber foam” in its class 17 specification, which is a type of foam that can be used for many purposes, including upholstery. Therefore, the above goods within the invoices could fall within this term.

51. I bear in mind that Mr Rasool does not specify whether the 25 Amazon invoices, which amount to £1,021.98, are a sample of its invoices, or whether they are all of the sales made by the opponent. Nevertheless, as they are the only evidence of sales before me, I find that this figure is low. I also note that I have not been provided with the opponent's market share, but again, based on the sales before me, I find that it would only amount to a very small proportion of the upholstery foam market. I have also not been provided with any advertising figures, or examples of advertising. Therefore, taking all of the above into account, I do not consider the evidence sufficient to establish enhanced distinctiveness of the opponent's mark at the relevant dates.

52. Even if I had found that the evidence was sufficient to establish enhanced distinctiveness, the invoice evidence only shows sales made by Hafzar Site Ltd under the AK TRADING CO mark, not the opponent. While Mr Rasool confirms in his witness statement that he is the sole director of Hafzar Site Ltd, I have not been provided with any evidence, for example, in the form of a licencing agreement, to show that Hafzar Site Ltd had permission to trade under Mr Rasool's mark. On this basis, I find that the evidence cannot establish enhanced distinctiveness of the mark on the basis that the only evidence of use pertains to an entity which is not the registered owner or a licensee.

Likelihood of confusion

53. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods and services down to the responsible undertakings being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa. It is necessary for me to keep in mind the distinctive character of the earlier mark, the average consumer for the goods and services and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer

rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he has retained in his mind.

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

675 Mark

- I have found the marks to be identical.
- I have found the opponent's earlier mark to be inherently distinctive to between a low and medium degree.
- I have identified the average consumer to be a business, a tradesperson or the general public, who will select the goods primarily by visual means, although I do not discount an aural component.
- I have concluded that no more than a medium degree of attention will be paid during the purchasing process.
- The parties' goods are identical.
- The parties' goods and services are similar to a medium degree.

55. In regard to the parties' identical marks and identical goods, a likelihood of direct confusion will clearly arise. In regard to the parties' goods and services which I have found to be similar to a medium degree, I bear in mind the interdependency principle, and therefore the identity of the marks offsets the lesser degree of similarity between the goods and services. Taking all of the above into account, I find that there is a likelihood of direct confusion.

440 Mark

- I have found the marks to be visually similar to a high degree.
- I have found the marks to be aurally similar to a high degree.
- I have found the marks to be conceptually similar to a high degree.
- I have found the opponent's earlier mark to be inherently distinctive to between a low and medium degree.

- I have identified the average consumer to be a business, a tradesperson or the general public, who will select the goods primarily by visual means, although I do not discount an aural component.
- I have concluded that no more than a medium degree of attention will be paid during the purchasing process.
- The parties' goods are identical.
- The parties' goods and services are similar to a medium degree.

56. Taking all of the above into account, considering the principle of imperfect recollection, and bearing in mind that the applicant's mark is wholly contained at the beginning of the opponent's mark, I consider that the marks are likely to be mistakenly recalled or misremembered as each other. The only difference between the marks is the "CO" element at the end of the opponents mark, which will be recognised by the average consumer as the usual shortening of the ordinary dictionary word "company". I find that this element would be easily overlooked, especially as it plays a lesser role in the overall impression. Consequently, I consider that there is a likelihood of direct confusion.

57. It now falls to me to consider the likelihood of indirect confusion. Indirect confusion was described in the following terms by Iain Purvis Q.C., (as he was then) sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10:

"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.”

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

59. I consider that the shared common use of the words “AK TRADING” in the parties marks will lead the average consumer to conclude that the marks originate from the same or economically linked undertakings. The only difference between the marks is the “CO” element at the end of the opponent’s mark, which will be recognised as the abbreviation of “company” by the average consumer, which is a common way of designating a company. Therefore, it is my view that the average consumer will view the applicant’s mark as an alternative mark or the company name being used on identical goods, and similar goods and services, by the same or economically linked undertakings, perhaps being an updated version of the same mark and therefore indicative of re-branding. I consider that it is not uncommon for undertakings re-brand themselves from time to time to accommodate changes in marketing considerations. Consequently, I consider there to be a likelihood of indirect confusion.

