

BL O/0726/26

IN THE MATTER OF THE TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. 00004095103 FOR THE FOLLOWING TRADE MARK IN
CLASS 25 IN THE NAME OF CHI CLOTHING LTD

CHI CLOTHING

AND IN THE MATTER OF OPPOSITION NO. 451044 BY DK COMPANY VEJLE A/S

AND IN THE MATTER OF AN APPEAL FROM THE DECISION OF K SERRAVALLE DATED 25 MARCH
2026 WITH NUMBER O/0260/26

DECISION

Introduction

1. This is an appeal before me by DK Company Vejle A/S (the “**Opponent/Appellant**”) from the decision of the Hearing Officer, K Serravalle, dated 25 March 2026 with number O/0260/26 (the “**Decision**”).

Background

2. By way of background, on 3 September 2024, Chi Clothing Ltd (the “**Applicant/Respondent**”) applied for trade mark number 000040951033 depicted below for certain goods in class 25 (the “**Application**”). This was published for opposition purposes on 13 September 2024.

Trade Mark No	Trade Mark	Goods
000040951033	CHI CLOTHING	<u>Class 25</u> : Clothes; Clothing; Swaddling clothes; Baby clothes; Beach clothes; Nappy pants [clothing]; Denims [clothing]; Jackets [clothing]; Shorts [clothing]; Work clothes; Drawers [clothing]; Drawers as clothing; Clothes for sports; Aprons [clothing]; Jackets (Stuff -) [clothing]; Stuff jackets [clothing]; Clothes for sport; Linen clothing; Headbands [clothing]; Headbands for clothing; Kerchiefs [clothing]; Gloves [clothing]; Gloves as clothing; Bottoms [clothing]; Capes (clothing); Furs [clothing]; Trunks being clothing; Maternity clothing; Jerseys [clothing]; Babies' pants [clothing]; Layettees [clothing]; Clothing layettes; Clothing for leisure wear; Woolen clothing; Gabardines [clothing]; Oilskins [clothing]; Bodies [clothing]; Clothing for babies; Hoods [clothing]; Ready-towear clothing; Garments for protecting clothing; Tops [clothing]; Gussets for underwear [parts of clothing]; Belts [clothing]; Belts for clothing; Collars [clothing]; Playsuits [clothing]; Pockets for clothing; Veils [clothing]; Knitwear [clothing]; Corsets [clothing, foundation garments]; Paper hats for use as clothing items; Silk clothing; Fabric belts [clothing]; Mitts [clothing]; Hats (Paper-) [clothing]; Paper hats [clothing]; Beach clothing; Belts (Money -) [clothing]; Money belts [clothing]; Braces for clothing; Chaps (clothing); Ready-made clothing; Embroidered clothing; Casual clothing; Knitted clothing; Gussets for bathing suits [parts of clothing].

3. On or around 28 November 2024, the Opponent opposed the Application for all goods under section 5(2)(b) of the Trade Marks Act 1994 (the “**Act**”), relying on its earlier trade marks depicted below for the following goods and services (together the “**Earlier Marks**”):

Trade Mark No	Trade Mark	Goods / Services
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916009185 ("185")	ICHI	<u>Class 9:</u> Glasses; sunglasses; eyeglass cases; spectacle frames; cases for sunglasses; straps for sunglasses. <u>Class 14:</u> Jewellery, precious stones not including bars of precious metal, coins of precious metal and ingots of precious metal; watches and chronometric instruments not including watches and chronometric instruments made from solid gold or solid silver. <u>Class 18:</u> Leather and imitations of leather; animal skins, hides; trunks and travelling bags; umbrellas. <u>Class 25:</u> Clothing, footwear, headgear. <u>Class 35:</u> Retail store services in the field of clothing, footwear, headgear, bags and purses.
901303684 ("684")	ICHI	<u>Class 14:</u> Jewellery of non-precious metal. <u>Class 18:</u> Suitcases, handbags, travelling bags, key cases, purses, wallets, rucksacks, train cases. <u>Class 25:</u> Clothing for men and women; belts (clothing); headgear; footwear
915615214 ("214")	ICHI	<u>Class 18:</u> Leather and imitations of leather; animal skins, hides; trunks and travelling bags; umbrellas. <u>Class 25:</u> Clothing, footwear, headgear. <u>Class 35:</u> Retail store services in the field of clothing, footwear, headgear, bags and purses.

