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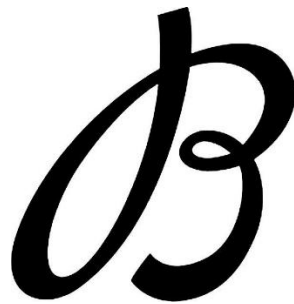
TRADE MARKS ACT 1994

IN THE MATTER OF INTERNATIONAL REGISTRATION

NO. WO0000001824631

BY BREITLING SA

IN RESPECT OF THE TRADE MARK:



IN CLASSES 9, 21, 30, 32, 33, 35, 36, 41 & 43

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. OP000454003

BY ALLIED DOMECQ SPIRITS & WINE LIMITED

Background and Pleadings

1. Breitling SA (“the Holder”), is the Holder of international trade mark registration 1824631 (“the IR”), shown on the cover page of this decision. The IR is registered with effect from 20 May 2024, with a priority date of 21 November 2023.¹ The request to protect the IR in the UK was made on 20 May 2024. It was accepted and published on 07 February 2025 in respect of goods and services in classes 9, 21, 30, 32, 33, 35, 36, 41 and 43.²
2. On 02 May 2025, Allied Domecq Spirits & Wine Limited (“the Opponent”) partially opposed the protection of the IR in the UK based upon section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opposition is directed against some of the Holder’s goods and services in classes 32, 33 and 43 of the IR, as set out in paragraph 89 of this decision.
3. The Opponent relies upon the following UK trade mark:



Trade mark no. UK00003016807

Filing date: 05 August 2013

Registration date: 20 December 2013

Relying upon all its goods in class 33, as set out in paragraph 89 of this decision.

4. The Opponent claims there is a likelihood of confusion because the goods and services are identical or highly similar and the marks are similar to a high degree.

¹ Priority claimed from Switzerland trade mark 15074/2023

² See Annex 1

5. The Holder filed a counterstatement denying the grounds of opposition and requesting that the Opponent provide proof of use of the earlier mark in respect of all the goods relied upon.
6. The Opponent is represented by Marks & Clerk LLP and the Holder is represented by Cam Trade Marks & IP Services.
7. Only the Opponent filed evidence. Neither party requested a hearing however, both parties filed written submissions in lieu of the same. This decision is taken following a careful consideration of the papers.

Evidence and Submissions

8. The Opponent's evidence is in the form of the witness statement of Eve-Marie Wilmann-Courteau dated 29 October 2025, accompanied by 11 exhibits (1-11). Ms Wilmann-Courteau is the Intellectual Property Counsel for the Opponent, a position held since November 2014.
9. The main purpose of Ms Wilmann-Courteau's evidence is to demonstrate that the earlier mark has been put to genuine use in the UK during the relevant period in relation to the goods relied upon.
10. The Holder filed written submissions in lieu of a Hearing on 04 February 2026.³
11. The Opponent filed written submissions in lieu of a Hearing on 05 February 2026.

Relevance of EU Law

12. 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

³ An amendment to the Holder's submissions in lieu was filed on 27 July 2026.

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.

Proof of Use

13. The registration procedure for the earlier mark was completed more than five years prior to the priority date of the contested IR. Therefore, it is subject to proof of use pursuant to section 6A of the Act. In its notice of opposition, the Opponent made a statement of use in relation to the class 33 goods relied upon. Accordingly, I will begin by assessing whether there has been genuine use of the earlier mark.

14. The relevant statutory provisions are as follows:

“6(1) This section applies where:

(a) an application for registration of a trade mark has been published,

(b) there is an earlier trade mark of a kind falling within section 6(1)(a), (aa) or (ba) in relation to which the conditions set out in section 5(1), (2) or (3) obtain, and

(c) the registration procedure for the earlier trade mark was completed before the start of the relevant period.

(1A) In this section “the relevant period” means the period of 5 years ending with the date of the application for registration mentioned in subsection (1)(a) or (where applicable) the date of the priority claimed for that application.

(2) In opposition proceedings, the registrar shall not refuse to register the trade mark by reason of the earlier trade mark unless the use conditions are met.

(3) The use conditions are met if –

(a) within the relevant period the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or

(b) the earlier trade mark has not been so used, but there are proper reasons for non- use.

(4) For these purposes –

(a) use of a trade mark includes use in a form (the “variant form”) differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor), and

(b) use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(5)-(5A) [Repealed] (6) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services.

15. Section 100 of the Act reads:

“If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it.”

16. The relevant period during which genuine use must be shown is the five years ending with the priority date of the contested IR, being 21 November 2023. Therefore, the relevant period is 22 November 2018 to 21 November 2023.

17. Consequently, the onus is upon the Opponent to prove that genuine use of the earlier mark was made in the UK, during the relevant period, and in respect of the relevant goods as registered.

18. In *easyGroup Ltd v Nuclei Ltd & Ors* [2023] EWCA Civ 1247, Arnold LJ summarised the law relating to genuine use as follows:

“105. The principles applicable to determining whether there has been genuine use of a trade mark have been considered by the CJEU in a considerable number of cases, the principal decisions being Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, Case C-259/02 *La Mer Technology Inc v Laboratories Goemar SA* [2004] ECR I-1159, Case C-416/04 *P Sunrider Corp v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237, Case C-442/07 *Verein Radetsky-Order v Bundervsvereinigung Kamaradschaft 'Feldmarschall Radetsky'* [2008] ECR I-9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Marken BV v Hagelkruis Beheer BV* [EU:C:2012:816], Case C-609/11 *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], Case C-141/13 *P Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089], Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434] and Joined Cases C-720/18 and C-721/18 *Ferrari SpA v DU* [EU:C:2020:854].

106. Ignoring issues which do not arise in the present case, such as use in relation to spare parts or second-hand goods and use in relation to a sub-category of goods, the principles may be summarised as follows:

(1) Genuine use means actual use of the trade mark by the proprietor or by a third party with authority to use the mark: *Ansul* at [35] and [37].

(2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark:

Ansul at [36]; *Sunrider* at [70]; *Verein* at [13]; *Leno* at [29]; *Centrotherm* at [71]; *Reber* at [29].

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Centrotherm* at [71]; *Leno* at [29]; *Gözze* at [37], [40]; *Ferrari* at [32].

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: *Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37]; *Verein* at [14]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle* at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23].

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial raison d'être of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use:

Ansul at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34]; *Leno* at [29]-[30], [56]; *Ferrari* at [33].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no de minimis rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72]; *Leno* at [55].

(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: *Reber* at [32].

107. The trade mark proprietor bears the burden of proving genuine use of its trade mark: see section 100 of the 1994 Act and *Ferrari* at [73]-[83]. The General Court of the European Union has repeatedly held that genuine use of a trade mark cannot be proved by means of probabilities or suppositions, but must be demonstrated by solid and objective evidence of effective and sufficient use of the trade mark on the market concerned: see e.g. Case T-78/19 *Lidl Stiftung & Co KG v European Union Intellectual Property Office* [EU:C:2020:166] at [25]. It has also repeatedly held that the smaller the commercial volume of the exploitation of the mark, the more necessary it is for the proprietor to produce additional evidence to dispel any doubts as to the genuineness of its use: see e.g. *Lidl* at [33].”

19. Whether the use shown is sufficient for this purpose will depend on whether there has been real commercial exploitation of the earlier mark, in the course of trade, sufficient to create or maintain a market for the goods at issue during the relevant five-year period. In making the assessment, I am required to consider all relevant factors, including:

- i) The scale and frequency of the use shown;
- ii) The nature of the use shown;
- iii) The goods for which use has been shown;
- iv) The nature of those goods and the market(s) for them; and
- v) The geographical extent of the use shown.

20. Before assessing the Opponent's evidence of use, I remind myself of the comments of Mr Daniel Alexander QC, (as he then was) sitting as the Appointed Person, in *Awareness Limited v Plymouth City Council*, where he stated that:⁴

“22. The burden lies on the registered proprietor to prove use [...]. However, it is not strictly necessary to exhibit any particular kind of documentation, but if it is likely that such material would exist and little or none is provided, a tribunal will be justified in rejecting the evidence as insufficiently solid. That is all the more so since the nature and extent of use is likely to be particularly well known to the proprietor itself. A tribunal is entitled to be sceptical of a case of use if, notwithstanding the ease with which it could have been convincingly demonstrated, the material actually provided is inconclusive. By the time the tribunal (which in many cases will be the Hearing Officer in the first instance) comes to take its final decision, the evidence must be sufficiently solid and specific to enable the evaluation of the scope of protection to which the proprietor is legitimately entitled to be properly and fairly undertaken, having regard to the interests of the proprietor, the opponent and, it should be said, the public.”

21. I also note Mr Alexander QC's (as he then was) comments in *Guccio Gucci SPA v Gerry Weber International AG*.⁵ Although the case concerned revocation proceedings, the principle is the same for proof of use in opposition actions. He stated:

⁴ Case BL O/230/13.

⁵ Case BL O/424/14.

“The Registrar says that it is important that a party puts its best case up front – with the emphasis both on “best case” (properly backed up with credible exhibits, invoices, advertisements and so on) and “up front” (that is to say in the first round of evidence). Again, he is right. If a party does not do so, it runs a serious risk of having a potentially valuable trade mark right revoked, even where that mark may well have been widely used, simply as a result of a procedural error. [...] The rule is not just “use it or lose it” but (the less catchy, if more reliable) “use it – and file the best evidence first time round – or lose it”.”

