

BL O/0759/26

TRADE MARKS ACT 1994

CONSOLIDATED PROCEEDINGS

IN THE MATTER OF TRADE MARK APPLICATION NOS.

UK4099361 AND UK4133937

BY REFINED COMMERCE LTD

TO REGISTER THE TRADE MARKS:

Refined Commerce

AND



(SERIES OF TWO)

IN CLASS 42

AND

IN THE MATTER OF CONSOLIDATED OPPOSITIONS THERETO

UNDER NOS. 451048 AND 453127

BY REFINEDWIKI AB

BACKGROUND AND PLEADINGS

1. These consolidated proceedings¹ involve oppositions against two trade marks that Refined Commerce Ltd (“the applicant”) seeks to register in the UK. The details for those trade marks are set out below:

- i) Refined Commerce
UK application no.: 4099361
Filing date: 12 September 2024
Publication date: 27 September 2024
 (“the First Application”)

- ii)   (series of two)
UK application no.: 4133937
Filing date: 6 December 2024
Publication date: 17 January 2025
 (“the Second Application”)

2. The above applications are in respect of services in class 42, as set out at paragraph 17 of this decision.

3. On 27 November 2024 and 17 March 2025 respectively, the applications were opposed in full by RefinedWiki AB (“the opponent”), on the basis of section 5(2)(b) of the Trade Marks Act 1994 (“the Act”).² The opponent relies on the following trade mark:

¹ On 17 June 2025, the proceedings were consolidated, pursuant to rule 62(1)(g) of the Trade Marks Rules 2008.

² The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK’s withdrawal from the EU. See also Tribunal Practice Notice (“TPN”) 2/2020 End of Transition Period – impact on tribunal proceedings.



International Registration designating the UK under no.: WO0000001509749

International Registration and UK designation date: 11 October 2019

Date protection conferred in the UK: 1 April 2020

Priority date: 13 May 2019 (EU)³

Relying on all goods and services in classes 9 and 42⁴

4. The opponent's mark qualifies as an earlier mark under section 6(1) of the Act. As it had not completed its registration procedure more than five years before the application date for the contested marks, it is not subject to the use provisions contained in section 6A of the Act. Consequently, the opponent may rely upon all of the goods and services for which the earlier mark is registered without having to establish genuine use.

5. The opponent claims that the marks at issue are highly similar and that the respective goods and services are either identical or similar to varying degrees, resulting in a likelihood of confusion and association on the part of the consumer.

6. The applicant filed counterstatements denying the ground of opposition.

7. Neither party filed evidence in these proceedings. Neither party requested a hearing and only the opponent filed written submissions in lieu of the same. This decision is taken following careful consideration of the papers before me.

8. The opponent is represented by Haseltine Lake Kempner LLP; the applicant is represented by Brandsmiths SL Limited.

³ European Union Intellectual Property Office (EUIPO) 018063925.

⁴ As set out at paragraph 17 of this decision.

PRELIMINARY ISSUES

9. The applicant has raised a point in its counterstatements that I intend to address as a preliminary issue. Before going any further into the merits of this opposition it is necessary to explain why, as a matter of law, this point will have no bearing on the outcome of these oppositions.

10. The applicant states:

“The Applicant submits its application targets a different consumer group and the actual services require a very high level of attention for very dissimilar types of services, which in turn results in complete dissimilarity from the Opponent’s registration.”

11. Marketing strategies, including the targeting of specific sectors or consumers, are temporary and may change over time.⁵ As such, it is not appropriate to take marketing factors into account in my assessment. However, I will make an assessment, later in this decision, as to who the average consumer could be for the goods and services at issue.

12. Moreover, differences between the goods and services currently provided by the parties are irrelevant, except to the extent that those differences are apparent from each party’s specification. It is the goods and services relied upon by the opponent, and the relevant services applied for by the applicant that I will be comparing later in this decision. The assessment I must make between the goods and services is a notional and objective assessment, rather than a subjective one.

DECISION

Section 5(2)(b)

13. Section 5(2)(b) of the Act states:

⁵ *Devinlec Développement Innovation Leclerc SA v OHIM*, Case C-171/06P

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

(a)...

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trademark 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.”