4. In response, the Applicant filed a counterstatement denying the grounds of opposition and putting the Opponent to proof of use (the Earlier Marks having been registered for more than five years).
5. Both parties filed evidence but did not request a hearing, filing written submissions in lieu. Having considered the evidence and submissions, the Hearing Officer held that there was insufficient evidence of use for the following and so the Opponent could only rely on the following goods:

Trade Mark No	Trade Mark	Goods / Services
916009185 ("185")	ICHI	<u>Class 18:</u> Travelling bags <u>Class 25:</u> <i>Women's</i> clothing, <i>women's</i> footwear, headgear
901303684 ("684")	ICHI	<u>Class 18:</u> Handbags, travelling bags <u>Class 25:</u> Clothing <i>women</i> ; headgear; <i>women's</i> footwear
915615214 ("214")	ICHI	<u>Class 18:</u> Travelling bags <u>Class 25:</u> <i>Women's</i> clothing, <i>women's</i> footwear, headgear

6. Having done so, the Hearing Officer concluded that the opposition was unsuccessful and the Application should be allowed for all goods. The reasons for this are explored in further detail below. Absent a request for (and estimate of) costs by the Applicant, there was no order as to costs.

7. On 22 April 2026, the Opponent filed a Notice of Appeal to the Appointed Person against the Decision under section 76 of the Act. On 19 May 2026, the parties requested that the appeal be addressed on the papers.
8. The appeal was allocated to me on 10 June 2026 and on 12 June 2026 I directed that the parties, if they wish, should file written submissions in lieu of a hearing by 1 July 2026. On 15 June 2026, the Opponent filed said submissions, broadly reproducing its Grounds of Appeal. On 29 June 2026, the Applicant filed its submissions.
9. The Opponent was represented by Ms Boddum of Patrade A/S. The Applicant was unrepresented.

Grounds of Appeal

10. The Opponent's Grounds of Appeal run to some 8 pages and do not identify specific heads. At the start the Opponent explains that "... the Hearing Officer has failed in the assessment of the similarity of the signs and, consequently, in the global assessment of the likelihood of confusion under section 5(2)(b) of the Trade Marks Act 1994". In support of this, it advances certain arguments, which I have sought to summarise below:
 - a. The Hearing Officer should have focussed on the distinctive element of the Application, CHI;
 - b. The Hearing Officer gave too much weight to the descriptive element of the Application, CLOTHING;
 - c. Visually, the additional letter "I" in the Earlier Marks is a minor difference, which does not materially alter the visual similarity;
 - d. Aurally, the Earlier Marks and the Application are highly similar phonetically;
 - e. Where the Earlier Marks were found to possess a high degree of inherent distinctiveness and the goods are identical or highly similar, a moderate degree of similarity between the signs should be sufficient to give rise to a likelihood of confusion;
 - f. Where the goods are identical or highly similar, the principle of interdependence means that a lesser degree of similarity between the signs should be readily offset, leading to a likelihood of confusion;
11. The Opponent also asserts that the Hearing Officer failed properly to account for the likelihood of indirect confusion.

Standard of Review

12. The principles to be applied to an appeal are well established. They were summarised by Joanna Smith J in *Axogen Corp v. AVIV Scientific* [2022] EWHC 95 (Ch) [24] as follows:

"... I bear the following principles, relevant to the issues before me, firmly in mind:

- i) The appeal is by way of a review, not a rehearing (see *TT Education Ltd v Pie Corbett Consultancy Ltd* (O/017/17) at [52(i)]);

ii) The appeal court will allow an appeal where the decision of the lower court was "wrong" (see CPR 52.11). Neither surprise at a Hearing Officer's conclusion, nor a belief that he or she has reached the wrong decision suffices to justify interference (*NINEPLUS O/039/21* at [14]);

iii) The decision of the lower court will be "wrong" if the judge makes an error of law, which might involve asking the wrong question, failing to take account of relevant matters or taking into account irrelevant matters. Absent an error of law, the appellate court would be justified in concluding that the decision of the lower court was wrong if the judge's conclusion was "outside the bounds within which reasonable disagreement is possible" (*Actavis Group* at [81]);

iv) The approach required by the appeal court depends on a number of variables including the nature of the evaluation in question (*REEF Trade Mark* [2003] RPC per at [26]). There is a "spectrum of appropriate respect for the Registrar's determination depending on the nature of the decision" (*TT Education* at [52(ii)]), with decisions of primary fact at one end of the spectrum and multi- factorial decisions (of the type which the parties agree were made in this case by the Hearing Officer) being further along the spectrum.

v) In the case of a multifactorial assessment or evaluation, involving the weighing of different factors against each other, the appeal court should show a real reluctance, but not the very highest degree of reluctance, to interfere in the absence of a distinct and material error of principle. Special caution is required before overturning such decisions (*TT Education* at [52(iv)], *REEF* at [28] and *Fine & Country* at [50]-[51]).

vi) An error of principle is not confined to an error as to the law but extends to certain types of error in the application of a legal standard to the facts in an evaluation of those facts. The evaluative process is often a matter of degree upon which different judges can legitimately differ and an appellate court ought not to interfere unless it is satisfied that the judge's conclusion is outside the bounds within which reasonable disagreement is possible (*Actavis Group* at [80]).

vii) Another variable to be taken into account will be "the standing and experience of the fact-finding judge or tribunal" (*REEF* at [26], *Actavis Group* at [78]). Expert tribunals are charged with applying the law in the specialised fields and their decisions should be respected unless it is quite clear that they have misdirected themselves in law. Appellate courts should not rush to find such misdirections simply because they might have reached a different conclusion on the facts (*Shanks* at [28] citing the warning given by Baroness Hale in *AH (Sudan) v Secretary of State for the Home Department* [2007] UKHL 49).

viii) The appellate court should not treat a judgment as containing an error of principle simply because of its belief that the judgment or decision could have been better expressed; "The duty to give reasons must not be turned into an intolerable burden" (see *REEF* at [29]). The reasons need not be elaborate.