22. The comments of Mr Geoffrey Hobbs QC (as he then was) in *Dosenbach-Ochsner Ag Schuhe Und Sport v Continental Shelf 128 Ltd*, where he sat as the Appointed Person, are also relevant.⁶ He stated that:

“21. The assessment of a witness statement for probative value necessarily focuses upon its sufficiency for the purpose of satisfying the decision taker with regard to whatever it is that falls to be determined, on the balance of probabilities, in the particular context of the case at hand. As *Mann J. observed in Matsushita Electric Industrial Co. v. Comptroller General of Patents* [2008] EWHC 2071 (Pat); [2008] R.P.C. 35:

[24] As I have said, the act of being satisfied is a matter of judgment. Forming a judgment requires the weighing of evidence and other factors. The evidence required in any particular case where satisfaction is required depends on the nature of the inquiry and the nature and purpose of the decision which is to be made. For example, where a tribunal has to be satisfied as to the age of a person, it may sometimes be sufficient for that person to assert in a form or otherwise what his or her age is, or what their date of birth is; in others, more formal proof in the form of, for example, a birth certificate will be required. It all depends who is asking the question, why they are asking the question, and what is going to be done with the answer when it is given. There can be no universal rule as to what level of evidence has to be provided in order to

⁶ Case BL O/404/13.

satisfy a decision-making body about that of which that body has to be satisfied.

22. When it comes to proof of use for the purpose of determining the extent (if any) to which the protection conferred by registration of a trade mark can legitimately be maintained, the decision taker must form a view as to what the evidence does and just as importantly what it does not 'show' (per Section 100 of the Act) with regard to the actuality of use in relation to goods or services covered by the registration. The evidence in question can properly be assessed for sufficiency (or the lack of it) by reference to the specificity (or lack of it) with which it addresses the actuality of use."

23. Accordingly, whilst there is no requirement to produce any specific form of evidence, I must consider what the evidence as a whole shows me and, whether on this basis, I can reasonably be satisfied that there has been genuine use of the mark.

Form of the mark

24. Before I move on to assess if the Opponent has shown genuine use, I must first consider if I find the use of the mark as shown in the evidence to be use of the mark as registered or acceptable variants.

25. Section 6A(4)(a) of the Act states:

"...use of a trade mark includes use in a form (the "variant form") differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor)..."

26. In *Colloiseum Holdings AG v Levi Strauss & Co.*, Case C-12/12, which concerned the use of one mark with, or as part of, another mark, the Court of Justice of the European Union found that:

“31. It is true that the ‘use’ through which a sign acquires a distinctive character under Article 7(3) of Regulation No 40/94 relates to the period before its registration as a trade mark, whereas ‘genuine use’, within the meaning of Article 15(1) of that regulation, relates to a five-year period following registration and, accordingly, ‘use’ within the meaning of Article 7(3) for the purpose of registration may not be relied on as such to establish ‘use’ within the meaning of Article 15(1) for the purpose of preserving the rights of the proprietor of the registered trade mark.

27. Nevertheless, as is apparent from paragraphs 27 to 30 of the judgment in *Nestlé*, the ‘use’ of a mark, in its literal sense, generally encompasses both its independent use and its use as part of another mark taken as a whole or in conjunction with that other mark.

28. As the German and United Kingdom Governments pointed out at the hearing before the Court, the criterion of use, which continues to be fundamental, cannot be assessed in the light of different considerations according to whether the issue to be decided is whether use is capable of giving rise to rights relating to a mark or of ensuring that such rights are preserved. If it is possible to acquire trade mark protection for a sign through a specific use made of the sign, that same form of use must also be capable of ensuring that such protection is preserved.

29. Therefore, the requirements that apply to verification of the genuine use of a mark, within the meaning of Article 15(1) of Regulation No 40/94, are analogous to those concerning the acquisition by a sign of distinctive character through use for the purpose of its registration, within the meaning of Article 7(3) of the regulation.

30. Nevertheless, as pointed out by the German Government, the United Kingdom Government and the European Commission, a registered trade mark that is used only as part of a composite mark or in conjunction with another mark must continue to be perceived as indicative of the origin of the product at issue for that use to be covered by the term ‘genuine use’ within the meaning of Article 15(1).”

31. The Opponent’s registration is for the mark:



32. Where the Opponent has used its earlier mark as registered, that will clearly be use on which the Opponent can rely. However, it is noted from the evidence that the Opponent's mark has also been used in the following ways:





33. The Holder submits that: “the B logo on the Ballantine’s bottle label is in a form of a wax seal in red, with the ‘B’ showing in three dimensions. This is suggestive of a seal of approval or an award but would not be considered in itself as the identifier of Ballantine’s whisky. It is an incidental feature of the bottle label”.⁷

34. However, I bear in mind that where a registered mark is used as part of another mark or with additional matter, this may still constitute acceptable use of the mark

⁷ Holder’s written submissions in lieu of a Hearing, paragraph 5.

as registered, where this element continues to act independently as an indicator of origin.⁸

35. To my mind, use of the mark within a circle simply acts to frame the letter “B”. In addition, I consider the use of the mark being used below the Opponent’s house mark ‘Ballantine’s’ makes no material difference to the distinctive character of the mark itself. I consider that the ‘B’ element remains clearly identifiable within the sign as used and continues to indicate origin. Consequently, it is use upon which the Opponent can rely.

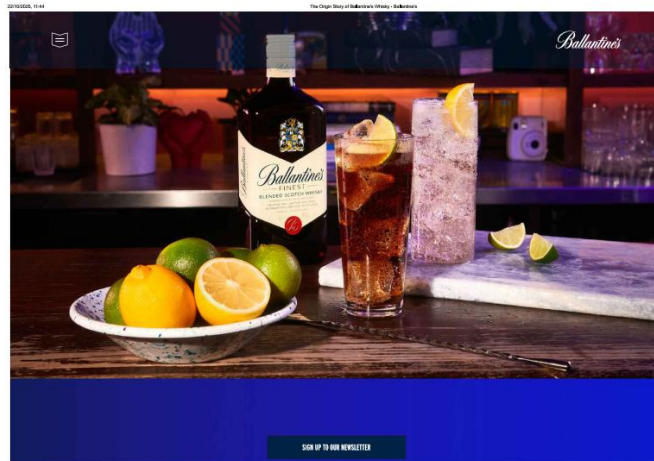
Evidence of use

36. From the witness statement of Ms Wilmann-Courteau, I note that the opponent, Allied Domecq Spirits & Wine Limited was incorporated in 1961 and has belonged to Pernod Ricard group since 2005. Ms Wilmann-Courteau states the following:

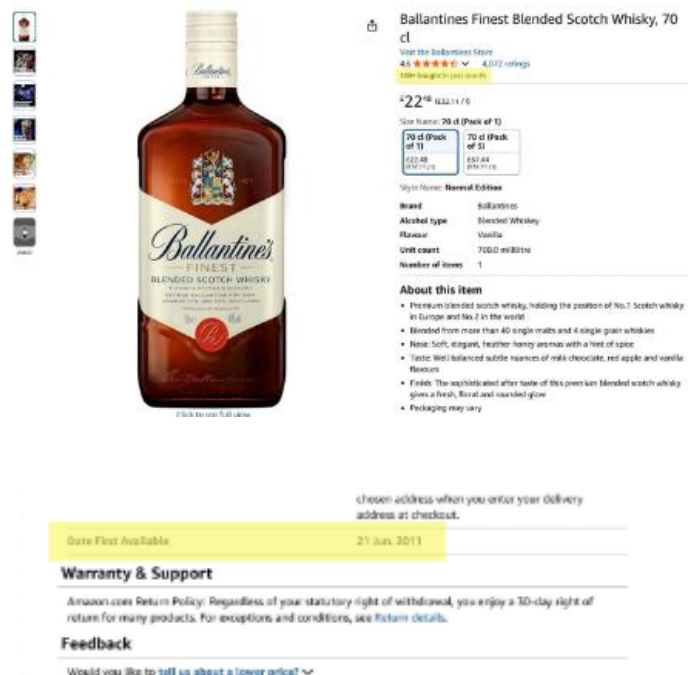
- the ‘Ballantine’s’ brand can be traced back to 1827.
- a calligraphy “B” has been used on bottles of Ballantine’s whisky since 1983.
- the “B” logo as registered has been used on certain ranges of Ballantine’s whiskies and alcoholic products since 2013.
- Ballantine’s was awarded its own Heraldic Arms by Lord Lyon in 1938 as an official statement of the honourable status within Scotland.

37. **Exhibit 1** provides extracts from the Opponent’s website dated 22 October 2025 which sets out the history of Ballantine’s between 1827 and 1938, a period which falls prior to the relevant period. The document shows the ‘B’ mark on a bottle of Scotch Whisky, as shown below:

⁸ *Colloseum Holdings AG v Levi Strauss & Co.*, Case C-12/12



38. **Exhibit 2** provides an extract from online retail platform Amazon.co.uk accessed on 21 October 2025, with prices shown in pounds sterling. Although the document itself is dated after the relevant period, page 42-43 shows that “Ballantine’s Finest Blended Scotch Whisky, 70 cl” bearing the Opponent’s mark was first available on the platform on 21 June 2011, as shown below:



39. **Exhibit 3** provides screenshots of the UK based online retail platform for Sainsbury’s showing the Opponent’s mark on “Ballantine’s Finest Blended Scotch Whisky 70cl”, as shown below:

[Drinks](#) > [Discover](#) > [Whisky flavours worth exploring](#)



Ballantine's Finest Blended Scotch Whisky 70cl

★ ★ ★ ★ ★ [Read reviews \(27\)](#)

Finest Blended Scotch Whisky

♥ [Add to Favourites](#)

£26.00 £37.14 / ltr

Add

The website extract is dated 21 October 2025, which falls outside of the relevant period, however, the same document (on page 47) includes fifteen reviews for the product, which date between 12th July 2018 and 17th December 2021. The presence of reviews dated within the relevant period demonstrates that the product was made available to UK consumers between those dates.

