

BL O/0770/26

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. 4097404
BY BARNABY LE FEVRE & BENJAMIN DEAVIN
TO REGISTER THE TRADE MARK:**

hang  ver pals

IN CLASSES 5, 30 & 32

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 451447
BY MASTER OF CEREMONIES LIMITED**

BACKGROUND AND PLEADINGS

1. On 9 September 2024 Barnaby LeFevre and Benjamin Deavin (“the applicants”) applied to register the trade mark shown on the cover page of this decision (“the contested mark”) in the UK. The application was published for opposition purposes on 20 September 2024, in respect of goods in classes 5, 30 and 32.

2. On 18 December 2024, the application was opposed by Master of Ceremonies Limited (“the opponent”), based upon section 5(2)(b) of the Trade Marks Act 1994 (“the Act”).¹ The opposition is directed against all of the goods in the application.² The opponent relies upon the following three trade marks:

PALS

UKTM no.: 3479623

Filing date: 6 April 2020

Registration date: 10 August 2020

Relying upon all the goods in classes 32 and 33³
 (“the First Earlier Mark”)



International Registration designating the UK under no.: WO0000001558644

International Registration and UK designation date: 25 September 2020

Priority date: 21 April 2020 (NZ)⁴

Date protection conferred in the UK: 19 February 2021

Relying upon all the goods in classes 32 and 33⁵
 (“the Second Earlier Mark”)

¹ 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.

² See the goods and services comparison.

³ See the goods and services comparison.

⁴ New Zealand (NZ) 1145702.

⁵ See the goods and services comparison.

PALS

UKTM no.: 3890186

Filing date: 17 March 2023

Priority date: 20 September 2022⁶

Registration date: 7 July 2023

Relying upon some of the services in class 35 for which the mark is registered⁷

("the Third Earlier Mark")

3. The opponent's marks qualify as earlier marks under section 6(1) of the Act. As they had not completed their registration/protection procedure more than five years before the application date for the contested mark, they are 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 marks are registered/protected without having to establish genuine use.

4. The opponent claims that the parties' marks are visually, aurally and conceptually similar and that the respective goods and services are either identical or closely similar, resulting in a likelihood of confusion and association on the part of the public.

5. The applicants filed a counterstatement denying the ground of opposition.

6. Both parties filed evidence. No hearing was requested but both parties filed written submissions in lieu of the same.

7. The opponent is represented by Lee & Thompson LLP; the applicants are self-represented.

⁶ New Zealand (NZ) 1219854.

⁷ See the goods and services comparison.

EVIDENCE AND SUBMISSIONS

8. The opponent's evidence of use came in the form of the witness statement of Amanda Wendy McDowall dated 14 October 2025, which is accompanied by five exhibits (exhibit AWM-1 to AWM-5). Ms McDowall is a partner at the opponent's representative firm. The exhibits are summarised as follows:

- Exhibit AWM-1 - Extracts from online dictionaries for the term 'HANGOVER'.
- Exhibit AWM-2 - Extracts from online dictionaries for the term 'PALS'.
- Exhibit AWM-3 - Extracts from the applicants' website showing their products.
- Exhibit AWM-4 - Articles relating to beverages formulated with supplement-style ingredients.
- Exhibit AWM-5 - Extracts from the applicants' website and Facebook page showing lanyards featuring the applicants' mark.

9. The applicants filed evidence in reply in the form of the witness statement of Barnaby LeFevre, dated 8 December 2025, which is accompanied by eight exhibits (exhibit BL1 to BL8). Mr LeFevre is a director at the applicants' company. The exhibits are summarised as follows:

- Exhibit BL1 - Product labels and packaging.
- Exhibit BL2 - Screenshots from the applicants' website showing use of their mark on gummies.
- Exhibit BL3 - Screenshots taken from the applicants' TikTok and Instagram social media pages showing use of their mark.
- Exhibit BL4 - Screenshots from the applicants' Shopify account showing sales of its products.
- Exhibit BL5 - Screenshots of customer reviews demonstrating association between the applicants' brand and gummies.
- Exhibit BL6 - Google screenshot of search results demonstrating consumer association between the term 'Hangover Pals' and the applicants' brand and goods.

- Exhibit BL7 - Google screenshot of search results for the word 'Pals'.
- Exhibit BL8 - Screenshot taken from the opponent's website 'drinkpals.co.nz'.