There is no duty on a judge, in giving her reasons, to deal with every argument presented by counsel in support of his case. It is sufficient if what she says shows the basis on which she has acted (*English* at [17], *Fage* at [115]). The issues the resolution of which were vital to the judge's conclusions should be identified and the manner in which she resolved them explained (*English* at [19]).

ix) In evaluating the evidence, the appellate court is entitled to assume, absent good reason to the contrary, that the first instance judge has taken all of the evidence into account (*TT Education* at [52(vi)]).

13. Further guidance has also been given by the Supreme Court in *Iconix Luxembourg Holdings SARL v. Dream Paris Europe Inc* [2025] UKSC 25 at [93] to [95].

14. In relation to appeals on likelihood of confusion, Mr Iain Purvis QC (as he then was) sitting as an Appointed Person in *ROCHESTER Trade Mark* BL O/049/17 [33] said as follows [33]:

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

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

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

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

(iv) The legal test involves a prediction as to how the public might react to the presence of two trade marks in ordinary use in trade. Any wise person who has practised in this field will have come to recognize that it is often very difficult to make such a prediction with confidence. Jacob J (as he then was) made this point in the passing off case *Neutrogena v Golden* [1996] RPC 473 at 482:

"It was certainly my experience in practice that my own view as to the likelihood of deception was not always reliable. As I grew more experienced I said more and more "it depends on the evidence."

Any sensible Appellate tribunal will therefore apply a healthy degree of self-doubt to its own opinion on the result of the legal test in any particular case.

34. I shall therefore approach this appeal on the basis that in the absence of a distinct and material error of principle, I ought not to interfere with the decision of the Hearing Officer unless I consider that his view on the issue of likelihood of confusion was clearly wrong in the sense that it was outside the range of views which could have been reasonably taken on the established facts."

15. Mr Purvis QC also made similar comments in BL O/106/20 GREYBOX.

16. As to the way in which appellate courts should approach writing judgments, the Court of Appeal in *Unik Bond SA v. Catbalogan Holdings Sarl* [2025] EWCA Civ 1594 has given the following guidance:

“59. In *Re Portsmouth City Football Club Ltd (in liquidation)* [2013] EWCA Civ 916, [2013] Bus LR 1152 Mummery LJ (with whom Rimer and Underhill LJ agreed) posed the question at [36]:

“What sensible purpose could be served by this court repeating in its judgments detailed discussions of every point raised in the grounds of appeal and the skeleton arguments when they have already been dealt with correctly and in detail in the judgment under appeal? No purpose at all, in my view.”

60. He continued at [38]:

“The proper administration of justice does not require this court to create work for itself, for other judges, for practitioners and for the public by producing yet another long and complicated judgment only to repeat what has already been fully explained in a sound judgment under appeal. If the judgment in the court below is correct, this court can legitimately adopt and affirm it without any obligation to say the same things over again in different words. The losing party will be told exactly why the appeal was dismissed: there was nothing wrong with the decision appealed or the reasons for it.”

17. I have kept the above principles in mind when considering this appeal.

Discussion

18. Using the issues identified at paragraph 10 above, I address the Opponent’s submissions below. As the issues at ¶10(a) and (b) as well as 10(e) and (f) respectively are closely linked, I address them together.

¶10(a): *The Hearing Officer should have focussed on the distinctive element of the Application, CHI* / ¶10(b): *The Hearing Officer gave too much weight to the descriptive element of the Application, CLOTHING*

19. The Opponent asserts that the Hearing Officer erred by not focussing on the distinctive element of the Application, CHI, while giving too much weight to the descriptive element, CLOTHING.
20. At [76] of her Decision, the Hearing Officer directed herself to *Sabel v. Puma* C-251/95, [23] explaining that it was clear that “the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details” and “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” (my emphasis).
21. Having quoted from *Bimbo v OHIM* Case C-591/12P, at [77] she then concluded “[i]t would be wrong, therefore, to dissect the trade marks artificially, 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” (my emphasis).

22. The Hearing Officer then considered the distinctive and dominant elements of the Application at [81], explaining that “[a]s ‘CHI’ will be perceived by the average consumer as an invented term, it is the distinctive and dominant element within the [Applicant’s] mark. The word ‘CLOTHING’ will be seen as descriptive in relation to the goods by the average consumer. Whilst it still contributes to applicant’s mark’s overall impression, it is to a much lesser degree.”