14. The following standard summary of the principles applicable to the assessment of the likelihood of confusion was approved by the Supreme Court in *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc & Anor* [2025] UKSC 25:

a) the likelihood of confusion must be appreciated globally, taking account of all relevant factors;

b) the matter must be judged through the eyes of the average consumer of the goods or services in question. The average consumer is deemed to be reasonably well informed and reasonably circumspect and observant, but someone who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them they have kept in their 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 greater degree of similarity between the marks and vice versa;

h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;

i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;

j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense; and

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

Comparison of goods and services

15. In *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, the Court of Justice of the European Union (“CJEU”) stated that:

“23. In assessing the similarity of the goods or services concerned, ... all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary”.

16. In *Gérard Meric v Office for Harmonisation in the Internal Market*, 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.”

17. The competing goods and services are:

The applicant's services

The First application - Class 42

Design of home pages and web sites relating to the creation and design of websites for e-commerce; Creation and maintenance of web sites for others relating to the creation and design of websites for e-commerce; Software design and development relating to the creation and design of websites for e-commerce; Consultancy relating to the creation and design of websites for e-commerce; Consultancy relating to the design of e-commerce home pages and Internet sites; none of the aforesaid including the integration of software for business management.

The Second application - Class 42

Design and development of software for website development; Website design and development; Web site design and creation services; Website development services; Programming of software for website development; Web site design consultancy; Web site design; Web site design services; Internet web site design services; Design of web sites; Design and development of databases; Design, creation and programming of web pages; Software design and development; Design and development of homepages and websites; Software development; Development of software;

Development and design of mobile applications; Creation and maintenance of web sites; Creation of internet web sites; Intranet design, development and maintenance; Design, development and implementation of software; Website development for others; Design and creation of web sites for others; Designing and developing web pages; Design of web pages; Development, design and updating of home pages; Web site hosting services; Software development, programming and implementation; Design of home pages and web sites; Design and creation of homepages and web pages; Design and maintenance of web sites for others; Planning, design, development and maintenance of online websites for third parties; Consultancy relating to the creation and design of websites for e-commerce; Creation and maintenance of web sites for others; Consultancy relating to the design of home pages and Internet sites; Design and creating web sites for others; Hosting of web sites; Hosting web sites; Webpage design services; Web hosting.

The opponent's goods and services

Class 9

Enterprise application software in the form of add-ons for use on computers and mobile devices for building and customizing custom made sites integrating third party software used for business management, task and project management and tracking, content sharing and collaboration, general work management, document management, transmission and receipt of data, images, and files, messaging and conversation-based contextual sharing of information, organizing and providing a platform for collaboration.

Class 42

Software as a service (SaaS) services featuring downloadable and non-downloadable software for enterprise applications used for building and customizing sites integrating third party software for business management, task and project management and tracking, content sharing and collaboration, general work management, document management, transmission and receipt of data, images, and files, messaging and

conversation-based contextual sharing of information, organizing and providing a platform for collaboration.

Comparison of the class 42 services contained within the First Application

Design of home pages and web sites relating to the creation and design of websites for e-commerce; Creation and maintenance of web sites for others relating to the creation and design of websites for e-commerce; none of the aforesaid including the integration of software for business management

18. The applicant provides a service of designing and creating websites for customers whereas the opponent provides software tools, via SaaS, that enable website creation and customisation. Whilst I acknowledge that the nature of the services differs, I find there to be an overlap in purpose. Both are directed towards the creation, development and customisation of websites or sites. The applicant achieves that objective through human expertise, whereas the opponent achieves that objective through software tools made available to users. There may also be a degree of competition, as consumers seeking an e-commerce website may either engage a website designer or utilise a SaaS website-building platform themselves. Overall, I find the respective services to be similar to a medium degree.

19. For the avoidance of doubt, I do not consider that the limitation to the contested services, *none of the aforesaid including the integration of software for business management* affects this finding, because my assessment is based upon the shared website-building functionality of the respective services rather than any business management integration features.