10. The applicants filed written submissions in lieu of a hearing on 26 March 2026.

11. The opponent filed written submissions in lieu of a hearing on 7 April 2026.⁸

12. I make this decision having taken full account of all the papers before me, referring to them in this decision only to the extent that I consider it is necessary.

PRELIMINARY ISSUES

13. The applicants raise points in their counterstatement and witness statement that I intend to address as preliminary issues. Before going any further into the merits of this opposition it is necessary to explain why, as a matter of law, the points raised will have no bearing on the outcome of this opposition.

Goods comparison and the target market

14. In their counterstatement the applicants state the following:

“The applicant's goods are aimed at hangover recovery and functional use, differing in nature, purpose, and audience from the opponent's beverages, even within Class 32.”

15. Further, in his witness statement Mr LeFevre states the following:

“Although the Applicant has filed for protection in Class 32, this is future-looking and does not reflect the current trading activity of the business. [...] The mere inclusion of Class 32 in the Applicant's specification does not create overlap in actual trading, which is the relevant assessment for confusion.

⁸ These are an updated version of the opponent's written submissions in lieu of a hearing, which were filed in order to correct typographical errors present in the opponent's original written submissions in lieu, filed on 2 April 2026.

The Applicant does not currently sell beverages of any kind. The only goods supplied in the marketplace are supplement gummies and a novelty promotional drinks lanyard.”

16. 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 specifications. It is the goods and services relied upon by the opponent and the goods applied for by the applicants 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.

17. Furthermore, marketing strategies, including the targeting of specific consumers, are temporary and may change over time.⁹ 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/services at issue.

No evidence of confusion or marketplace overlap

18. In his witness statement Mr LeFevre states the following:

“Since launching the HANGOVER PALS gummies, the Applicant has received no instances of confusion, no misdirected enquiries, and no evidence that consumers believe the Applicant’s goods originate from or are connected to the Opponent [...]”

19. With regards to an absence of any evidence of actual confusion, in *The European Limited v The Economist Newspaper Ltd* [1998] FSR 283 Millett L.J. stated that:

⁹ *Devinlec Développement Innovation Leclerc SA v OHIM*, Case C-171/06P

"Absence of evidence of actual confusion is rarely significant, especially in a trade mark case where it may be due to differences extraneous to the plaintiff's registered trade mark."

20. As such, the absence of actual confusion will not have any bearing on whether there exists a likelihood of confusion between the applicants' mark and the opponent's marks. Whilst evidence of actual confusion may be persuasive where it exists, the absence of confusion in the marketplace is rarely significant. This is because the absence of confusion may be attributable to the earlier marks having only been used to a limited extent, in relation to only some of the goods or services for which they are registered, or in such a way that there has been no possibility of the one, for example, being mistaken for the other. Therefore, this line of argument does not assist the applicants.

DECISION

Sections 5(2)(b)

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

"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 trade mark is protected

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark."

22. Section 5A of the Act is as follows:

“5A Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only.”

23. 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

24. 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.”

25. The competing goods and services are:

The applicants' goods

- Class 5 Food supplements; Vitamin and mineral food supplements; Health food supplements made principally of vitamins; Food supplements for non-medical purposes; Nutritional supplements; Dietary supplements consisting of vitamins; Dietary supplements in powder form; Gummy vitamins; Vitamin drinks; Vitamin supplements; Vitamin tablets; Dietary supplement drink mixes; Effervescent vitamin tablets; Powdered nutritional supplement drink mix.
- Class 30 Sweets; Candies [sweets]; Sweets [candy]; Fruit jellies [confectionery]; Jellies (Fruit -) [confectionery]; Sugar candies (Non-medicated -).
- Class 32 Vitamin fortified non-alcoholic beverages; Non-alcoholic drinks enriched with vitamins and mineral salts; Carbohydrate drinks; Vitamin enriched sparkling water [beverages]; Beverages containing vitamins; Isotonic non-alcoholic drinks; Energy drinks containing caffeine; Isotonic drinks; Energy drinks; Fruit flavoured drinks; Sports drinks containing electrolytes.

The opponent's goods and services

The First Earlier Mark

- Class 32 Beers; mineral and aerated waters and other non-alcoholic beverages; low-alcohol beers; seltzers; seltzer water; seltzer based beverages; fruit beverages and fruit juices; fruit based beverages; syrups and other preparations for making beverages.