23. In making an assessment of the visual similarities between the Earlier Marks and the Application, at [84] the Hearing Officer then said:

“The competing marks are visually similar as both contain the letters ‘CHI’. The marks differ visually as the opponent’s mark also contains ‘I’ before the letters ‘CHI’, and the applicant’s mark also contains the word ‘CLOTHING’ as its second word. Whilst I acknowledge the descriptive nature of the word ‘CLOTHING’, it is not entirely visually negligible either. This results in the lengths of the competing marks being different, with the opponent’s mark being one word of four letters, and the applicant’s mark being two words of three and eight letters respectively.”

She concluded that the Earlier Marks and Application were visually similar to a low to medium degree.

24. Turning to the aural similarities, having cited *Pensa Pharma v OHIM* Case T-544/12 and *Onyinye Udokporo v Enrich International* BL O/1141/25, the Hearing Officer said at [89] “[i]t is my view that, as the word ‘CLOTHING’ is descriptive in relation to the class 25 goods, the average consumer would not articulate this word when saying the [Applicant’s] mark”. It followed that the Earlier Marks and Application were aurally similar to a medium degree (and, if she were wrong and CLOTHING is pronounced, similar to a low to medium degree).

25. As to conceptual similarities, the Hearing Officer held at [93] that “[t]he average consumer will therefore not assign conceptual meanings to the words ‘ICHI’ or ‘CHI’ in the competing marks, but will understand the second word ‘CLOTHING’ in the [Applicant’s] mark based on its ordinary dictionary meaning. On this basis, insofar as the marks convey any concept, the competing marks are dissimilar.”

26. In making an assessment of the likelihood of confusion, the Hearing Officer then reminded herself at [100] that it was “... necessary for [her] to keep in mind the distinctive character of the [Opponent’s] mark, the average consumer for the goods and the nature of the purchasing process”, noting at [104] that “[d]ue to the descriptive nature of ‘CLOTHING’, the word ‘CHI’ plays a greater role in the mark’s overall impression”.

27. The Hearing Officer then concluded at [105] that:

“... the average consumer paying a medium level of attention would not overlook the visual and aural differences between the two competing marks ‘ICHI’ and ‘CHI CLOTHING’. In particular, the key visual and aural differences between the dominant components of the marks’ overall impressions exist at the beginning of the mark, where differences have more visual and aural impact than the ends. Furthermore,

whilst the word ‘CLOTHING’ is descriptive, it is not entirely negligible either and still contributes to the overall impression of the [Applicant’s] mark ... I therefore find that there is no likelihood of direct confusion, notwithstanding the identical nature of some of the goods.” (My emphasis.)

28. The Opponent does not say that the Hearing Officer misdirected herself by referring to the cases cited above or in her summary of the law. Further, if it is the Opponent’s submission that the Hearing Officer failed to consider the distinctive and dominant elements of the Application, this not borne out by her Decision, which clearly addresses this (see above).
29. This leaves the weight to be applied to the distinctive and dominant element of the Application, CHI (and the descriptive element, CLOTHING). Here, I remind myself that an Appointed Person’s reluctance to interfere with an evaluative decision is quite high. In particular, I remind myself that I should only interfere if I come to the conclusion that the Hearing Officer was clearly wrong in the sense that the conclusion was outside the range of views which could have been reasonably taken on the established facts.
30. In support of its submission that the Hearing Officer applied the incorrect weight to the distinctive and dominant element of the Application, the Opponent asserts that the Hearing Officer attributed significance to CLOTHING in both the aural and visual comparison contrary to her finding that CLOTHING was descriptive.
31. First, I note that the Hearing Officer proceeded with her assessment of the aural similarity on the basis that CLOTHING would not be articulated and, therefore, did not form part of the comparison (see paragraph 24 above). It was for this reason that she held that the Earlier Marks and Application were aurally similar to a medium degree, not a low to medium degree. This point therefore falls away.
32. Second, the Hearing Officer proceeded with her assessment of the visual similarity on the basis that CLOTHING was “not entirely visually negligible” (see paragraph 23 above)¹, which I understand to mean that she gave CLOTHING very limited weight.
33. Taken all together, therefore, I do not think that the weight applied by the Hearing Officer can be described as outside the range of views which could have been reasonably taken. In particular, while CLOTHING is descriptive, it is still reasonable to give it some very limited weight (in any visual assessment).

¶10(c): Visually, the additional letter “I” in the Earlier Marks is a minor difference, which does not materially alter the visual similarity

34. With regard to ¶10(c), the Opponent submits that the visual similarity between the Earlier Marks and Application is greater than a low to medium degree, asserting that it should be “medium, if not high”. In support of this it asserts that the dominant element of the Application is CHI, which is wholly contained within the Earlier Marks, ICHI. Further, it submits that the initial letter I in the Earlier Marks is a minor difference which does not materially alter the visual similarity, particularly given the imperfect recollection of consumers.