Software design and development relating to the creation and design of websites for e-commerce; none of the aforesaid including the integration of software for business management

20. The contested services concern the design and development of software relating to the creation and design of e-commerce websites, whereas the opponent's services concern the provision of software via a SaaS model. Accordingly, whilst both are

software-related services, they differ in their essential nature. However, I find that the respective services share a common focus, namely the creation, design, development and customisation of websites or sites. The applicant achieves this through the design and development of software relating to website creation and design, whereas the opponent achieves it through the provision of software tools enabling end users to build and customise websites or sites. As a result, I find that there may be an overlap in users and providers, as businesses seeking website creation solutions may encounter both software development services and SaaS website-building solutions from undertakings operating within the software and web-development sectors. Further, there may be a degree of complementarity because software developed for website creation may also operate alongside, integrate with, or contribute to, website-building platforms made available through SaaS services. Accordingly, I find the respective services to be similar to a medium degree.

21. For the avoidance of doubt, I do not consider that the limitation *none of the aforesaid including the integration of software for business management* to the contested services affects this finding, on the basis that the overlap identified relates to the creation, design, development and customisation of websites or sites, rather than any business management integration functionality.

Consultancy relating to the creation and design of websites for e-commerce;
Consultancy relating to the design of e-commerce home pages and Internet sites;
none of the aforesaid including the integration of software for business management

22. The contested consultancy services relate to the creation and design of websites, homepages and internet sites, whereas the opponent's *software as a service (SaaS) services featuring downloadable and non-downloadable software [...] used for building and customizing sites [...]*, broadly concern the provision of software tools via SaaS for building and customising sites. Whilst I acknowledge that the nature of the respective services differ, I find that they share a common focus, namely the creation, development and customisation of websites or sites. Accordingly, I consider that there is likely to be an overlap in users, providers and trade channels. For example, a business seeking to establish or improve an e-commerce website may seek consultancy regarding the design and creation of that website whilst also utilising SaaS

website-building tools. Similarly, web-development agencies, digital consultancies and website-platform providers are likely to operate within the same sector and may offer both advisory and technical solutions. Overall, I find the respective services similar to between a low and medium degree. For the avoidance of doubt, I do not consider that the limitation *none of the aforesaid including the integration of software for business management* to the contested services affects this finding, because the overlap identified relates to the creation, development and customisation of websites or sites, rather than any business management integration functionality.

Comparison of the class 42 services contained within the Second Application

Design and development of software for website development; Programming of software for website development

23. The contested services concern the design, development and programming of software for website development, whereas the opponent's *software as a service (SaaS) services featuring downloadable and non-downloadable software [...] used for building and customizing sites [...]*, broadly concern the provision of software tools via a SaaS model for that purpose. Accordingly, for the same reasons as outlined in paragraph 20 above, I consider that the contested services are similar to the opponent's software as a service (SaaS) services to a medium degree.

Software design and development; Software development; Development of software; Development and design of mobile applications; Design, development and implementation of software; Software development, programming and implementation

24. I consider these services to be similar to the opponent's *software as a service (SaaS) services*, because the same undertakings that offer access to software as a service may also be involved in the design, development and implementation of those technologies. Consequently, there is likely to be an overlap in users, providers and trade channels. Further, there is a degree of complementarity because software developed or implemented by one undertaking may operate alongside, integrate with, or contribute to software platforms made available through a SaaS model. Additionally, I consider that there may also be a degree of competition, as some users may choose

between purchasing ready-made software as a service or engaging the services of a business to create a bespoke package to meet their particular requirements. Accordingly, I consider the services to be similar to a medium degree.

Website design and development; Web site design and creation services; Website development services; Web site design; Web site design services; Internet web site design services; Design of web sites; Design, creation and programming of web pages; Design and development of homepages and websites; Creation and maintenance of web sites; Creation of internet web sites; Intranet design, development and maintenance; Website development for others; Design and creation of web sites for others; Designing and developing web pages; Design of web pages; Development, design and updating of home pages; Design of home pages and web sites; Design and creation of homepages and web pages; Design and maintenance of web sites for others; Planning, design, development and maintenance of online websites for third parties; Creation and maintenance of web sites for others; Design and creating web sites for others; Webpage design services

25. As explained above, the design, development, creation and maintenance of intranets, homepages, webpages and/or websites broadly involve IT services whereby a provider builds, develops or maintains online sites for customers. The opponent's services include *software as a service (SaaS) featuring downloadable and non-downloadable software [...] used for building and customising sites [...]*. Accordingly, there is a shared focus between the respective services, namely the creation, development and customisation of websites or online sites. Whilst the nature of the services differs, I find that there is an overlap in purpose. The applicant achieves the creation and development of websites through human expertise, whereas the opponent achieves this through software tools made available to users.