60. The opposition under sections 5(2)(a) and 5(2)(b) succeeds in full.

Section 5(3)

61. Section 5(3) of the Act states:

“5(3) A trade mark which –

(a) is identical with or similar to an earlier trade mark, shall not be registered if, or to the extent that, the earlier trade mark has a reputation

in the United Kingdom (or, in the case of a European Union trade mark or international trade mark (EC), in the European Union) and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or repute of the earlier trade mark.”

62. Section 5(3A) of the Act states:

“Subsection (3) applies irrespective of whether the goods and services for which the trade mark is to be registered are identical with, similar to or not similar to those for which the earlier trade mark is protected.”

63. The relevant case law can be found in the following judgments of the CJEU: Case C-375/97, *General Motors*, Case 252/07, *Intel*, Case C-408/01, *Adidas-Salomon*, Case C-487/07, *L’Oreal v Bellure* and Case C-323/09, *Marks and Spencer v Interflora* and Case C383/12P, *Environmental Manufacturing LLP v OHIM*. The law appears to be as follows.

a) The reputation of a trade mark must be established in relation to the relevant section of the public as regards the goods or services for which the mark is registered; *General Motors*, paragraph 24.

(b) The trade mark for which protection is sought must be known by a significant part of that relevant public; *General Motors*, paragraph 26.

(c) It is necessary for the public when confronted with the later mark to make a link with the earlier reputed mark, which is the case where the public calls the earlier mark to mind; *Adidas Saloman*, paragraph 29 and *Intel*, paragraph 63.

(d) Whether such a link exists must be assessed globally taking account of all relevant factors, including the degree of similarity between the respective marks and between the goods/services, the extent of the overlap between the relevant consumers for those goods/services, and the strength of the earlier mark’s reputation and distinctiveness; *Intel*, paragraph 42.

(e) Where a link is established, the owner of the earlier mark must also establish the existence of one or more of the types of injury set out in the section, or there is a serious likelihood that such an injury will occur in the future; *Intel*, paragraph 68; whether this is the case must also be assessed globally, taking account of all relevant factors; *Intel*, paragraph 79.

(f) Detriment to the distinctive character of the earlier mark occurs when the mark's ability to identify the goods/services for which it is registered is weakened as a result of the use of the later mark, and requires evidence of a change in the economic behaviour of the average consumer of the goods/services for which the earlier mark is registered, or a serious risk that this will happen in future; *Intel*, paragraphs 76 and 77 and *Environmental Manufacturing*, paragraph 34.

(g) The more unique the earlier mark appears, the greater the likelihood that the use of a later identical or similar mark will be detrimental to its distinctive character; *Intel*, paragraph 74.

(h) Detriment to the reputation of the earlier mark is caused when goods or services for which the later mark is used may be perceived by the public in such a way that the power of attraction of the earlier mark is reduced, and occurs particularly where the goods or services offered under the later mark have a characteristic or quality which is liable to have a negative impact of the earlier mark; *L'Oreal v Bellure NV*, paragraph 40.

(i) The advantage arising from the use by a third party of a sign similar to a mark with a reputation is an unfair advantage where it seeks to ride on the coat-tails of the senior mark in order to benefit from the power of attraction, the reputation and the prestige of that mark and to exploit, without paying any financial compensation, the marketing effort expended by the proprietor of the mark in order to create and maintain the mark's image. This covers, in particular, cases where, by reason of a transfer of the image of the mark or of the characteristics which it projects to the goods identified by the identical or similar sign, there is clear exploitation on the coat-tails of the mark with a reputation (*Marks and*

Spencer v Interflora, paragraph 74 and the court's answer to question 1 in *L'Oreal v Bellure*).