Class 33 Alcoholic beverages (except beers); spirits; alcoholic seltzers; hard seltzers; spirit seltzers; alcoholic cocktails; flavoured alcoholic beverages; flavoured malt beverages.

The Second Earlier Mark

Class 32 Beverages, non-alcoholic; carbonated beverages, non-alcoholic; concentrates for making beverages; de-alcoholised beverages; essences used in the preparation of beverages; fruit-based beverages; iced fruit beverages; mineral and aerated waters and other non-alcoholic beverages; mineral enriched water [beverages]; mineral waters [beverages]; non-alcoholic beverages; non-alcoholic beverages fortified with vitamins; non-alcoholic carbonated beverages; plant-based beverages; powders for effervescing beverages; preparations for making non-alcoholic beverages; protein-enriched sports beverages; red wine powder [preparations for making beverages]; smoothies [fruit beverages, fruit predominating]; syrups for beverages; alcohol-free beer; alcohol-reduced beer; beer; beer-based beverages.

Class 33 Alcoholic beverages, essences and extracts; alcoholic beverages, except beer; alcoholic preparations for making beverages; flavoured liquors [alcoholic beverages]; liquors [alcoholic beverages]; low alcohol beverages, except beers; spirits [beverages]; wine-based beverages; red wine cocktails; sparkling fruit wines; sparkling grape wines; sparkling wine; sparkling wine cocktails; still wine; wine; wine-based drinks; wine punch; distilled beverages; pre-mixed alcoholic beverages, other than beer-based.

The Third Earlier Mark

Class 35 Wholesale and retail services relating to the sale of alcoholic beverages and non-alcoholic beverages, including spirits, pre-mixed beverages, beer, wine, liqueur, cider, cocktails, juices, waters and carbonated

beverages; wholesale and retail services in relation to food and beverages; consultancy, advisory and information services relating to the foregoing.

My Approach

26. I do not intend to undertake a full comparison of the competing goods and services at this stage of the decision, but I will instead proceed on the basis that at least some of the contested goods are identical to some of the opponent's goods, in line with the principle set out above in *Meric*. For example, the applicants' class 32 goods all fall within the opponent's broader term *beverages, non-alcoholic* contained in the Second Earlier Mark, consequently, these goods are *Meric* identical. If the opposition fails even where the contested goods are (*Meric*) identical to the opponent's goods, it follows that the opposition will also fail where the goods or services at hand are only similar. However, if a likelihood of confusion is found, I will proceed to assess the goods and services at issue in full.

The average consumer and the nature of the purchasing act

27. 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 in question (see *Lloyd Schuhfabrik Meyer*, Case C-342/97).

28. In *Iconix* (cited above), 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.

29. The average consumer for the goods at issue will be a member of the general public. The cost of the goods is likely to be relatively low, and they are likely to be purchased reasonably frequently. I am of the view that factors such as health/dietary requirements and flavour will be considered by the consumer when purchasing the goods. Taking all of this into account, I consider that a medium degree of attention is likely to be paid during the purchasing process.

30. The goods are likely to be self-selected from the shelves of a retail outlet or an online equivalent or following perusal of the goods at food/drink venues (either on taps, on shelves or in fridges behind the bar or, alternatively, on a drinks list). Consequently,

visual considerations are likely to dominate the purchasing process. However, I do not discount an aural component to the purchase, given that advice may be sought from retail assistants and/or orders may be placed verbally in a bar or café, etc.

Comparison of the trade marks

31. 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 Court of Justice of the European Union (“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.”

32. 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.

33. The trade marks to be compared are as follows:

Opponent's marks	Applicants' mark
PALS (First Earlier Mark)	

 (Second Earlier Mark) PALS (Third Earlier Mark)	
--	--

34. Both parties have filed submissions regarding the similarity of the marks. Whilst I do not propose to reproduce those here, I have taken them all into consideration in reaching my decision.

Overall impression

35. The opponent's First and Third Earlier Marks consist of the word 'PALS'. The overall impression of the marks resides in this single element.