¹ Elsewhere, she explained that CLOTHING contributed to the overall impression of the Application “to a much lesser degree” than CHI (see [81])

35. Again, the Opponent does not say that the Hearing Officer incorrectly identified the relevant law or that she has made an error of principle (namely, that she omitted to consider a visual similarity). Rather, the submission appears to be directed to the weight to be applied to the “I” in the Earlier Marks and, to a much lesser degree, CLOTHING in the Application. Again, I remind myself of the guidance in *Axogen Corp.*
36. The Hearing Officer addressed the visual comparison at [83] to [84] of her Decision. Here, she rejected the Opponent’s suggestion that the “I” would be overlooked when compared to the Application, holding that this would amount to an artificial dissection of the Earlier Marks. Rather, she pointed to *El Corte Inglés v OHIM T-183/02* [81], in which it was held that the beginnings of words tend to have more visual and aural impact than the ends. The Hearing Officer recorded the Opponent as having acknowledged this (something with which the Opponent does not take issue). She also recorded that the Earlier Marks were one word of four letters in length and the Application (including CLOTHING) was two words of three and eight letters in length respectively, totalling eleven letters.
37. Again, I do not think that such weight can be described as outside the range of views which could have been reasonably taken. While ICHI and CHI CLOTHING share three letters in common (CHI), it is fair to take into account the impact the difference in the beginning of the word has, as well as bearing in mind the very limited differences CLOTHING introduces. It follows that the Hearing Officer’s finding that the Earlier Marks and Application are visually similar to a low to medium degree stands.

¶10(d): *Aurally, the Earlier Marks and the Application are highly similar phonetically*

38. As to ¶10(d), the Opponent submits that the aural similarity between the Earlier Marks and Application is greater than a medium degree, reasoning that ICHI and CHI are highly similar phonetically.
39. As before, the Opponent does not say that the Hearing Officer incorrectly identified the relevant law or that she has made an error of principle (for example, that she omitted to consider an aural similarity). Rather, the submission appears to be directed to the evaluation of how to pronounce the Earlier Marks. Again, I remind myself of the guidance in *Axogen Corp.*
40. The Hearing Officer addressed the aural comparison at [85] to [89]. Having accepted the Opponent’s submission that CLOTHING should be disregarded for the purposes of the assessment, she concluded that the one-syllable verbal element CHI in both the Earlier Marks and Application would be pronounced “chee” (a finding with which the Opponent does not appear to disagree). She noted the parties’ submissions on pronunciation, with the Opponent submitting that of the Earlier Marks “... significant weigh [sic] of expression and phonetic on the element ‘CHI’ ...” and the Applicant submitting that the Earlier Marks would be pronounced “itchy”. Having further noted that the Opponent did not provide evidence in support of its submission, she sided with the Applicant holding that the average consumer would pronounce the word ‘itchy’. She then concluded that “itchy” and “chee” were aurally similar to a medium degree.
41. The Opponent’s submission appears to amount to a bare assertion that the Hearing Officer’s findings and subsequent evaluation were wrong, without any explanation as to why it would be outside the range of views which could have been reasonably taken on the

facts. I find that her conclusion was within this range. It therefore follows that there is no basis to overturn the Hearing Officer's evaluation.

¶10(e): Where the Earlier Marks were found to possess a high degree of inherent distinctiveness and the goods are identical or highly similar, a moderate degree of similarity between the signs should be sufficient to give rise to a likelihood of confusion / ¶10(f): Where the goods are identical or highly similar, the principle of interdependence means that a lesser degree of similarity between the signs should be readily offset, leading to a likelihood of confusion

42. The Opponent puts its case two ways: First it submits that even with the moderate degree of similarity between the Earlier Marks and Application found by the Hearing Officer, the high degree of inherent distinctiveness of the Earlier Marks and identity of the goods are sufficient to give rise to a likelihood of confusion. Second, it submits that the Hearing Officer under-estimated the similarity and, once this is redressed, the inherent distinctiveness of the Earlier Marks and the identity of the goods would be sufficient to give rise to a likelihood of confusion. Where I have declined to overturn the finding on similarity, this latter point falls away. In support of both, the Opponent relies on the 'principle of imperfect recollection' and the 'principle of interdependence'.
43. As before, the Opponent does not say that the Hearing Officer incorrectly identified the relevant law. Further, if the submission is that the Hearing Officer did not consider the imperfect recollection of the average consumer, the high degree of inherent distinctiveness or the interdependence principal, this is not borne out by the Decision. In particular:
 - a. The Hearing Officer considered the law on imperfect recollection at [58] and [72] and applied it to the global assessment at [100], [101] and [109].
 - b. The Hearing Officer considered the law on inherent distinctiveness at [94] and [95], made a finding in relation to the Earlier Marks at [98] (albeit it did not find enhanced distinctiveness) and applied this to the global assessment at [100], [104], [105] and [109].
 - c. The Hearing Officer considered the interdependency as part of the global assessment at [100] and [101].
44. Rather, the Opponent's submission appears to be directed to the weight to be applied. Again, I remind myself of the guidance in *Axogen Corp.*
45. Before addressing this evaluation, it may be useful to make a general observation regarding interdependence. It is clear that likelihood of confusion must be appreciated globally, taking account of all relevant factors. In *Iconix v Dream Pairs* [2025] UKSC 25, the Supreme Court reiterated that one of the factors is 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" (my emphasis). This use of conditional language ("may") is distinct from other factors listed, where the court uses imperative language ("must")². It follows that that a lesser degree of similarity between the goods (etc) is not always offset by a greater degree of similarity between the marks. Rather, this is but one factor which may be relevant when