64. The conditions of section 5(3) are cumulative. Firstly, the opponents and applicants marks must be identical or similar. Secondly, the opponent must show that its earlier mark has achieved a level of knowledge/reputation amongst a significant part of the public. Thirdly, it must have established that the level of reputation and the similarities between the marks will cause the public to make a link between them, in the sense of the opponents mark being brought to mind by the later mark. Fourthly, assuming that the first, second and third conditions have been met, section 5(3) requires that one or more types of damage claimed will occur. It is unnecessary for the purposes of section 5(3) that the goods be similar, although the relative distance between them is one of the factors which must be assessed in deciding whether the public will make a link between the marks. The relevant date for the assessment under section 5(3) is the registration date of the applicant's marks. Therefore the relevant date for the 440 Mark is 28 April 2023, and the relevant date for the 675 Mark is 9 May 2023.

Reputation

65. In *General Motors*, Case C-375/97, the CJEU held that:

“25. It cannot be inferred from either the letter or the spirit of Article 5(2) of the Directive that the trade mark must be known by a given percentage of the public so defined.

26. The degree of knowledge required must be considered to be reached when the earlier mark is known by a significant part of the public concerned by the products or services covered by that trade mark.

27. In examining whether this condition is fulfilled, the national court must take into consideration all the relevant facts of the case, in particular the market share held by the trade mark, the intensity, geographical extent and duration of its use, and the size of the investment made by the undertaking in promoting it.

28. Territorially, the condition is fulfilled when, in the terms of Article 5(2) of the Directive, the trade mark has a reputation 'in the Member State'. In the absence of any definition of the Community provision in this respect, a trade mark cannot be required to have a reputation 'throughout' the territory of the Member State. It is sufficient for it to exist in a substantial part of it."

66. In determining whether the opponent has demonstrated a reputation for the services in issue, it is necessary for me to consider whether its mark will be known by a significant part of the public concerned with the services. In reaching this decision, I must take all of the evidence into account including "the market share held by the trade mark, the intensity, geographical extent and duration of use, and the size of the investment made by the undertakings in promoting it."

67. I bear in mind that the evidence summarised at paragraph 49 above does not show the opponent using its earlier mark. Instead, the evidence shows the company Hafzar Site Ltd using the AK TRADING CO mark. Mr Rasool has not provided any evidence, for example, in the form of a licencing agreement, to show that Hafzar Site Ltd had permission to trade under Mr Rasool's mark. On this basis, I find that the opponent has failed to establish any use of its earlier mark, and consequently section 5(3) falls at the first hurdle.

68. Nevertheless, even if I was wrong in my above finding, and the opponent was entitled to rely on Hafzar Site Ltd's use of the AK TRADING CO mark, I do not consider that the evidence provided would be sufficient in demonstrating a reputation.

69. Mr Rasool states that the evidence provided in support of his witness statement shows that its mark "had a reputation at the application date". This means that it must be known by a significant proportion of the relevant public. However, in my view, the evidence has a number of shortcomings in this regard. Albeit the 25 invoices provided by the opponent dated between 27 January 2022 and 3 January 2023 show that its sales were geographically spread throughout the UK, I note that all of the invoices only amount to £1,021.98. I find that this figure is low. Whilst I have not been provided with the opponent's market share, based on the sales figures before me, I find that it would only amount to a very small proportion of the upholstery foam market. Lastly, the

opponent has not provided me with any examples of advertising or advertising figures. Therefore, taking the above into account, I find that the evidence is not persuasive in showing that a significant part of the relevant public knew of the opponent's earlier mark at the relevant dates. The evidence is therefore insufficient to establish a reputation in the UK, and, consequently, the opposition based upon section 5(3) fails.

Section 5(4)(a)

70. Section 5(4)(a) of the Act states as follows:

“5(4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented –

a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, where the condition in subsection (4A) is met,

aa)...

b) ...

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of “an earlier right” in relation to the trade mark”.