36. The opponent's Second Earlier Mark consists of the word 'Pals' presented in a stylised bold, cursive-style black font. The underlined lettering slants diagonally upwards from left to right giving it a handwritten appearance. I find that the overall impression of the mark resides in the single word element as the way the word is presented makes a relatively minor contribution to the overall impression of the mark. Accordingly, I find that the mark is dominated by the word itself, while the stylisation plays a secondary role.

37. The applicants' mark is a composite mark comprising the words and letters 'hang', 'ver' and 'pals', presented in a bold black lowercase font, together with a figurative teddy bear device outlined in black and positioned between 'hang' and 'ver'. Whilst the figurative element does not literally resemble the letter 'o', I consider that, by virtue of its position within the mark, it will be perceived by most average consumers as a substitution for a missing 'o', resulting in the mark being understood as the phrase 'hangover pals'. Accordingly, I find that the overall impression of the mark is likely to

reside predominantly in the phrase ‘hangover pals’, although the bear device remains a noticeable figurative element and contributes to the mark’s overall impression.

Visual comparison

38. Visually, the marks overlap to the extent that they both contain the word PALS/Pals/pals. I do not consider the distinction in letter case or stylisation to be points of significant difference. However, the additional word/letter elements ‘hang’ and ‘ver’, together with the bear device positioned between them, are clear points of visual difference in the applicants’ mark. Taking into account the similarities, whilst bearing in mind the differences, I find the marks to be visually similar to a low degree.

Aural comparison

39. Aurally, the word PALS/Pals/pals in the marks will be pronounced identically. In the applicants’ mark, I consider that most average consumers will read the elements ‘hang’, the bear device and ‘ver’ together as forming the word ‘hangover’, with the mark therefore being articulated as ‘hangover pals’. Even if some consumers were instead to perceive the mark as containing the separate elements ‘hang’ and ‘ver’, with the bear device itself not being articulated, those additional elements remain clear points of aural difference. This is particularly so given their position at the beginning of the applicants’ mark. Overall, I consider the marks to be aurally similar to a low degree.

Conceptual comparison

40. 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.

41. Conceptually, the ordinary English dictionary word PALS/Pals in the earlier marks will be understood as referring to a close friend or companion.

42. As set out above, I consider that most average consumers will perceive the applicants' mark, as a whole, as the phrase 'hangover pals'. On that basis, whilst all the marks at issue overlap conceptually through the shared reference to 'pals', the applicants' mark conveys the additional concept of friends or companions associated with hangovers, such as, a friend who provides support during a hangover, as suggested by the opponent;¹⁰ 'hangover' being an ordinary English dictionary word referring to the delayed aftereffects of drinking too much alcohol.

43. That said, I acknowledge that some consumers may not perceive the bear device as a substitute for the letter 'o' and may instead view the applicants' mark as comprising the ordinary English dictionary word 'hang', the bear device, the invented word 'ver' and the ordinary English dictionary word 'pals'. However, even on that basis, those additional verbal and figurative elements introduce concepts which are absent from the opponent's marks.

44. Overall, due to the presence of the shared concept of close friends/companions in the marks, I find them to be conceptually similar to between a low and medium degree.

Distinctive character of the earlier marks

45. 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*

¹⁰ Opponent's submissions in lieu of a hearing, filed on 07/04/2026.

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)."

46. 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 or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. Although the distinctiveness of a mark can be enhanced by virtue of the use that has been made of it, the opponent did not file any evidence of use in relation to the earlier marks, nor were they required to do so. Consequently, I have only the inherent position to consider.

47. The opponent's marks comprise the ordinary English dictionary word PALS/Pals, meaning close friends or companions. As previously stated, I find that the way the word is presented in the Second Earlier Mark makes a relatively minor contribution to its overall impression. In relation to the goods and services at issue, the marks will not be perceived as descriptive or directly allusive. Overall, I consider the earlier marks to be inherently distinctive to no more than a medium degree.

Likelihood of confusion

48. 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 being 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 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 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.

49. I have found as follows:

- At least some of the goods are identical as per *Meric*.
- The average consumer is a member of the general public who will pay a medium degree of attention during the purchasing process.
- The purchasing process for the goods is predominantly visual, although I do not discount an aural component.
- The marks are visually and aurally similar to a low degree and conceptually similar to between a low and medium degree.
- The earlier mark is inherently distinctive to no more than a medium degree.