40. **Exhibit 4** provides screenshots of various other online retail platforms showing the Opponent's mark on "Ballantine's Finest Blended Scotch Whisky 70cl".

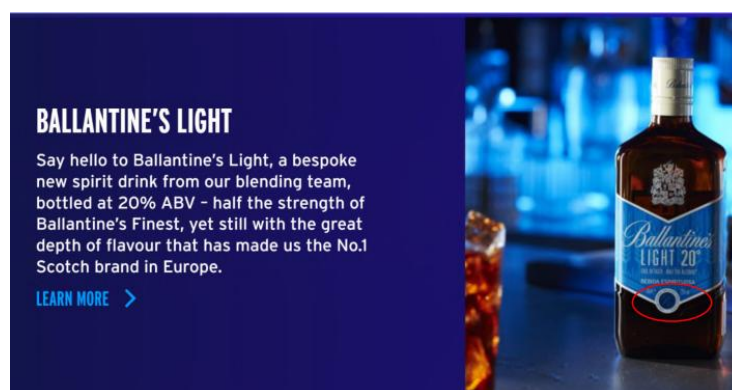
- Page 53 provides an extract from asda.com dated 09 September 2025, which falls outside of the relevant period. However, the same document (on page 54) shows eight product reviews for Ballantine's Blended Scotch Whisky dated between 04 February 2021 and 26 March 2023.
- Page 55 provides an extract from tesco.com showing a bottle of whisky displaying the Opponent's mark. Whilst the exhibit is undated, the document (at page 56) shows seven product reviews for Ballantine's Finest Blended Scotch Whisky 70cl dated between 11 December 2021 and 24 October 2022. Examples of these reviews are shown below:



- Page 57 provides an extract from ocado.com, which shows a bottle of Ballantine's Finest Blended Scotch Whisky displaying the Opponent's mark, dated 09 September 2025. Although the date the website was accessed falls outside of the relevant period, the same document (on page 58) shows five product reviews for Ballantine's Finest Blended Scotch Whisky dated between 17 January 2022 and 14 December 2023.
 - Page 59-62 provides extracts from weedram.co.uk, whiskyshop.com, thewhiskyworld.com and thewhiskyexchange.com. The extracts all show the Opponent's mark on bottles of whisky and blended whisky, however, the documents are all dated 09 September 2025, which falls outside of the relevant period.
41. **Exhibit 5** provides 37 invoices showing sales of Ballantine's finest scotch whisky, 8 of which fall after the relevant period. Of those dated within the relevant period, I am able to discern that between 28 January 2019 and 06 November 2023 the Opponent sold 12,866 units of "Ballantine's Finest 40% 70CLX6" (product codes 20675 and 21662), which Ms Wilmann-Courteau states all display the Opponent's mark. The goods were sold to six different retailers, with consignee addresses across the UK, including locations in Rugby, Doncaster, London, Northampton, Tamworth and Birmingham. For ease of reference, the following table summarises the sales by retailer of "Ballantine's Finest 40% 70CLX6" (product codes 20675 and 21662), between 28 January 2019 and 06 November 2023, as shown in the invoices:

Retailer	Quantity
Sainsbury's supermarkets Ltd	3250
ASDA stores Limited	2970
Waitrose Limited	2016
WM Morrisons Supermarkets Limited	1230
Tesco Stores Ltd	3360
Matthew Clark Bibendum Ltd	40

42. **Exhibit 6** provides an extract from the Opponent's website www.ballantines.com dated 21 October 2025, which I note falls outside of the relevant period. The document shows a range of products displaying the Opponent's mark, including blended and single grain Scotch whisky, a whisky & cola canned drink, a light (reduced alcohol) drink and two whisky based spirit drinks.
43. Pages 104-107 provide extracts from the website www.ballantines.com retrieved from the Wayback machine, dated 21 March 2021, 11 May 2023 and 23 May 2021. The documents show the Opponent's mark on Ballantine's finest blended scotch whisky and Ballantine's Light, which is described as a 'bespoke new spirit drink', as shown below:



44. **Exhibit 7** provides extracts from the annual reports of Pernod Ricard between 2013 and 2024 showing the Opponent's mark on bottles. While I note that much of this period predates the relevant period, Ms Wilmann-Courteau highlights the following relevant figures:⁹

⁹ Witness statement of Eve-Marie Wilmann-Courteau, paragraph 11.

Fiscal Year	2020	2021	2022	2023
Global	7,197,914	7,633,185	9,141,607	8,802,113
UK	32,266	34,542	26,504	25,839

From this data, I am able to discern that during the period 2020-2023 the Opponent sold 119,151 9-litre cases of Ballantine's in the UK, which Ms Wilmann-Courteau states relate to products displaying the Opponent's mark. I note that the annual report for 2017/2018 states that Ballantine's is the number one Scotch whisky in Europe and number two in the world, although these factors do not specifically relate to the UK market.

45. Ms Wilmann-Courteau also provides global sales figures for Ballantine's Finest Blended Scotch Whisky (which display the Opponent's mark) along with their market share, as shown below:¹⁰

000L sold per financial year	2019	2020	2021	2022	2023	2024
Blended Scotch	760,949	685,248	788,865	846,528	820,004	808,813
Ballantine's Scotch	65,778	60,547	74,514	77,494	72,642	78,913
Ballantine's Share	8.6%	8.8%	9.4%	9.2%	8.9%	9.8%

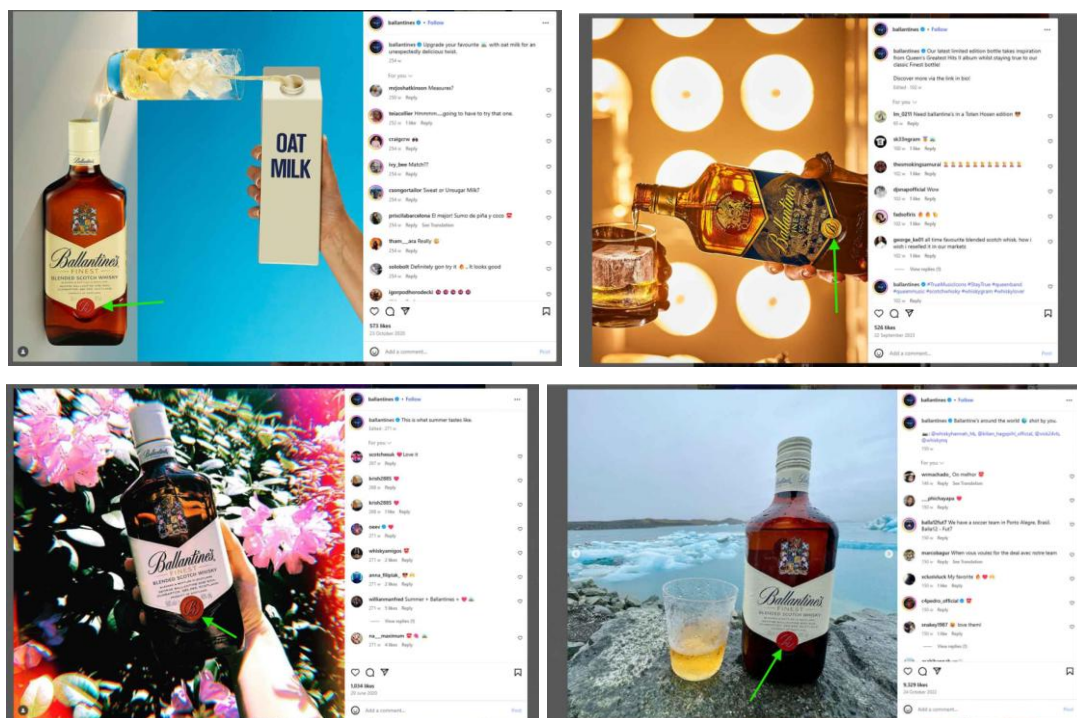
However, as these figures are global, and not broken down by country, I am unable to discern with any certainty what the Opponent's market share was in the UK.

46. Ms Wilmann-Courteau provides the following statistics for followers on various social media platforms, however, no analytics are provided to identify what proportion of these followers are based in the UK. The figures are shown below:

Social Media Account	Link	Followers
Facebook	https://www.facebook.com/Ballantines/?brand_redir=107941064175896#	4.2 million
Instagram	https://www.instagram.com/ballantines	92.8k
X	https://x.com/ballantines	7,264k
YouTube	https://www.youtube.com/ballantines	35.9K

¹⁰ Witness statement of Eve-Marie Wilmann-Courteau, paragraph 12.