71. Subsection (4A) of section 5 of the Act states:

“(4A) The condition mentioned in subsection (4)(a) is that the rights to the unregistered trade mark or other sign were acquired prior to the date of application for registration of the trade mark or date of the priority claimed for that application.”

72. In *Discount Outlet v Feel Good UK*, [2017] EWHC 1400 IPEC, Her Honour Judge Melissa Clarke, sitting as a deputy Judge of the High Court, conveniently summarised the essential requirements of the law of passing off as follows:

“55. The elements necessary to reach a finding of passing off are the ‘classical trinity’ of that tort as described by Lord Oliver in the Jif Lemon case (Reckitt & Colman Product v Borden [1990] 1 WLR 491 HL, [1990] RPC 341, HL), namely goodwill or reputation; misrepresentation leading to deception or a likelihood of deception; and damage resulting from the misrepresentation. The burden is on the Claimants to satisfy me of all three limbs.

56. In relation to deception, the court must assess whether “a substantial number” of the Claimants’ customers or potential customers are deceived, but it is not necessary to show that all or even most of them are deceived (per *Interflora Inc v Marks and Spencer Plc* [2012] EWCA Civ 1501, [2013] FSR 21).”

Relevant date

73. Whether there has been passing off must be judged at a particular point (or points) in time. In *Advanced Perimeter Systems Limited v Multisys Computers Limited*, BL O-410-11, Mr Daniel Alexander QC, sitting as the Appointed Person, considered the relevant date for the purposes of s.5(4)(a) of the Act and stated as follows:

“43. In *SWORDERS TM* O-212-06 Mr Alan James acting for the Registrar well summarised the position in s.5(4)(a) proceedings as follows: ‘Strictly, the relevant date for assessing whether s.5(4)(a) applies is always the date of the application for registration or, if there is a priority date, that date: see Article 4 of Directive 89/104. However, where the applicant has used the mark before the date of the application it is necessary to consider what the position would have been at the date of the start of the behaviour complained about, and then to assess whether the position would have been any different at the later date when the application was made.’”

74. The prima facie relevant date is the date of the applications in issue. Therefore the prima facie relevant date for the **440 Mark** is 28 April 2023, and the prima facie relevant date for the **675 Mark** is 9 May 2023. However, it is also necessary to consider what the position would have been at the start of the behaviour complained about.

75. In *Smart Planet Technologies, Inc. v Rajinda Sharma*, Case BL O/304/20, Mr Thomas Mitcheson QC, sitting as the Appointed Person, pointed out that “the start of the behaviour complained about” is the date that the user of that mark committed the first external act about which the other party could have complained (if it knew about it) as an act of actual or threatened passing off. Typically, this will be the date when first offer was made to market the relevant goods or services under the mark. However, it could also be the date the first public facing indication was made that sales were proposed to be made under the mark in future.

76. In Mr Farooq’s witness statement, he claims that his parent company, M&A Styles Ltd., owns the brands “AK TRADING CO.” and “AK TRADING” on Amazon, and has been selling these brands since “mid-2021” which not only demonstrates their “longstanding use” of the marks, but establishes its own “solid reputation and presence in the market”. **Exhibit EXH** has been filed to “substantiate [his] position”, to demonstrate the applicant’s “prior and continuous use of these marks before” the opponent. I note the following from this exhibit:

- a) A trademark registration certificate for the mark UK00003882247 shows that it was registered on 24 February 2023, and is owned by M&A Styles Ltd.
- b) One invoice from M&A STYLES LTD was issued on 11 October 2021 to a customer in Cheshire for AK TRADING CO. “long regular density upholstery foam” amounting to £43.98.
- c) Undated screenshots from Amazon showing M&A STYLES LTD selling AK TRADING CO. “spray adhesive” and “upholstery foam cushion”, with the date of these first available from 15 August 2021.