² For example, "... the matter must be judged through the eyes of the average consumer of the goods or services in question ..."

making a global assessment of the likelihood of confusion. It is for this reason that I find the Opponent puts its case too emphatically when it says “[t]hat point [the identity of some of the goods] is not merely formal. It is of substantive importance because the more similar or identical the goods are, the lower the degree of similarity between the marks needed to establish a likelihood of confusion.”

46. Turning to the Hearing Officer’s findings, on inherent distinctiveness she held at [98] that the Earlier Marks “carrie[d] a high level”, reasoning that the average consumer of the goods would perceive the Earlier Marks to be an invented term with no specific meaning in relation to the goods.
47. On conducting a global assessment, she noted the ‘interdependency principle’ at [100], explaining that “a lesser degree of similarity between the competing marks may be offset by a greater degree of similarity between the respective goods, and vice versa”. She then noted that:

“As mentioned above, it is necessary for me to keep in mind the distinctive character of the opponent’s mark, the average consumer for the goods and the nature of the purchasing process. In doing so, I must be mindful 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 they have retained in their mind.”

48. The Hearing Officer then made the following evaluation at [104] and [105], part of which is reproduced below (my emphasis):

“It is considered that the average consumer paying a medium level of attention would not overlook the visual and aural differences between the two competing marks “ICHI” and “CHI CLOTHING”. In particular, the key visual and aural differences between the dominant components of the marks’ overall impressions exist at the beginning of the mark, where differences have more visual and aural impact than the ends. Furthermore, whilst the word “CLOTHING” is descriptive, it is not entirely negligible either and still contributes to the overall impression of the applicant’s mark. Although the opponent’s mark is highly distinctive, it is my view that the noticeable visual and aural differences are likely to prevent the average consumer from mistaking one mark for the other, especially when paying a medium level of attention. I therefore find that there is no likelihood of direct confusion, notwithstanding the identical nature of some of the goods.

49. In the final two sentences the Hearing Officer does engage in an assessment of the ‘interdependence principle’, concluding that highly distinctive nature of the Earlier Marks and identity of some of the goods are not sufficient to offset the visual and aural differences. She does this through the prism of the average consumer, who she acknowledges has imperfect recollection. Again, I do not find the Hearing Officer’s conclusion to be outside the range of views which could have been reasonably taken on the facts. It follows that her evaluation stands.

Cases

50. In support of its submissions, the Opponent cites a number of EUIPO and UKIPO decisions³ by analogy, for which I am grateful. I briefly address the decisions below (where the similarity of facts to the case at hand is likely to be self-evident, I have only identified areas of difference where applicable):
- a. Opposition No. B 3 222 487 (IPURI / INURI CLOTHING): Here, the Opposition Division noted that the earlier mark (IPURI) was visually similar to at least an average degree, aurally highly similar and conceptually not similar to the mark applied for (INURI CLOTHING), with the goods and services partly identical and partly similar to varying degrees. It went on to conclude that there was a likelihood of confusion. This is distinct from the case at hand, where the earlier mark (ICHI) is considered visually similar to a low to medium degree and aurally similar to a medium degree to the application (CHI CLOTHING);
 - b. Opposition No. B 3 235 301 (PREDATOR / PREDATOR CLOTHING): Here, the Opposition Division noted that the single element making up the earlier mark (PREDATOR) is *entirely* included in the mark applied for (PREDATOR CLOTHING). As a result, this partial identity is such as to create, in the mind of the relevant public, a certain impression of similarity. It went on to conclude that there was a likelihood of confusion. This is distinct from the case at hand, where the earlier mark (ICHI) is not entirely included in the mark applied for (CHI CLOTHING), without modification. As such, there is no partial identity;
 - c. Opposition No. B 3 165 377 (NATIVE SHOES / NATIVE ORIGINAL CLOTHING): Here, the Opposition Division concluded that “consumers may be led to believe that the contested goods come from the same or economically linked undertakings due to the presence of the verbal element ‘NATIVE’ in both signs.” It went on to conclude that there was a likelihood of confusion. This is distinct from the case at hand, where the earlier mark and trade mark applied for do not contain the same element (ICHI v CHI);
 - d. Opposition No. B 3 142 025 (HAMPTONS / THE HAMPTONS CLOTHING): Here, the Opposition Division held that the earlier mark (HAMPTONS) was visually similar to an average degree and aurally and conceptually similar to a high degree with the mark applied for (THE HAMPTONS CLOTHING), noting that “the earlier mark’s most distinctive and dominant element ‘HAMPTONS’ is entirely included within the contested sign’s distinctive and co-dominant verbal element”. It concluded that there was a likelihood of confusion. This is distinct from the case at hand for the reasons given at paragraphs 50.a, 50.b and 50.c above;
 - e. Opposition No. B 3 125 227 (ISLAND / ISLAND CLOTHING): Here, the Opposition Division held that the signs in issue (ISLAND and ISLAND CLOTHING) were visually, aurally and conceptually highly similar and there was a likelihood of confusion. Again, this is distinct from the case at hand for the reasons given at paragraphs 50.a, 50.b and 50.c above;