47. **Exhibit 8** provides extracts from the Opponent's Instagram account (@ballantines) showing 52 posts made between 24 January 2020 and 11 August 2025. Of these posts, 34 are dated within the relevant period. The posts show the Opponent's mark displayed on the front of bottles of scotch whisky. A number of the posts provide cocktail recipes or encourage the reader to try mixing Ballantine's whisky with other products, including fruit juice, soda water, and sugar syrup. The 'likes' on each post range between 214 and 9329. Examples of these posts are shown below:



48. Several of the posts, including those provided as pages 131, 132 and 135 also show the Opponent's mark on the lid of bottles of whisky and blended whisky. An example of this is shown below:



49. I note that some of the social media posts also show the Opponent's mark on bottles of spirit drink, however, these date outside the relevant period. I am therefore unable to discern with any certainty from those documents whether these bottles were available during the relevant period. An example of this is shown in the image below, dated 29 August 2024:



50. Ms Wilmann-Courteau explains in her witness statement that the Opponent has employed advertising agencies to create social media content on Instagram and We Transfer, with the aim of promoting Ballantine's whisky bottles which feature the Opponent's mark.¹¹

51. **Exhibit 9** provides nine invoices for advertising between 2021 and 2025 and an advertisement on the 'We Transfer' website used during 2020/2021. Although one of the invoices falls outside of the relevant period, and the value of the invoices has been redacted, I am able to discern that they relate to advertising services provided by WeTransfer B.V. and Meta for Ballantine's. From the content of the invoices, I note that the highlighted services cover posting, lead generation and newsletter sign-ups. While no analytics have been provided to demonstrate the reach of these marketing activities, from the content of the invoices it is evident that the activities targeted UK consumers.

¹¹ Witness statement of Eve-Marie Wilmann-Courteau, paragraph 15.

52. **Exhibit 10** provides various third-party press articles and reviews for Ballantine's whisky.

53. Page 195-196 contains an article dated 08 October 2018 from 'JustDrinks', titled "Pernod Ricard pairs Ballantine's Scotch whisky with Felipe Pantone in True Music Series". The article relates to a collaboration between the Opponent and street artist Felipe Pantone and contains an image of a Ballantine's bottle however, as shown below, due to the quality of the image I am unable to identify the Opponent's mark:



54. Pages 197-198 contains an article dated 23 November 2020 from 'Wonderland Magazine', titled "BALLANTINE'S x JOSHUA VIDES". The article relates to a limited-edition collaboration between Ballantine's and Californian illustrator Joshua Vides and states that the products are due to go on sale via Amazon. The article shows the Opponent's mark on the special edition bottles and packaging, as shown below:



55. Page 199-200 contains an article dated 19 January 2021 from 'JustDrinks', titled "Pernod Ricard unveils 20%-abv Beefeater Light, Ballantine's Light". The article relates to the launch of reduced alcohol products from Beefeater and Ballantine's. The article states that Ballantine's Light is not classified as a Scotch whisky, but is categorised as a 'spirit drink', as shown in the extract below:

As with Whyte & Mackay Light, Ballantine's Light cannot be classified as a Scotch whisky because of category rules. Pernod describes Ballantine's Light as a "lower-abv alternative for Scotch".

The CEO of Pernod Scotch whisky unit Chivas Brothers, Jean-Christophe Coutures, said: "Our teams have been working hard to create spirit drinks that accommodate mindful drinking without compromising on flavour, and to bring Scotch and gin fans a new way to enjoy the Ballantine's and Beefeater experience."

56. Page 201-204 contains an article dated 15 April 2021 from 'JustDrinks', titled "Why whisky/whiskey can no longer ignore the allure of flavours - comment". The article relates to flavoured whisky drinks, including lime-infused Ballantine's Brasil and Ballantine's Passion, which is described as a mix of traditional Scotch with sweet tropical fruits.
57. Page 205-207 contains an article dated 17 May 2021 from 'The Drum', titled "'Half an ad' takes Ballantine's lower-alcohol messaging into the void". The article relates to Ballantine's Light, a reduced alcohol drink, which at the time of the article was exclusive to the Spanish market, and therefore not available in the UK.
58. Page 208-210 contains an article dated 06 September 2022 from 'The Drinks Business', titled "Chivas Brothers sales soar 25% in FY22". The article relates to the Opponent's performance in the financial year ending 2022, stating that net sales were up 25%, and the company had experienced a global growth of +29%. No specific statistics regarding UK growth are provided, however, the article states that all four international Scotch Whisky brands owned by Pernod Ricard (Chivas, Ballantine's, Royal Salute and The Glenlivet) had grown over 20% in domestic markets.

59. Page 211-214 contains an article dated 15 November 2022 from 'Hypebeast', titled "J. Demsky shares the unique futuristic references behind new Ballantine's collaboration". Pages 215-219 contain an article dated 21 February 2023 from 'ViperMag', titled "Ballantine's & J. Demsky invite you to shape your future through their new limited edition bottle design". These articles both relate to a collaboration between Ballantine's and contemporary visual artist J.Demsky and both include images of the same bottle design showing the Opponent's mark, as shown below:



60. Page 220-222 contains an article dated 06 June 2024 from 'The Moodie Davitt Report', titled "Pernod Ricard unveils Asia Pacific travel retail-exclusive Ballantine's 23 Year Old Golden Hour Series". The article dates from after the relevant period and relates to worldwide sales, rather than those in the UK. In addition, I am unable to identify the Opponent's mark within the images included in the article.
61. Page 223-230 contains an article dated 19 June 2025 from 'The Spirit Business', titled "Top 10 biggest-selling Scotch Brand Champions". The article names Ballantine's as Scotch Brand Champion for 2025 due to sales growth of 13.9% in 2024. I note that the article dates from after the relevant period and relates to global sales, rather than the UK market.
62. Page 231-234 contains an extract from 'Cobbosr.com', accessed on 29 October 2025. The document shows a range of Ballantine's products containing the

Opponent's mark and contains reviews for Ballantine's Scotch whisky which were published '13 years ago' (2012) and '15 years ago' (2010). Based upon the date the website was accessed, I note that these reviews were all written prior to the relevant period.

63. **Exhibit 11** provides a summary of awards won by Ballantine's Blended Scotch Whisky. The image provided on the document displays the Opponent's mark, and states that the product has won over 440 awards and 17 competitions since 1990, as shown below:



64. I note that Ms Wilmann-Courteau highlights 'Ballantine's Finest' has won the following awards:

- 17 International Wine and Spirit Competition Awards (1990-2020)
- 18 International Spirits Challenge Awards (1998-2020)
- 1 San Francisco World Spirits Competition Award (2005-2012)
- 3 Hong Kong International Wine and Spirits Competition Awards (2015-2017)
- 7 The Scotch Whisky Masters Awards (2009-2019)

65. I further note from the document that other products in the Ballantine's range have gained international awards, including Ballantine's Brasil which won 6 awards between 2015 and 2019. While the data provided is not broken down by year, a number of awards are displayed on the document, a sample of which are shown below:



66. In view of this, I am satisfied that at least some of the awards noted by Ms Wilmann-Courteau were achieved during the relevant period. However, as these are international awards, they do not appear to relate to the UK market for which proof of use must be shown.

Genuine use

Assessment of Evidence

67. Whether the use shown in the evidence is sufficient to constitute genuine use will depend on whether there has been real commercial exploitation of the mark, in the course of trade, sufficient to create or maintain a market for the goods at issue in the relevant territories, during the relevant five-year period. In making my assessment, I must consider all relevant factors, including:

- the scale and frequency of the use shown;
- the nature of the use shown;
- the goods for which use has been shown;
- the nature of those goods and the market(s) for them; and
- the geographical extent of the use shown.

68. An assessment of genuine use is a global assessment, which includes looking at the evidential picture as a whole, not whether each individual piece of evidence shows use by itself. It is possible for an accumulation of evidence to show use, even if individual items of evidence would on their own be insufficient proof: see *New Yorker SHK Jeans GmbH & Co. KG v OHIM*, Case T- 415/09, paragraph 53. However, where there is no use of the mark in respect of the goods as registered, it follows there has been no genuine use of the mark: *Dosenbach-Ochsner Ag Schuhe Und Sport v Continental Shelf 128 Ltd*, Case BL 0/404/13, paragraph 22.
69. Case law does not specify particular types of documentation that must be adduced in evidence. When considering the evidence, I am entitled “to be sceptical of a case of use if, notwithstanding the ease with which it could have been convincingly demonstrated, the material actually provided is inconclusive”: (see *PLYMOUTH LIFE CENTRE*, BL O/236/13, paragraph 22). However, I remind myself that I must evaluate all the evidence submitted in an overall assessment, and that although pieces of evidence may be insufficient by themselves, they may contribute to proving use in combination.
70. With regard to the evidence of use submitted, I must now consider if it sufficiently demonstrates genuine use. The burden is on the Opponent to prove that it has used its mark within the relevant period. Therefore, it was the Opponent’s responsibility to provide proof that the mark was used in the UK during the five-year relevant period.
71. Having considered the overall picture presented by the evidence, even when discounting those parts of the evidence which are dated outside of the relevant period or which do not pertain to the UK market, it is clear to me that it does demonstrate use of the Opponent’s mark during the relevant period.
72. I have been able to ascertain from the 29 invoices provided (which date from within the relevant period) that Ballantine’s Finest Scotch Whisky was sold to UK based retailers with addresses across the breadth of the UK. While the invoice values have been redacted, the unit sales demonstrate a total of 12,866 units.