26. Consequently, there is likely to be an overlap in users, providers and trade channels, as consumers seeking website creation solutions may encounter both website design and development services and SaaS website-building platforms from undertakings operating within the software and web-development sectors. There may also be a degree of competition, as consumers seeking a website may either engage

a website designer or utilise a SaaS website-building platform themselves. Overall, I find the respective services to be similar to a medium degree.

Web site design consultancy; Consultancy relating to the creation and design of websites for e-commerce; Consultancy relating to the design of home pages and Internet sites

27. The contested services consist of consultancy relating to the creation and design of websites, homepages and internet sites, whereas the opponent's *software as a service (SaaS) services* broadly concern the provision of software tools via a SaaS model for that purpose. As previously stated above, whilst the nature of the respective services differs, I find that they share a common focus, namely the creation, development and customisation of websites or sites. Consequently, there is likely to be an overlap in users, providers and trade channels. For example, a business seeking to establish or improve a website may obtain consultancy regarding its design and creation whilst also utilising SaaS website-building tools. Further, providers operating within the software and web-development sectors may offer both consultancy services and website-building solutions. Overall, I find the respective services similar to between a low and medium degree.

Design and development of databases

28. Broadly speaking, a database is a collection of data organised in a way that enables information to be stored, managed and retrieved efficiently. The design and development of databases therefore involve the use of software and technical expertise to create and maintain such systems. The opponent's class 9 goods consist of *enterprise application software in the form of add-ons for use on computers and mobile devices for building and customizing custom made sites integrating third party software used for business management, task and project management and tracking, content sharing and collaboration, general work management, document management, transmission and receipt of data, images, and files, messaging and conversation-based contextual sharing of information, organizing and providing a platform for collaboration*. Whilst the nature of the goods and services is not the same, they both fall within the broader field of information technology and software solutions.

Consequently, there may be an overlap in users, providers and trade channels, as software developers and technology companies may offer both database development services and software products. Further, there is a degree of complementarity because database development services may rely upon, or be used in conjunction with, software products of the kind covered by the opponent's specification. Taking all relevant factors into account, I find the respective goods and services similar to a low degree.

Web site hosting services; Hosting of web sites; Hosting web sites; Web hosting

29. Broadly speaking, web hosting services involve providing the infrastructure and server environment necessary for websites and online applications to be accessible via the internet. The opponent's software as a service (SaaS) services involve the provision of cloud-based software applications that are likewise accessed online and maintained by the service provider. Whilst the respective services are not identical in nature, I find that they are very closely connected. In particular, there is likely to be a significant overlap in users, providers, trade channels and method of use. Further, there is a strong degree of complementarity because SaaS services rely upon hosting infrastructure in order to function and may commonly be provided by the same undertakings. Consequently, consumers are likely to expect such services to originate from the same or economically linked undertakings. Accordingly, I find the respective services to be similar to a high degree.

The average consumer and the nature of the purchasing act

30. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question (see *Lloyd Schuhfabrik Meyer*, Case C-342/97).

31. In *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc & Anor*, [2025] UKSC 25, the Supreme Court approved the comments of Arnold LJ in *Lidl Great Britain*

Ltd & Anor v Tesco Stores Ltd & Anor (Rev1) [2024] EWCA Civ 262, where he pointed out that:

- (a) Consumers who are ill-informed or careless, or consumers with specialised knowledge or who are excessively careful are excluded from consideration;
- (b) The average consumer provides a standard which enables the courts to strike a balance between the competing interests involved, such as trade mark owners, their competitors and consumers;
- (c) The average consumer is neither a single hypothetical person nor a mathematical average; assessment from the perspective of the average consumer does not involve a statistical test. There is no single meaning rule and if, having regard to the perceptions and expectations of the average consumer, the court considers that a significant proportion of the relevant public is likely to be confused, a finding of infringement may properly be made;
- (d) Assessment from the perspective of the average consumer is intended to facilitate adjudication of trade mark disputes by providing an objective criterion, by promoting consistency of assessment and by enabling courts and tribunals to determine such issues so far as possible without the need for evidence;
- (e) The average consumer's level of attention varies according to the category of goods or services in question; and
- (f) the average consumer rarely has the opportunity to make direct comparisons between trade marks (or between trade marks and signs) and must instead rely upon the imperfect picture of the trade mark they have kept in their mind.