50. The identity of the goods is clearly a factor in favour of the opponent. However, taking all of the above factors into account, I consider it unlikely that the marks will be mistakenly recalled or misremembered as each other. This is particularly the case given the low degree of visual and aural similarity between the marks, the predominantly visual purchasing process, and the fact that the average consumer will pay a medium degree of attention during the purchase.

51. The coinciding element PALS/Pals/pals is the only word in the opponent's marks, whereas in the applicants' mark it appears at the end of a longer composite sign. Although the marks coincide in that element, I do not consider that the word 'pals' plays an independent distinctive or dominant role in the applicants' mark. As set out above, whilst the figurative bear element does not literally resemble the letter 'o', I consider that, by virtue of its position within the mark, most average consumers will perceive the elements 'hang', the bear device and 'ver' as forming the word 'hangover'. The applicants' mark is therefore likely to be perceived as the phrase 'hangover pals', in which 'hangover' qualifies the word 'pals'. As such, the marks convey different overall impressions, which will assist the average consumer in distinguishing one from the other. The bear device is also a noticeable figurative element in the applicants' mark and will not be overlooked.

52. Even if some consumers were instead to perceive the applicants' mark as containing the separate elements 'hang' and 'ver', together with the bear device, those additional verbal and figurative elements remain clear points of visual and conceptual difference between the marks. In my view, these elements will not be overlooked or misremembered. Accordingly, I do not consider there to be a likelihood of direct confusion between the marks.

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

54. I acknowledge that a finding of indirect confusion should not be made merely because the two marks share a common element. Furthermore, it is not sufficient that a mark merely calls to mind another mark:¹¹ This is mere association not indirect confusion.

55. 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*:¹²

¹¹ *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17.

¹² BL O/375/10.

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

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).

(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).”

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

57. 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]:

“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.”

58. Accordingly, it is necessary for me to bear this in mind when considering whether the common element PALS/Pals/pals is sufficiently powerful, when weighed against the differences.

59. Having recognised the differences between the marks, I consider it unlikely that the average consumer will conclude that they originate from the same or economically linked undertakings. The word ‘PALS’, meaning close friend or companion, is not so strikingly distinctive that consumers would assume that only one undertaking would use it in a trade mark. I have considered the opponent’s submission that the applicants’ mark may be perceived as a variant or extension of the earlier marks,¹³ however, I do not agree. In the applicants’ mark, the word ‘pals’ appears at the end of the longer phrase ‘hangover pals’, or, for those consumers who do not perceive the bear device as replacing the letter ‘o’, alongside the separate elements, ‘hang’ and ‘ver’ and the bear device. In either case, the additional verbal and figurative elements create a different overall impression, such that the applicants’ mark would not naturally be understood as a logical brand variant, sub-brand or extension of the earlier marks. In my view, the average consumer would simply put the presence of the common element PALS/Pals/pals in the marks down to coincidence rather than to an economic connection between the undertakings.

¹³ Written submissions in lieu of a hearing, filed on 7 April 2026.

Final Remarks

60. For the avoidance of doubt, as I have found no likelihood of confusion where the contested goods are (*Meric*) identical to the opponent's goods/services, this will also apply even if I had undertaken a full assessment and found that they are only similar.

CONCLUSION

61. The opposition is unsuccessful and subject to any successful appeal, the application may proceed to registration.

COSTS

62. The applicants have been successful and are entitled to an award of costs. As the applicants had not instructed professional representatives, they were invited by the Tribunal to indicate whether they intended to make a request for an award of costs, including accurate estimates of the number of hours spent on a range of given activities relating to pursuing the proceedings. On 26 March 2026, the applicants submitted a pro-forma for the following award of costs:

 Intellectual Property Office	
Tribunal Cost Pro Forma	
Form types	Time spent in hours/minutes
Notice of Opposition	
Notice of Cancellation	
Notice of Defence	2 hours
Considering forms filed by the other party	2 hours
TOTAL	4 hours
Official fees for the above forms	
TOTAL	£0
Preparing evidence/written submissions and considering and commenting on the other side's evidence/written submissions	
Description of activity	Time spent in hours/minutes
reparing evidence	6 hours
reviewing evidence	2 hours
reparing final written evidence	2 hours
TOTAL	0 hours

63. In addition to the above cost pro-forma, I note the applicants' following submissions:¹⁴

"8. Costs

The Applicant further notes that considerable time and effort has been required to respond to the opposition and to prepare the supporting evidence. This is particularly so in circumstances where the Tribunal's preliminary view indicated that the marks were not considered confusingly similar, and the Opponent nevertheless elected to continue the proceedings.