73. There are shortcomings in the overall sales figures and market share details provided in that much of the data relates to EU or global markets, or falls outside of the relevant period. However, the figures do demonstrate UK sales figures for the years 2020-2023 of 119,151 9-litre cases, a figure I consider to be sizable.
74. The evidence shows the Opponent's mark on bottles of whisky and blended whisky on sale to UK consumers via a number of online retail platforms, including Amazon, Sainsbury's, Tesco, Asda and Ocado. While the extracts provided from said retail platforms were retrieved at the date of the evidence being collated, the documents include a range of reviews that date within the relevant period. In addition, the evidence demonstrates that bottles of blended whisky bearing the Opponent's mark have been available to UK consumers via Amazon's online marketplace since 21 June 2011.
75. There is also evidence of the mark used in relation to spirit drinks (including Ballantine's Light) available through the Opponent's website and shown in a press article. However, this evidence is more limited.
76. With regards to the Opponent's social media followers, whilst I take note that the figures are substantial, no analytics have been provided to show how many of those followers were from the UK. In addition, it has not been made clear from the Opponent whether the figures provided are correct at the date the evidence was submitted, or whether data is retrospectively provided for a date within the relevant period.
77. Turning to the Instagram evidence provided, the evidence shows that posts displaying the Opponent's mark were frequently published between 24 January 2020 and 11 August 2025 (34 of which are dated within the relevant period). The number of 'likes' on many of these posts are significant (between 214 and 9329 per post) however, I remain alert to the fact that Instagram is a global platform, and no analytics have been provided to confirm how many of these interactions originate in the UK.
78. While the evidence pertaining to awards shows that Ballantine's had achieved a number of awards, for whisky, blended whisky and spirit drinks, this evidence has

a number of shortcomings. While it is noted that Ballantine's products won a significant number of international awards since 1990, and several within the relevant period, it is not clear which of these awards pertain to the UK market.

79. On balance, I consider that the Opponent's evidence is sufficient to demonstrate commercial exploitation of their mark in relation to some of the goods at issue in the UK during the relevant period. However, from the evidence I have before me, I can only ascertain that the Opponent's mark has been used on whisky, blended whisky and, to a more limited extent, spirit drinks. There is no evidence to suggest that the Opponent's mark has been used on alcoholic beverages outside of these goods.

Fair specification

80. I must now consider whether, or the extent to which, the evidence shows use of the registered mark in relation to the goods relied upon. I must bear in mind that fair protection is not to be achieved by identifying and defining particular examples of goods for which there has been genuine use, but, rather, the particular categories of goods they should realistically be taken to exemplify. For that purpose, the terminology of the resulting specification should accord with the perceptions of the average consumer for the goods concerned.¹² In arriving at a fair specification, I must consider how the average consumer would fairly describe the goods shown in evidence; the task is not to describe the use made of the registered mark in the narrowest possible terms, unless that is what an average consumer would do. I remind myself that the Opponent cannot reasonably be expected to use a mark in relation to all possible variations of the particular goods covered by the registration.¹³

81. The Opponent has claimed use of the mark on the following goods:

Class 33: Alcoholic beverages (except beer)

¹² *Euro Gida Sanayi Ve Ticaret Limited v Gima (UK) Limited*, BL O/345/10

¹³ *Property Renaissance Ltd (t/a Titanic Spa) v Stanley Dock Hotel Ltd (t/a Titanic Hotel Liverpool) & Ors* [2016] EWHC 3103 (Ch)

82. On the matter of a fair specification, the Opponent submits the following:

“Given the range of alcoholic products the Earlier Mark is used in relation to it is submitted that the goods “Alcoholic beverages (except beers)” is fair and can be relied on by the Opponent given the range of goods sold under the mark (including whisky, blended whisky, spirit drink products and pre-mixed alcoholic beverages) the terminology “Alcoholic beverages (except beers)” accords with the perception of the average consumer in relation to the goods concerned.

In the alternative, it is abundantly clear from the Witness Statement and the accompanying exhibits that a fair specification would at least cover “whisky; blended whisky; spirits; spirit drinks”.¹⁴

83. The Holder submits that “it is not contested that during the relevant period Ballantine’s whisky was well established in the UK market. No other spirits, let alone other alcoholic beverages, appear in any relevant way in the evidence”.¹⁵

84. Taking the evidence as a whole, I am satisfied that it demonstrates use of the Opponent’s mark during the relevant period in relation to whisky, blended whisky and spirit drinks. I bear in mind that it is not necessary to describe the use made by the trade mark proprietor in the narrowest possible terms unless that is what the average consumer would do.¹⁶

85. Accordingly, keeping in mind the guidance provided by the relevant caselaw, I consider that a fair specification of the Opponent’s goods for which sufficient evidence of use has been provided to be:

Class 33: Whisky, blended whisky, and whisky based spirit drinks.

¹⁴ Opponent’s written submissions in lieu of a Hearing, paragraphs 21-22.

¹⁵ Holder’s written submissions in lieu of a Hearing, paragraph 3.

¹⁶ *Property Renaissance Ltd (t/a Titanic Spa) v Stanley Dock Hotel Ltd (t/a Titanic Hotel Liverpool) & Ors* [2016] EWHC 3103 (Ch)

86. The Opponent may therefore rely upon these goods for the purposes of these opposition proceedings.

Decision

Sections 5(2)(b) and 5A

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

“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 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”.

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.”

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

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

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to

make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;

(f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

(g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;

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

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

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

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

Comparison of goods and services

89. The competing goods and services are as follows:

Opponent's goods	Holder's goods and services
<u>Class 33:</u> Whisky, blended whisky, and whisky based spirit drinks.	<u>Class 32:</u> Beers. <u>Class 33:</u> Alcoholic beverages (except beer); Spirits (beverages); liqueur; wine; cider; alcoholic cocktails; alcoholic essences; alcoholic extracts; anise (liqueur); anisette; aperitifs; arak (arrack); bitters (liqueurs); brandy; curacao; digesters (liqueurs and spirits); distilled beverages; alcoholic beverages containing fruit; kirsch; mead [hydromel]; perry; piquette; pre-mixed alcoholic beverages, other than beer-based; rice alcohol; rum; sake; vodka; whisky; gin. <u>Class 43:</u> Services for providing food and beverages; restaurant services; bar services; cocktail bar services; cafés, café services; catering services; restaurant (food) services; food and

	beverage preparation services; self-service restaurant services; hospitality services [food and beverages]; itinerant catering services; mobile restaurant services; mobile cafe services for the provision of food and beverages; provision of food and beverages through a mobile truck; online booking of restaurant tables; alcoholic beverage service; take-away services [preparation of meals]; bar and restaurant services; catering services; information services for restaurants and bars; reservation services for restaurants and bars; information, advice and consultancy services relating to any of the above (including virtual, online or augmented reality services).
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90. In *Gérard Meric v OHIM*, Case T-133/05, the General Court (“GC”) stated that:

“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”.

91. When making the comparison, all relevant factors relating to the goods and services in the specifications should be taken into account. In the judgment of the Court of Justice of the European Union (“CJEU”) in *Canon*, Case C-39/97, the court stated at paragraph 23 that:

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

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

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

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

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

94. For the purposes of considering the issue of similarity of goods and services, it is permissible to consider groups of terms collectively where they are sufficiently comparable to be assessed in essentially the same way and for the same reasons.¹⁷

Class 32:

Beers.

95. I consider that the Holder's above goods overlap in nature with the Opponent's "whisky" as they are both alcoholic beverages however, they differ in appearance, taste, alcohol content, measure and production methods. There is a general overlap in user, being members of the general public over 18 years of age. There is a degree of overlap in method of use and purpose as the respective goods may both be drunk for enjoyment, relaxation or their intoxicating effects, however, beer could also be drunk for refreshment or to quench thirst. I consider that while the goods at issue will all be sold in off-licenses and in the alcohol section of supermarkets, they are usually on different shelves or aisles. Similarly, although the goods will be sold in licensed premises, I consider that spirits are usually displayed in bottles behind a bar, while beer is usually kept in fridges or provided by the taps on the bar. I consider that if there is any competition between the goods, it will be very slight. I do not consider the goods to be complementary. Overall, I consider the goods to be similar to a low degree.

Class 33:

¹⁷ *Separode Trade Mark* (BL O/399/10), per Mr Geoffrey Hobbs QC, sitting as the Appointed Person; and *BVBA Management, Training en Consultancy v. Benelux-Merkenbureau* [2007] ETMR 35, at paragraphs 30 to 38).

Whisky.

96. The Holder's above goods are self-evidently identical to the Opponent's "whisky".

Alcoholic beverages (except beer); Spirits (beverages); distilled beverages.

97. Whisky is a type of distilled alcoholic beverage and a type of spirit. In view of this, the Opponent's "whisky" is encompassed by the Holder's above broader categories. They are therefore identical on the principle outlined in *Meric*.

Digesters (liqueurs and spirits).

98. I understand the Holder's above goods to be liqueurs or spirits which are drunk after dining to aid digestion. I consider that this broad category would encompass the Opponent's "whisky". They are therefore identical on the principle outlined in *Meric*.

Aperitifs.

99. I understand aperitifs to be liqueurs, fortified wines or spirits which are drunk before a meal to stimulate appetite. While the Opponent's whisky is not generally considered an aperitif, there is an overlap in nature and user as the goods are both alcoholic beverages which are drunk in small measures by members of the general public over the age of 18. The purpose differs to the extent that aperitifs are specifically drunk prior to dining, while whisky is drunk more widely for enjoyment, relaxation or its intoxicating effects. The goods at issue will all be sold within off-licenses and the alcoholic beverage section of supermarkets, where they will likely be positioned on the same shelves or aisles. Similarly, where the goods will be sold in licensed premises, I consider that aperitifs and whisky may both be displayed in bottles behind a bar. There is a degree of competition in that a consumer may choose whisky over another spirit to drink as an aperitif. I do not consider the goods to be complementary in the way set out in caselaw. Overall, I consider the goods to be similar to a high degree.