³ The Opponent having confirmed that these decisions are full and final.

- f. Opposition No B 3 062 323 (OH HELLO CLOTHING / HELLOW): Here, the Opposition Division held: “Referring to the similarities established above, the contested sign entirely incorporates a part of the distinctive verbal element of the earlier mark, namely ‘HELLO’. The main difference concerns the additional figurative or verbal elements. However, these differences concern elements which are weak or non-distinctive and thus cannot on their own differentiate the signs visually, aurally or conceptually. Furthermore, the signs convey a similar meaning because the word ‘HELLO’ or its misspelling ‘Hellow’ will be perfectly understood by the relevant public. Consequently, the aforesaid differences are not sufficient to outweigh the similarities between the signs.”
- a. Opposition No B 3 049 043 (BAREFOOT LIVING / BAREFOOT CLOTHING)⁴: Here, the Opposition Division concluded: “The conflicting word marks each consist of two elements, sharing the same first element—which is the distinctive and therefore more significant one. While the second element of each mark is also distinctive for a portion of the relevant public (specifically those who do not understand English) across all the goods concerned, this fact alone is insufficient to rule out any likelihood of confusion given the identical initial element and the similar or identical nature of the goods. Consequently, a likelihood of confusion exists regarding the contested hosiery products, at least for that segment of the public that does not understand the word “Barefoot.” A likelihood of confusion arises when the consumer directly confuses the conflicting marks or establishes a connection between them, assuming that the goods or services in question originate from the same undertaking or from economically linked undertakings. In the present case, it is entirely plausible that the relevant consumer would perceive the contested mark as a sub-brand—that is, as a variation of the earlier mark that takes on different forms depending on the specific goods or services it designates (23/10/2002, T-104/01, Fifties, EU:T:2002:262, § 49). This is distinct from case at hand for the reasons given at paragraphs 50.b and 50.c above.
- b. Opposition No B 2 643 271 (BEST MOUNTAIN / BLACK MOUNTAIN CLOTHING COMPANY): Here, the Opposition Division held that “The signs are visually, aurally and conceptually similar to an average degree since they coincide in the sequence of letters ‘B****_MOUNTAIN’, which are nine letters out of a total of twelve that form the earlier mark. The differing first elements, ‘BEST’ in the earlier mark and ‘BLACK’ in the contested sign, are both adjectives qualifying the coinciding element ‘MOUNTAIN’. They are also the shortest elements of the conflicting signs.” It concluded that there was a likelihood of confusion. This is distinct from the case at hand for the reasons given at paragraphs 50.b and 50.c above.
- c. O-408-16 (KNOCK OUT / KNOCK-OUT CLOTHING): Here, the Hearing Officer held that there was “a reasonably high degree of visual, aural and conceptual similarity between the competing marks ...” and that the “average consumer will believe that the respective goods come from the same or economically linked undertakings.”

⁴ I have only been provided with a copy of the decision in German and have, therefore, used a machine translation.

This is distinct from the case at hand for the reasons given at paragraphs 50.a, 50.b and 50.c and above; and