32. The average consumer for the goods and services at issue will predominantly be a business/professional user. Whilst the goods and services will vary in price, the average consumer is likely to consider various factors. When selecting the goods, the average consumer will consider factors such as functionality and compatibility with

existing systems and any particular features, etc. When selecting the services, the average consumer will consider factors such as reputation, technical expertise, and reliability, etc. Consequently, I consider that at least a medium degree of attention will be paid during the purchasing process, although, in my view, not to the highest degree.

33. The goods and services will likely be primarily accessed via digital channels, such as websites, application stores and online platforms. The selection process is therefore likely to be undertaken by the consumer viewing details of the goods or services on a screen, for example via a webpage, before making a decision to download, subscribe to, or otherwise access the relevant software or service. Accordingly, in my view, the visual component will dominate the purchasing process, however, I do not discount an aural component to the purchase given that word-of-mouth recommendations or verbal references, etc., may be made.

Comparison of the trade marks

34. It is clear from *Sabel BV v. Puma AG* 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 them, bearing in mind their distinctive and dominant components. The CJEU stated in *Bimbo SA v OHIM*, that:

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

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

36. The trade marks to be compared are:

Opponent's mark	Applicant's marks
	Refined Commerce (the First Application)  (Series of two) (the Second Application)

Overall impression

The opponent's mark

37. The opponent's figurative mark contains the word 'Refined' presented in a dark grey, large, standard title-case font. This word is preceded by a dark grey geometrical device element comprising a vertical line and a diagonal line attached at the top, together with a circular loop shape attached to the upper right side of the diagonal line. I acknowledge that when considered in combination with the word 'Refined', the figurative element may be perceived by a proportion of consumers as a highly stylised capital letter 'R'.

38. Despite the presence of the device element, I find that initially, the eye is naturally drawn to the element of the mark that can easily be read,⁶ namely 'Refined'. Accordingly, I consider that this word plays the greater role in the overall impression, with the figurative device element playing a slightly lesser, but still noticeable, role.

⁶ *MigrosGenossenschafts-Bund v EUIPO*, T-68/17.

The applicant's marks

The First Application

39. The mark comprises the two words 'Refined Commerce', presented in standard title case. I am of the view that the words hang together as a unitary phrase, with the word 'Refined' qualifying the word 'Commerce'. Accordingly, the overall impression of the mark resides in the combination of those two words.

The Second Application

40. The series of two marks each comprise the words 'Refined commerce.com'. In both marks, the word 'Refined' is presented in a large title-case font, with the words 'commerce.com' appearing beneath it in a much smaller font. In the first mark in the series, the initial letter 'R' in 'Refined' is slightly stylised by means of a light grey-to-white colour gradient which creates a subtle stripe-like effect, while the remaining letters of 'Refined' and the words 'commerce.com' are presented in white. In the second mark in the series, the initial letter 'R' is similarly stylised, but appears in a light grey-to-dark grey/black colour gradient which creates a similar subtle stripe-like effect, while the remaining letters of 'Refined' and the words 'commerce.com' are presented in dark grey/black. In my view, due to its size and position, the word 'Refined' is the dominant element of both marks and plays the greatest role in their overall impression. The words 'commerce.com', due to their smaller size, position and allusive nature, play a lesser, but still noticeable, role. The colour/stylisation and, in the first mark, the black rectangular background (which merely serves to show off the letters which are presented in white), play a much lesser role. I do not consider the stylistic differences between the two marks in the series to materially affect my assessment. Therefore, I will consider them at the same time, referring to them simply as 'The Second Application'.