Arak (arrack); brandy; kirsch; rum; vodka; gin; Liqueur; curacao; anise (liqueur); anisette; bitters (liqueurs); sake; rice alcohol.

100. I consider that the Holder's above goods overlap in nature with the Opponent's "whisky" to the extent that they are all alcoholic beverages containing a high alcohol content however, the goods will differ in taste and appearance. There is a general overlap in user, being members of the general public over 18 years of age. There is an overlap in method of use as the goods at issue are all drinks which may be drunk neat or be mixed with another beverage. The goods overlap in purpose as they will all be consumed for enjoyment, relaxation, or for their intoxicating effects. I consider that the goods are likely to be placed within close proximity to one another within the spirits section of supermarkets or off-licenses, or on the same shelves behind the bar in licensed premises. There is a degree of competition between the goods, as the consumer may choose to purchase another neat alcoholic beverage with a similar alcohol content, over purchasing whisky. I do not consider the goods to be complementary. Overall, I consider the goods are similar to a high degree.

Alcoholic cocktails; pre-mixed alcoholic beverages, other than beer-based; alcoholic beverages containing fruit.

101. The Holder's above goods are all mixed alcoholic beverages, which could incorporate a range of alcohols, including whisky. I consider the goods overlap in nature, purpose and method of use with the Opponent's "whisky" as they are all alcoholic drinks which are consumed for enjoyment, relaxation or their intoxicating effects. However, whisky has a high alcohol content and is drunk neat or with a mixer, while the Holder's goods are pre-mixed alcoholic beverages. There is a general overlap in user, being members of the general public over 18 years of age. I consider that while the goods at issue will all be sold in off-licenses and the alcohol section of supermarkets, they are usually on different shelves or aisles. Similarly, although the goods will be sold in licensed premises, I consider that whisky will usually be displayed in bottles behind a bar, whilst pre-mixed alcoholic beverages would be in bottles either in fridges or under the bar. There is a degree of complementarity where the Holder's above goods incorporate whisky, as whisky

will be important and indispensable to those beverages and the average consumer will likely expect a whisky provider to also provide whisky-based beverages. I also consider there to be a degree of competition, as a consumer may choose to purchase a whisky based cocktail or pre-mixed beverage over purchasing neat whisky to add to a mixer themselves. Overall, I consider the goods to be similar to between a medium and high degree.

Alcoholic essences; alcoholic extracts.

102. I consider that the Holder's above goods overlap in user with the Opponent's "whisky" to the extent they are all consumed by members of the general public over the age of 18. I consider there to be a degree of overlap in purpose, to the extent that whisky or alcoholic essences/extracts may be used for their flavour. However, I understand alcoholic essences and extracts to be highly concentrated liquids derived from alcohol, which are added to beverages to give the flavour of a specific alcohol. They therefore differ in nature and method of use to whisky which is an alcoholic beverage which can be drunk neat or with a mixer. Whisky is sold in the spirits aisles of supermarkets, off-licenses and behind the bar of licensed premises, while alcoholic essences and extracts are more likely to be sold via brewing or specialist drinks retailers. The average consumer may expect an undertaking responsible for whisky would also be responsible for essences/extracts of that same whisky. However, I do not consider the goods to be complementary in the way set out in caselaw. Nor do I consider them to be in competition. Overall, I consider the goods similar to a low degree.

Wine; cider; perry; piquette.

103. I consider that the Holder's above goods overlap in nature with the Opponent's "whisky" to the extent they are all alcoholic beverages however, they differ in taste, alcohol content and production methods. There is a general overlap in user, being members of the general public over 18 years of age. There is a degree of overlap in method of use and purpose as the respective goods may both be drunk for enjoyment, relaxation or their intoxicating effects, however, whisky is served neat in a short measure or mixed with another beverage, while the Holder's wine, perry

& piquette are served unmixed in a larger measure. I consider that while the goods at issue will all be sold in off-licenses and the alcohol section of supermarkets, they are usually on different shelves or aisles. Similarly, although the goods will be sold in licensed premises, I consider that spirits are usually displayed in bottles behind a bar, whilst wine, perry and piquette would be in bottles either in fridges or under the bar. Given the differing alcohol content, taste and measure I consider that if there is any competition between the goods, it will be very slight. I do not consider the goods to be complementary. I therefore find them to be similar to a low degree.

Mead [hydromel].

104. I consider that the Holder's above goods overlap in nature with the Opponent's "whisky" as they are all alcoholic beverages however, they differ in taste, alcohol content, measure and production methods. There is a general overlap in user, being members of the general public over 18 years of age. There is a degree of overlap in method of use and purpose as the respective goods may both be drunk for enjoyment, relaxation or their intoxicating effects. I consider that while the goods at issue will all be sold in off-licenses and the alcohol section of supermarkets, they are usually on different shelves or aisles. Similarly, although the goods will be sold in licensed premises, I consider that whisky is usually displayed on shelves behind a bar, while mead is more likely to be displayed on drinks menus and kept behind the bar. Given the differences in alcohol content and taste of the drinks, I consider that if there is any competition between the goods, it will be very slight. I do not consider the goods to be complementary. Overall, I consider the goods to be similar to a low degree.

Class 43:

Bar services; cocktail bar services; alcoholic beverage service; bar [...] services.

105. In *Group Lottus Corp., SL v OHIM*, Case T-161/07, the GC held that there was a "lesser" [low] degree of similarity between beers and bar, nightclub and cocktail

bar services. While this caselaw relates to beer, I consider many of the same considerations can be applied to the Opponent's "whisky". The nature of the goods and services clearly differ but the user of the goods and services will likely overlap. While the Opponent's 'whisky' is commonly purchased from retail establishments, it may also reach the market through the type of services listed above. There is a degree of competition in that a consumer may choose to purchase whisky from a shop to drink at home, rather than choosing to engage in a service which provides drinks (including whisky). While whisky is likely to be provided through the Holder's services, I do not consider the goods to be complementary in the way set out in caselaw. In the absence of any evidence to the contrary, I do not consider it common in trade for the types of services listed to serve their own branded whisky; I consider it more typical for bar and alcoholic beverage services to provide products produced by third parties. Overall, I consider the goods and services to be similar to a low degree.

Services for providing food and beverages; Restaurant services; [...] restaurant services; hospitality services [food and beverages]; food and beverage preparation services; Mobile restaurant services; self-service restaurant services; provision of food and beverages through a mobile truck; itinerant catering services; catering services; Cafés, café services; mobile cafe services for the provision of food and beverages.

106. The Holder's above services all pertain to the preparation and/or provision of food and beverages, which I consider are broad enough to encompass the provision of alcoholic beverages, including the Opponent's "whisky". I consider the goods and services overlap in user at a general level, however they differ in nature, method of use and purpose. I say this because the Opponent's goods are a type of beverage, while the Holder's services relate to the preparation or provision of foods and drinks. Whisky may be supplied to consumers through licensed cafés, restaurant, hospitality services or other food and beverage services. However, in the absence of any evidence to the contrary, I do not consider it customary in trade for an undertaking responsible for whisky to also be responsible for the provision of restaurants, or services which provide and/or prepare both food and drinks. I do not consider the goods and services to be in competition. While the Opponent's

‘whisky’ may be provided through the Holder’s services, I do not consider them to be complementary in the way set out in caselaw. In view of this, I consider the goods and services to be similar to a low degree.

Restaurant (food) services; take-away services [preparation of meals].

107. The Holder’s above restaurant services pertain specifically to the provision or preparation of food/meals. As the Opponent’s goods are all alcoholic beverages, I consider they differ in nature, purpose and method of use to the Holder’s above services. While the user would overlap at a very general level, this is insufficient to engage a finding of similarity. I do not consider the goods and services to be in competition, nor are they complementary in the way set out in caselaw. Overall, I consider the goods and services to be dissimilar.

Online booking of restaurant tables; reservation services for restaurants and bars.

108. The Holder’s above services relate to the reservation or online booking of restaurants and bars. Bearing in mind that the Opponent’s goods are all alcoholic beverages, the goods and services clearly differ in nature, purpose and method of use. I do not consider that booking/reservation services are in competition, nor are they complementary to alcoholic beverages. Overall, I consider the goods and services to be dissimilar.

Information services for restaurants and bars; information, advice and consultancy services relating to any of the above (including virtual, online or augmented reality services).

109. Although the Holder’s above services include those relating to bars or the provision of alcohol, I bear in mind that they remain primarily information/advisory/consultancy services. They therefore differ in nature, purpose and method of use to the Opponent’s goods, which are all alcoholic beverages. There will be an overlap in user at a very general level, for example where information services pertaining to bars may be accessed by members of

the general public who also drink alcoholic beverages, however, this is insufficient in itself to engage a finding of similarity. I do not consider that the Opponent's whisky or blended whisky are in competition with the Holder's above information, advisory or consultancy services, even where they relate to bars or the provision of alcoholic beverages. Neither do I consider the goods and services to be complementary in the way set out in caselaw. Overall, I consider the goods and services to be dissimilar.

110. It is a prerequisite of section 5(2)(b) of the Act that the goods and services be identical or at least similar. As per *eSure*,¹⁸ in relation to the services which I have found to be dissimilar, as there can be no likelihood of confusion under section 5(2)(b) of the Act, I will take no further account of such services, with the opposition failing to that extent. The opposition under section 5(2)(b) of the Act, therefore, fails at this juncture for the following services:

Class 43:

Restaurant (food) services; take-away services [preparation of meals]; Online booking of restaurant tables; reservation services for restaurants and bars; Information services for restaurants and bars; information, advice and consultancy services relating to any of the above (including virtual, online or augmented reality services).