77. All of the applicant’s above evidence shows the use of the applicant’s marks by the company M&A Styles Ltd. While Mr Farooq states that this is his “parent company” in his witness statement, he has not provided any further evidence to demonstrate his relationship with M&A Styles Ltd (for example, a licence to show that M&A Styles Ltd was authorised to use his marks on his behalf). I therefore find that the applicant has

not filed any evidence of themselves using the marks, and as such, I have only the prima facie relevant dates to consider, i.e. 28 April 2023 and 9 May 2023.

Goodwill

78. The House of Lords in *Inland Revenue Commissioners v Muller & Co's Margarine Ltd* [1901] AC 217 (HOL) provided the following guidance regarding goodwill:

“What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation and connection of a business. It is the attractive force which brings in customers. It is the one thing which distinguishes an old-established business from a new business at its first start.”

79. In *South Cone Incorporated v Jack Bessant, Dominic Greensmith, Kenwyn House and Gary Stringer (a partnership)* [2002] RPC 19 (HC), Pumfrey J. stated:

“27. There is one major problem in assessing a passing off claim on paper, as will normally happen in the Registry. This is the cogency of the evidence of reputation and its extent. It seems to me that in any case in which this ground of opposition is raised the registrar is entitled to be presented with evidence which at least raises a prima facie case that the opponent's reputation extends to the goods comprised in the applicant's specification of goods. The requirements of the objection itself are considerably more stringent than the enquiry under s.11 of the 1938 Act (see *Smith Hayden & Co. Ltd's Application (OVAX)* (1946) 63 R.P.C. 97 as qualified by *BALI Trade Mark* [1969] R.P.C. 472). Thus the evidence will include evidence from the trade as to reputation; 54 evidence as to the manner in which the goods are traded or the services supplied; and so on.

28. Evidence of reputation comes primarily from the trade and the public, and will be supported by evidence of the extent of use. To be useful, the evidence must be directed to the relevant date. Once raised, the applicant must rebut the prima facie case. Obviously, he does not need to show that passing off will not

occur, but he must produce sufficient cogent evidence to satisfy the hearing officer that it is not shown on the balance of probabilities that passing off will occur.”

80. However, in *Minimax GmbH & Co KG v Chubb Fire Limited* [2008] EWHC 1960 (Pat) Floyd J. (as he then was) stated that:

“[The above] observations are obviously intended as helpful guidelines as to the way in which a person relying on section 5(4)(a) can raise a case to be answered of passing off. I do not understand Pumfrey J to be laying down any absolute requirements as to the nature of evidence which needs to be filed in every case. The essential is that the evidence should show, at least prima facie, that the opponent's reputation extends to the goods comprised in the application in the applicant's specification of goods. It must also do so as of the relevant date, which is, at least in the first instance, the date of application.”

81. As noted above, all of the evidence provided by the opponent shows sales made by Hafzar Site Ltd under the AK TRADING CO mark. While Mr Rasool confirms in his witness statement that he is the sole director of Hafzar Site Ltd, I have not been provided with any exhibited evidence to confirm this relationship, nor have I been, for example, provided with any form of licencing agreement to show that Hafzar Site Ltd had permission to trade under Mr Rasool's mark. On this basis, I find that the section 5(4)(a) case fails as I have not been provided with any evidence proving the existence of any protectable level of goodwill in the opponent and its sign at the relevant dates.

CONCLUSION

82. The opposition is successful under sections 5(2)(a) and 5(2)(b) and both of the applications are refused in their entirety.

COSTS

83. The opponent has been successful and is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice 1/2023. In the

circumstances, I award the opponent the sum of £1,650 as a contribution towards the costs of the proceedings. The sum is calculated as follows:

Filing Notices of opposition and considering the applicant's counterstatements (x2)	£500
Preparing and filing evidence	£400 ³
Preparing and filing submissions in lieu	£350
Official Fee (x2)	£400
Total	£1,650

84. I therefore order MOBEEN FAROOQ to pay Naeem Rasool the sum of £1,650. This sum is to be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 17th day of July 2025

L FAYTER
For the Registrar

³ As the amount of evidence filed by the opponent was light, and did not particularly assist them, I have awarded below the usual scale.