Visual Comparison

The First Application

41. Visually, the marks coincide in the presence of the word 'Refined'. They differ in the presence of the figurative device element in the opponent's mark and the additional word 'Commerce' in the First Application. Overall, I find the marks to be visually similar to a medium degree.

The Second Application

42. Visually, the marks coincide in the presence of the word 'Refined'. They differ in the presence of the figurative device element in the opponent's mark and the additional elements 'commerce.com' in the Second Application. The colour and stylistic differences between the marks also act as points of visual difference. However, as previously stated, I find that the word 'Refined' plays the greatest role in the overall impression of the application due to its size and position. Accordingly, I find the marks to be visually similar to between a medium and high degree.

Aural Comparison

The First Application

43. Aurally, as the word 'Refined' in the respective marks is an English dictionary word, it will likely be pronounced in the ordinary way ('re-fined'), therefore this element in the marks will be pronounced identically. The additional English dictionary word 'Commerce' (pronounced 'com-merce') in the application will act as a point of aural difference. In my view, the device element in the earlier mark will not be articulated, even in the event that it is perceived as a stylised letter 'R'. Overall, I find the competing marks to be aurally similar to a medium degree.

The Second Application

44. Aurally, as previously stated, the word 'Refined' in the respective marks will likely be pronounced in the ordinary way, therefore this element in the marks will be pronounced identically. The additional ordinary words 'commerce' and '.com'

(pronounced 'dot com') in the application will act as points of aural difference. Overall, I find the competing marks to be aurally similar to a medium degree.

Conceptual Comparison

45. For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer. This is highlighted in numerous judgments of the GC and the CJEU including *Ruiz Picasso v OHIM* [2006] E.C.R-I-643; [2006] E.T.M.R 29. The assessment must, therefore, be made from the point of view of the average consumer.

46. Conceptually, the word 'Refined' in the opponent's mark will likely be attributed its ordinary dictionary meaning, i.e. inter alia, carefully developed, precise and/or of high quality.

47. The First Application combines the ordinary English dictionary words 'Refined' and 'Commerce'. The word 'Commerce' will be understood as referring to trade or commercial activity, with the word 'Refined' qualifying it. Accordingly, considered as a whole, the First Application is likely to convey the concept of commercial activity that is precise, carefully developed and/or of high quality. In the Second Application, the additional element '.com' does not convey a distinctive conceptual message, merely indicating that the applicant's services are provided online via a '.com' website.

48. The marks therefore share the concept conveyed by the word 'Refined'. I acknowledge that 'Commerce' and 'commerce.com' have no counterpart in the earlier mark and therefore introduce some conceptual difference. However, those elements are not particularly distinctive in respect of the relevant services, since they merely indicate commercial activity, including via a website.

49. The figurative device element in the opponent's mark does not, in my view, convey any clear independent concept. However, to the extent that a proportion of consumers perceive it as a stylised capital letter 'R', it will merely reinforce the initial letter of the word 'Refined'. Overall, taking all of the above into account, I consider the opponent's mark and the applications to be conceptually similar to a medium degree.

Distinctive character of the earlier mark

50. The distinctive character of a trade mark can be measured only, first, by reference to the goods or services in respect of which registration is sought and, second, by reference to the way it is perceived by the relevant public. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, the CJEU stated that:

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

51. 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, to those with high inherent distinctive character, such as invented words which have no allusive qualities.

52. Although the distinctiveness of a mark can be enhanced by virtue of the use that has been made of it, the opponent has not filed any evidence of use in relation to the

earlier mark, nor were they required to do so. Consequently, I have only the inherent position to consider.

53. I bear in mind that whilst not directly descriptive the English dictionary word 'Refined' may be perceived as allusive in terms of the goods and services at issue, i.e. that they are carefully developed, precise and/or of high quality. With regards to the device element, whilst it cannot be overlooked, I do not find it particularly striking, nor does it have any obvious meaning in respect of the goods and services at issue. However, as previously stated, I acknowledge that when the mark is considered as a whole, a proportion of consumers may perceive the device element as a highly stylised capital letter 'R'. Accordingly, as a whole, I find the mark to be inherently distinctive to a medium degree.

Likelihood of confusion

54. 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 them, and the goods and services, down to the responsible undertaking 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 marks may be offset by a greater degree of similarity between the 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.