Average consumer and the purchasing act

111. It is necessary for me to determine who the average consumer is for the goods and services in question; I must then determine the manner in which the goods and services are likely to be selected by the average consumer in the course of trade.
112. 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

¹⁸ *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA

is likely to vary according to the category of goods in question: *Lloyd Schuhfabrik Meyer, Case C-342/97*. In *Hearst Holdings Inc, Fleischer Studios Inc v A. V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

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

113. The average consumer of the goods at issue will be adult members of the general public as well as members of the business community. Various factors are likely to be taken into consideration during the purchasing process, including the cost, taste, alcohol content and ingredients. The goods will be purchased relatively frequently and while the cost is likely to vary, many of the goods will be relatively inexpensive. For the lower priced goods the selection process is likely to be more casual than careful, but for higher priced goods such as relatively expensive bottles of spirits, consumers will pay more attention. Taking into account all of these factors, it is my view that where the average consumer is a member of the general public they will pay around a medium degree of attention.
114. Where the average consumers are owners of businesses such as, for example, bars, public houses, restaurants and nightclubs, the goods are likely to be frequent purchases for the ongoing operation of the business. In addition to the factors considered by the general public during the selection process, these consumers will be acutely aware that the goods they are selecting will be consumed by their customers, as well as the negative impact of choosing the wrong goods for their business. Due to this increased responsibility and liability, it is my view that consumers from the business community will demonstrate at least a medium level of attention when purchasing these goods. However, I bear in mind that the

likelihood of confusion must be assessed from the perspective of the former (the general public) since they are the group who will pay the lower degree of attention.¹⁹

115. The goods will likely be self-selected from the shelves of retail outlets or their online equivalents. Goods such as these are also sold in hospitality settings such as in restaurants, bars, nightclubs and public houses. In these environments, there may be an aural component to the selection process, such as requests to bar and waiting staff. However, even where the goods are ordered in this way, the selection process would still be in the context of a visual inspection of the goods on a drinks' menu, for example, prior to the order being placed. Given the process of selection, the visual impact of the marks is likely to play the greater role, though I do not discount the opportunity for aural recommendations to be made, for example, by word-of-mouth or from a sales person, etc.

116. The average consumer for the services will be members of the general public. Various factors are likely to be taken into consideration during the purchasing process, including the range of drink options, prices, location, and the presentation of the premises. Taking into account all of these factors, it is my view that the average consumer is likely to pay a medium degree of attention.

117. The services will be selected after seeing the mark on signage or on the premises. They may also select the services after seeing advertisements or reviews in printed publications or online via websites and/or social media. Given the process of selection the visual impact of the marks is likely to play the greater role, though I do not discount the opportunity for aural recommendations to be made, for example, by word-of-mouth or from a sales person, etc.

Comparison of marks

118. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and

¹⁹ Case T-356/14, *CareAbout v OHMI - Florido Rodríguez (Kerashot)*, paragraph 25

conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The Court of Justice of the European Union stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

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

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

120. The respective trade marks are shown below:

Opponent's mark	Holder's mark
	

121. 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.

122. The Opponent's mark consists of a black calligraphy style capital letter 'B'. The letter 'B' is made up of two intersecting strokes, one of which extends anticlockwise from the top forming a circular shape which frames the letter. The overall impression lies in the mark as a whole.

123. The Holder's mark consists of a black calligraphy style capital letter 'B'. The letter 'B' is made up of a single continuous stroke which includes a large loop to the back of the letter. The overall impression lies in the mark as a whole.
124. Visually, the marks coincide in that they are capital letter 'B's in a calligraphy style. However, they differ in their construction in that the Opponent's mark is formed from two intersecting strokes, one of which extends around the letter to create a prominent circular flourish, whereas the holder's mark appears to be drawn in a single continuous stroke and lacks that surrounding feature. Despite these differences, the marks share a highly similar overall shape and aesthetic, and I therefore consider them visually similar to a high degree.
125. Aurally, the Holder submits that the letter B in the Holder's mark would be pronounced as 'Breitling' and that the B in the Opponent's mark would be pronounced as 'Ballantine's'.²⁰ However, this would involve an extra analytical step whereby a consumer would see the letter 'B' and associate it with a previously seen word or mark. I have no evidence before me to suggest that the public has been educated to the degree where this would be commonplace. Rather, I consider that for a significant proportion of average consumers, both marks will be pronounced in the ordinary way as the letter 'B'. The presentation of the letter in each mark will not impact the way either mark is pronounced. The marks are, therefore, aurally identical.
126. Conceptually, the marks will both be recognised as the letter 'B' which does not carry any meaning beyond being a letter of the alphabet. The stylisation of the letter in each mark will not convey any particular meaning beyond that of the letter itself. Accordingly, I consider the marks to be conceptually identical.

²⁰ Holder's TM8 and counterstatement, paragraph 10.

Distinctive character of the earlier trade mark

127. The distinctive character of a trade mark can be appraised only, first, by reference to the goods and services in respect of which registration is sought and, secondly, by reference to the way it is perceived by the relevant public – *Rewe Zentral AG v OHIM (LITE)* [2002] ETMR 91. In *Lloyd Schuhfabrik*, the CJEU stated that:

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

In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in 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).”

128. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods and services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use that has been made of it.

129. Earlier in this decision I considered the evidence filed by the Opponent to support genuine use of the mark, which overall I found to be sufficient for that purpose. The Opponent submits that this evidence also demonstrates that their mark has an enhanced level of distinctive character.²¹

130. While I found the Opponent's evidence sufficient to demonstrate proof of use, I must now consider whether it meets the threshold required to demonstrate the mark's distinctiveness has been enhanced through use.

131. The Opponent's evidence provides details of their global market share, however this is not broken down by country, meaning I am unable to discern what market share they occupy within the UK. Similarly, while the Opponent's evidence shows substantial social media engagement (including 4.2 million followers on Facebook), I am unable to identify how many of those 'follows' or 'likes' pertain to UK consumers, and, in some instances, whether they fall within the relevant period. In addition, while the evidence states that the Opponent has won 440 awards and 17 competitions since 1990, it is unclear how many of these relate to the UK market, or fall within the relevant period. Many of the awards demonstrated in evidence are international and as such do not assist in demonstrating enhanced distinctiveness in the UK market.

132. When discounting evidence which falls outside of the relevant period or does not pertain to the UK, I find that it does not establish that the Opponent's mark has acquired an enhanced degree of distinctiveness in relation to the goods at issue. I am therefore of the view that the Opponent's evidence falls short of what would be required to show that the distinctiveness of the mark has been enhanced through use. Consequently, I will now consider the inherent position.

133. I do not consider that the stylised letter 'B' describes or alludes to the goods or services for which the mark is registered. Accordingly, I find the mark meaningless in respect of the same. Whilst the calligraphy type presentation of the mark is noted, it is not particularly striking or memorable. I am of the view that there is nothing especially striking or inventive about a single letter of the alphabet.

²¹ Opponent's written submissions in lieu of a Hearing, paragraph 58.

Accordingly, I find the earlier mark to be inherently distinctive to between a low and medium degree.

Likelihood of Confusion

134. I must now feed all of my earlier findings into the global assessment of the likelihood of confusion, keeping in mind the following factors: i) the interdependency principle, whereby a lesser degree of similarity between the goods and services may be offset by a greater similarity between the marks, and vice versa (*Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*); ii) the principle that the more distinctive the earlier mark is, the greater the likelihood of confusion (*Sabel BV v Puma AG*), and; iii) the factor of imperfect recollection i.e. that consumers rarely have the opportunity to compare marks side by side but must rather rely on the imperfect picture that they have kept in their mind (*Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V.*).

135. There are two types of confusion that may occur. Direct confusion is where the average consumer mistakes one mark for the other, while indirect confusion is where the average consumer recognises that the marks are different, but for some reason assumes that the later mark also identifies the goods or services of the owner of the earlier mark, or that the two undertakings are related: see *L.A. Sugar Limited v Back Beat Inc*, BL O/375/10, paragraph 16.

136. Earlier in this decision, I found that:

- The parties' goods and services range from identical to similar to a low degree.
- The average consumer for the goods and services is the general public and members of the business community who will select the goods primarily by visual means, although I do not discount an aural component.
- I have concluded that the average consumer (bearing in mind that the likelihood of confusion must be assessed from the perspective of the group who will pay the lower degree of attention) will pay a medium degree of attention during the purchasing process.

- The marks are visually similar to a high degree, and aurally and conceptually identical.
- The earlier mark is inherently distinctive to between a low and medium degree. On this point, it is acknowledged that a weaker degree of distinctive character in an earlier mark does not preclude a finding of confusion.²²

137. Taking all of the above into account and bearing in mind that the average consumer rarely has the opportunity to compare marks side-by-side will, to my mind, lead the average consumer to mistake one mark for the other. While the average consumer may remember the letter 'B' is presented in a calligraphy style typeface, I consider it unlikely they will remember the exact combination or curvature of lines forming the letter 'B' in each mark. Accordingly, notwithstanding the earlier mark's lower than medium degree of inherent distinctiveness, taking into account all of the factors listed above, I find that the aural identity of the marks, the identical concept of a single letter 'B' and the highly similar presentation of the marks overwhelm any differences in the specific curvature or exact number of strokes forming the letter B. As such, I find there to be a likelihood of direct confusion for all the opposed goods for which a degree of similarity was found. This remains the case even where the goods and services are similar only to a low degree due to the interdependency principle.