The Applicant also notes that the Opponent's position appears to have evolved following that preliminary view, requiring the Applicant to address arguments which could and should have been advanced earlier.

In these circumstances, the Applicant submits that the Opponent's conduct has been unreasonable and invites the Tribunal to consider **an award of costs off the usual scale**. In the alternative, the Applicant seeks costs in accordance with the Tribunal Practice Notice scale." (**emphasis added**)

64. In response, the opponent submits:¹⁵

"For completeness, the Opponent notes that the Applicant's request for off-scale costs is misconceived. The Opponent pursued a properly arguable case based on registered rights, and it is neither unreasonable nor abusive to proceed to a determination following a non-binding preliminary view. The Applicant's unrepresented status also provides no basis for the exceptional remedy of off-scale costs against the Opponent."

¹⁴ Written submissions in lieu, filed on 26 March 2026.

¹⁵ Written submissions in lieu, filed on 2 April 2026.

DECISION - off scale costs

65. I will address first the conduct of the opponent. The applicants claim that the opponent has demonstrated unreasonable conduct on the basis that even though the Tribunal's preliminary view indicated that the marks were not considered confusingly similar, the opponent nevertheless elected to continue the proceedings. In addition, the applicants claim that the opponent's position evolved following that preliminary view, requiring the applicants to address arguments which could and should have been advanced earlier.

66. Whilst I understand the applicants' frustration, I do not consider that the opponent's conduct amounted to unreasonable behaviour. Although the opponent elected to continue the proceedings despite the Tribunal's preliminary indication, as the opponent submits, and as stated in the Tribunal's official letter of 7 July 2025, such an indication is not binding. Where proceedings continue, the final decision will be made by a different hearing officer, determining the matter afresh and without being bound by, or taking into account, the preliminary indication. It follows that the full decision will not automatically reflect that indication. The evidence and/or submissions of the parties will be taken into account, and a different view may be taken from that of the hearing officer who gave the preliminary indication.¹⁶ As such, a party cannot automatically be regarded as having acted unreasonably merely because it chose to continue proceedings despite receiving a preliminary indication that there was no likelihood of confusion.

67. Accordingly, whilst the applicants are entitled to an award of costs in their favour, having considered the factors set out above, I am not satisfied that the opponent's conduct amounted to unreasonable behaviour that would justify an award of costs off the standard scale. I therefore decline to make such an award.

68. With regard to costs awards, I remind myself that there is no right to be awarded the amount claimed. This is subject to an assessment of the reasonableness of the

¹⁶ Tribunal Practice Notice 3/2007.

claim and must also take account of the registrar's practice of awarding costs on a contributory, not compensatory, basis.

69. With regards to the 'Notice of Defence' and 'Considering forms filed by the other party' sections of the 'Tribunal Cost Pro Forma' ("the Pro Forma"), I note that the applicants have claimed a total of 4 hours. I consider the hours claimed to be reasonable. In addition, with regards to the 'Preparing evidence/written submissions' and 'commenting on the other side's evidence and written submissions' sections of the Pro Forma, I find the 10 hours claimed by the applicants to also be reasonable, accepting that an unrepresented party is likely to take longer to consider evidence and submissions than, for example, a trade mark attorney.

70. Accordingly, I have set out below my assessment of the applicants' claim made. I remind myself that the Civil Procedure Rules Part 46 and the associated Practice Direction set the amount payable to litigants in person at £19 per hour. I see no reason to award anything other than this. In accordance with Annex A of TPN 1/2023, I award costs to the applicants as follows:

Considering the statement of grounds and preparing a notice of defence (4 hours x £19)	£76
Preparing evidence and written submissions in lieu of a hearing and considering the other side's evidence (10 hours x £19)	£190
Total	£266

71. I therefore order Master of Ceremonies Limited to pay Barnaby LeFevre and Benjamin Deavin the sum of £266. This should be paid within twenty-one days of the expiry of the appeal period or, if there is an unsuccessful appeal, within twenty-one days of the appeal proceedings.

Dated this 25th day of August 2026

**Sam Congreve
For the Registrar**