55. Earlier in the decision I found that:

- The goods and services vary from being highly similar to similar to a low degree.

- The average consumer for the goods and services at issue will predominantly be a business/professional user, who will pay at least a medium degree of attention during the purchasing process, although, in my view, not the highest degree.
- The purchasing process for the goods and services is predominantly visual, although I do not discount an aural component.
- The First Application and the opponent's mark are visually, aurally and conceptually similar to a medium degree; The Second Application and the opponent's mark are visually similar to between a medium and high degree, and aurally and conceptually similar to a medium degree.
- The earlier mark is inherently distinctive to a medium degree.

56. I acknowledge that the word 'Refined' is identically present in the competing marks and plays an important role in their overall impressions. I also bear in mind that the words 'Commerce' and 'commerce.com' in the First and Second Applications are not particularly distinctive in relation to the goods and services at issue, and that the figurative device element in the opponent's mark plays a lesser role than the word 'Refined'. Nevertheless, I do not consider those elements to be negligible. The applications contain the additional words 'Commerce' and 'commerce.com', which have no counterpart in the earlier mark, while the earlier mark contains a figurative device element. There are also colour and stylistic differences between the marks, all of which act as points of visual difference. Given that the purchasing process is predominantly visual, I do not consider that those differences will be overlooked or disregarded by consumers. The additional words also materially lengthen the applications when compared with the earlier mark. Accordingly, I am satisfied that consumers paying at least a medium degree of attention, albeit not the highest degree, are unlikely to mistakenly recall or misremember the marks as each other. Therefore, even factoring in imperfect recollection and interdependency, I do not consider there to be a likelihood of direct confusion.

57. Having found no likelihood of direct confusion, I now go on to consider indirect confusion.

58. I acknowledge that a finding of indirect confusion should not be made merely because the marks share a common element. Furthermore, it is not sufficient that a mark merely calls to mind another mark.⁷ This is mere association, not indirect confusion.

59. Indirect confusion was described in the following terms by Iain Purvis QC (as he then was), sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*:⁸

“16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: ‘The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark.

17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:

(a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right (‘26 RED TESCO’ would no doubt be such a case).

⁷ *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17.

⁸ BL O/375/10.

(b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand 16 extension (terms such as 'LITE', 'EXPRESS', 'WORLDWIDE', 'MINI' etc.).

(c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension ('FAT FACE' to 'BRAT FACE' for example)."

60. These examples are not exhaustive but provide helpful focus.

61. 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. He added that, "trade mark law was about consumers' unwitting assumptions, not what they could find out if they thought to check".

62. Accordingly, it is necessary for me to bear this in mind when considering whether the common element 'Refined' is sufficiently powerful, when weighed against the differences.

63. Given the similarities between the marks and the varying degrees of similarity between the goods and services, I find that the potential for consumers to perceive a commercial connection between the marks is increased. Whilst consumers will recognise the differences between the competing marks, the common use of the word 'Refined', considered in the context of the marks as wholes, is likely to be viewed as indicating a connection between them. The device element in the opponent's mark, the stylistic differences between the marks and the words 'Commerce' and 'commerce.com' in the First and Second Applications do not prevent that finding, particularly as I have found 'Commerce' and 'commerce.com' not to be particularly

distinctive in respect of the goods and services at issue. Overall, I find that consumers will view the parties' marks as variations used by the same or economically linked undertakings, resulting in a likelihood of indirect confusion.

CONCLUSION

64. The oppositions under section 5(2)(b) of the Act succeed against the applicant's marks. Subject to any successful appeal against my decision, the applications will be refused in their entirety.

COSTS

65. The opponent has succeeded and is entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice ("TPN") 1/2023. In the circumstances, I award the opponent the sum of £950 as a contribution towards its costs. The sum is calculated as follows:

Official fees (Form TM7 - £100 x 2)	£200
Preparing notices of opposition and considering the applicant's counterstatements	£500
Preparing written submissions in lieu of a hearing	£250
Total:	£950

66. I therefore order Refined Commerce Ltd to pay RefinedWiki AB the sum of £950. The above sum should 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 20th day of August 2026

**Sam Congreve
For the Registrar**