- d. O-285-16 (DRTY / DIRTY CLOTHING): Here, the Hearing Officer held that the “competing trade marks are visually similar to a relatively high degree, aurally similar to at least a high degree and conceptually identical.” The Hearing Officer concluded that there was a likelihood of direct confusion. Again, this is distinct from the case at hand for the reasons given at paragraph 50.a above; and
 - e. O-506-13 (KARMALoop / KARMA CLOTHING): Here, the Hearing Officer held that the “... the distinctive device element, and the presence of the word LOOP in the opponent’s mark, is more than sufficient to avoid a likelihood of direct confusion ...” This is broadly consistent with the Hearing Officer’s decision in the current case. In O-506-13, however, the Hearing Officer went on to find that “... the presence of the independently distinctive word KARMA ... together with the fact that the average consumer will ... identify the same word as an element of the opponent’s KARMALoop mark, is likely, in my view, to lead the average consumer to assume that the goods and services come from undertakings which are economically linked i.e. there will be indirect confusion”. This is distinct from the case in hand, with the earlier mark (ICHI) and the mark applied for (CHI CLOTHING) not having an identical distinctive word. I also note that the Hearing Officer does not refer to *LA Sugar v. By Back Beat* BL O/375/10 or apply the analysis set out therein and predates *Cheeky Italian Ltd v Sutaria* (O/219/16) and *Liverpool Gin Distillery v Sazerac Brands* [2021] EWCA Civ 1207, as to which see below.
51. It is instructive to consider the outcome in other oppositions which raise similar issues to that here, and I have given careful consideration to these decisions when coming to my conclusions. Nonetheless, there is a limit to the probative value of the cases. Each case will turn on the specific finding of facts, which are not binding on the Hearing Officer or me. It also does not follow that, simply because other tribunals came to a different conclusion on similar facts that the Hearing Officer’s own assessment is outside the range of views which could have been reasonably taken. I also note that the first eight cited are before the EUIPO, with five of them post-dating the United Kingdom’s departure from the European Union.

Overall

- 52. As with most Opposition proceedings, the Hearing Officer has applied a generalised legal test by considering the evidence, determining the facts, weighing those facts and making an evaluative assessment, coming to a nuanced decision on the likelihood of confusion.
- 53. It is well-established that a wide latitude is given to Hearing Officers in relation to such decisions and no appeal is likely to succeed unless the appellant demonstrates a distinct and material error of law or principle or that, in making an evaluative assessment, the Hearing Officer’s conclusion is outside the range of views which could have been reasonably taken, given the facts.
- 54. In practice, the Opponent’s submissions broadly amount to an invitation for me to set aside the evaluative assessment made by the Hearing Officer and substitute it for my own. Whether on the basis of each issue above or overall as part of a global assessment, the

Opponent has not met the high threshold required and I am not persuaded to interfere. For these reasons, I decline to overturn the Hearing Officer's global assessment of the likelihood of direct confusion under section 5(2)(b) of the Act.

¶10(g): *The Hearing Officer failed properly to account for the likelihood of indirect confusion*

55. Finally, the Opponent asserts that the Hearing Officer failed properly to account for the likelihood of indirect confusion.
56. Again, I do not understand this to be a submission that the Hearing Officer incorrectly identified the relevant law. Further, if the submission is that the Hearing Officer did not consider indirect confusion, this is not borne out by the Decision.
57. Rather, the Hearing Officer addressed this at [106] to [109], concluding that the average consumer would notice the differences between the Earlier Marks and Application but would not assume an economic link between the two undertakings. She reasoned that the visual and aural differences were not consistent with a brand extension or sub-brand. For example, it would be unusual for a business to remove the I from ICHI to designate such and there is no immediate link between "itchy" and "chee". She further noted that an average consumer would not imperfectly recall "CHI CLOTHING" as "ICHI".
58. To this, the Opponent asserts that the "shared distinctive element 'CHI / ICHI' is sufficiently close that the average consumer may reasonably assume that CHI CLOTHING designates a sub-brand, line extension or economically linked undertaking associated with ICHI.
59. I remind myself of the comments of James Mellor QC sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16) who pointed out 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'.
60. This was endorsed by Arnold LJ in *Liverpool Gin Distillery v Sazerac Brands* [2021] EWCA Civ 1207, noting that "Mr Mellor went on to say that, if there is no likelihood of direct confusion, 'one needs a reasonably special set of circumstances for a finding of a likelihood of indirect confusion'. I would prefer to say that there must be a proper basis for concluding that there is a likelihood of indirect confusion given that there is no likelihood of direct confusion."
61. This "proper" basis was addressed by Mr Iain Purvis QC (as he then was) in *LA Sugar v. .By Back Beat* BL O/375/10 in which he explained that "[i]t 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'.
62. The Opponent's submissions fall foul of the issue identified above. Something more than a shared distinctive element is required to establish a likelihood of indirect confusion. The Opponent must show that the average consumer would conclude that the Application is another brand of the owner of the Earlier Marks. It has not done so. For these reasons, I see no reason to overturn the first instance decision.

Decision

63. The appeal fails for the reasons given above. The Application should continue to registration.

Costs

64. For the costs below, absent a request for (and estimate of) costs by the Applicant, there was no order as to costs. Again, I have no request for (or estimate of) costs. Accordingly, no costs are awarded.

Antony Craggs
Appointed Person
12 August 2026

Representation

Applicant/Respondent: Not represented

Opponent/Appellant: Ms Charlotte Rask Boddum, Patrade A/S