Conclusion

138. The opposition filed under section 5(2)(b) of the Act has been partially successful. Accordingly, subject to any successful appeal of my decision, the Holder's mark:

(a) is hereby refused in respect of the following goods and services:

Class 32:

Beers.

²² *L'Oréal SA v OHIM*, Case C-235/05 P.

Class 33:

Alcoholic beverages (except beer); spirits (beverages); liqueur; wine; cider; alcoholic cocktails; alcoholic essences; alcoholic extracts; anise (liqueur); anisette; aperitifs; arak (arrack); bitters (liqueurs); brandy; curacao; digesters (liqueurs and spirits); distilled beverages; alcoholic beverages containing fruit; kirsch; mead [hydromel]; perry; piquette; pre-mixed alcoholic beverages, other than beer-based; rice alcohol; rum; sake; vodka; whisky; gin.

Class 43:

Bar services; cocktail bar services; alcoholic beverage service; bar and restaurant services; services for providing food and beverages; Restaurant services; hospitality services [food and beverages]; food and beverage preparation services; cafés, café services; mobile cafe services for the provision of food and beverages; mobile restaurant services; self-service restaurant services; provision of food and beverages through a mobile truck; itinerant catering services; catering services.

(b) shall be protected in respect of the following services:

Class 43:

Restaurant (food) services; take-away services [preparation of meals]; Online booking of restaurant tables; reservation services for restaurants and bars; Information services for restaurants and bars; information, advice and consultancy services relating to any of the above (including virtual, online or augmented reality services).

(c) For completeness, I confirm that the IR will also be protected for those goods and services which were not opposed in classes 9, 21, 30, 35, 36, 41 & 43.

Costs

139. The Opponent has enjoyed the greater degree of success and is therefore entitled to a contribution towards its costs. I base the costs awarded on the scale contained in TPN 1/2023. In the circumstances, I award the Opponent the sum of £1100 as

a contribution towards the costs of the proceedings. The sum is calculated as follows:

Official fee	£100
Preparing a statement and considering the other side's counterstatement	£250
Preparing and filing evidence ²³	£400
Preparing written submissions in lieu of a hearing	£350
Total:	£1100

140. I therefore order Breitling SA to pay Allied Domecq Spirits & Wine Limited the sum of £1100. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 25th day of August 2026

E REES

For the Registrar

²³ This award takes into consideration the fact that the other side did not file any evidence or submissions during the evidence rounds.

Annex 1

Class 9:

Instruments for diagnosis [for scientific use]; Nautical apparatus and instruments; surveying apparatus and instruments; photographic apparatus and instruments; optical apparatus and instruments except for glasses and photographic apparatus; measuring apparatus; signal transmission apparatus, naval signalling apparatus, electrical signalling apparatus; speed checking apparatus; inflatable apparatus for life-saving purposes, emergency signal transmitters; audiovisual teaching apparatus; emergency watch; watch with a distress beacon; electronic installations for measuring, display and transmission of data regarding time; speed measuring instruments; time recording apparatus; apparatus for recording, transmission or reproduction of sound or images; portable electronic apparatus providing access to the Internet as well as data transmission and reception; portable computer hardware; connected watches that communicate data to smartphones; smart watches; DVDs and other digital recording media; optical data media; magnetic data media; USB flash drives; optical goods; optical glass filters, optical lenses for sunglasses; spectacles, sunglasses, sports glasses, spectacle frames, spectacle glasses, spectacle cases, optical glasses, computer bags, cases and holders for tablets, cases and holders for portable telephones; leather cases for mobile phones and tablets; Downloadable virtual goods, namely, horological and chronometric instruments and parts thereof, watches, time pieces, precious metals and their alloys, jewelry, precious and semi-precious stones, non-medicated cosmetics and toiletry preparations, non-medicated dentifrices, perfumery and essential oils, scented water and fragrances, bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations, hygiene and beauty care utensils, stickers and temporary tattoos, paper and cardboard, printed matter and printed publications, bookbinding material, photographs, writing instruments, stationery and office requisites (except furniture), drawing materials and materials for artists, paintbrushes, instructional and teaching materials, plastic sheets and bags for wrapping and packaging, bags, leather and imitation leather goods, animal skins and hides, luggage and carrying bags, umbrellas and parasols, walking sticks, whips, harness and saddlery, accessories for animals (collars, leashes, clothing), household or kitchen utensils and containers, cookware and tableware (except forks, knives and spoons), articles for cleaning purposes,

unworked or semi-worked glass (except building glass), glassware, porcelain and earthenware, drinking vessels, furniture, textiles, eyewear, eyeglasses and sunglasses, smart watches, cash registers, calculating devices, computers and computer peripheral devices, diving suits and divers' masks, ear plugs and nose clips for divers and swimmers, gloves for divers, breathing apparatus for underwater swimming, fire-extinguishing apparatus, clothing, footwear, headwear, belts, neckties, gloves, hosiery, scarves and shawls, furs, coffee and artificial coffee, tea, cocoa and chocolate, preparations made from cereals, edible ices, sweeteners, salt, sweets and candy, biscuits, decorations, fruit beverages and fruit juices, syrups and other preparations for making non-alcoholic beverages, mineral and aerated waters, non-alcoholic beverages, beers and alcohol-free beer, non-alcoholic cocktails, alcoholic beverages (except beer), alcoholic preparations for making beverages, aperitifs, liqueur, wine, alcoholic essences and extracts, digesters (liqueurs and spirits), cocktails, rice alcohol, rum, sake, vodka, whisky, gin; downloadable digital files authenticated by non-fungible tokens; film, sound and video recordings; magnetic tapes, audio and video cassettes, vinyl records and other analogue recording media; compact discs; digital music and podcasts (downloadable); mobile telephone ringtones (downloadable); publications (downloadable); computer software; application software; computer game software; eyeglasses; cases for sunglasses and eyeglasses; cases for mobile phones; smart watches; mobile phones; pedometers; decorative magnets; parts and fittings for the aforementioned goods.

Class 21:

Household or kitchen utensils and containers; Cookware and tableware, except forks, knives and spoons; cosmetic utensils, hygiene and beauty utensils, namely abrasive gloves for skin exfoliation, non-electric make-up removing apparatus, make-up applicators in the form of rods, cosmetic applicators, cleaning combs, brushes for personal hygiene, scouring sponges, powder compacts, make-up brushes, toiletry bags [filled], cosmetic sponges, deodorizing apparatus for personal use, exfoliating brushes, exfoliating pads, eyebrow brushes, eyelash brushes, facial polishing pads, foam toe separators for pedicure, lip brushes, make-up artist belts, make-up sponges, mascara brushes, nail brushes, microdermabrasion sponges for cosmetic use, perfume sprays, perfume bottles, scalp scrapers, shaving brushes, skin cleansing brushes; combs and sponges; brushes (except paintbrushes); articles for cleaning

purposes; glassware, porcelain and earthenware; beer mugs; heat-insulated containers for beverages; tea caddies; bottles; rags [cloths] for cleaning; glasses (receptacles); drinking horns; ice cube molds; soap dispensers; crockery; drinking bottles for sports; coolers [ice pails]; cups; shaving brushes; shaving brush stands; candy boxes; coasters, neither of paper nor of textile materials; polishing gloves; drinking glasses; isothermic bags; lunch boxes; money boxes; toothbrushes; combs; hair brushes; water bottles; shoe horns; vases; bowls; paper plates; table cups of paper; plastic cups; figurines made of porcelain, ceramic, terracotta, crystal or glass; works of art made of porcelain, ceramic, terracotta, crystal or glass; gloves for gardening; perfume bottles; perfume vaporizers; perfume burners; food containers; drinking vessels; bathroom accessories and dispensers, namely bath brushes, bath sponges, bath towel holders, bathroom cup holders, toilet and bathroom cleaning utensils, dental floss dispensers, hair spray dispensers; candlesticks; plant pots; parts and fittings for the aforementioned goods.

Class 30:

Coffee, tea, cocoa and coffee substitutes; chocolate; rice; tapioca and sago; flour and preparations made from cereals; bread, pastry and confectionery products; edible ices; sugar, honey, golden syrup; yeast, baking powder; salt; mustard; vinegar, sauces (condiments); spices; ice for refreshment; sweets (non-medicated); ice cream; sherbets [ices]; frozen yogurt (edible ices); cakes; cake mixes; cookies (biscuits); cookie mixes; confectionery for decorating Christmas trees; confectionery; propolis; candy; edible confectionery and chocolate ornaments; food powders made from cereals and seeds for food preparation; flavorings for foods; cereal bars; flavorings for beverages, other than essential oils.

Class 32:

Mineral and aerated waters and other non-alcoholic beverages; Fruit beverages and fruit juices; syrups and other preparations for making beverages; waters; flavored waters; tonic water; non-alcoholic preparations for making beverages; beers; alcohol-free beer, non-alcoholic cocktails; non-alcoholic aperitifs; cider, non-alcoholic.

Class 33:

Alcoholic beverages (except beer); Spirits (beverages); liqueur; wine; cider; alcoholic cocktails; alcoholic essences; alcoholic extracts; anise (liqueur); anisette; aperitifs; arak (arrack); bitters (liqueurs); brandy; curacao; digesters (liqueurs and spirits); distilled beverages; alcoholic beverages containing fruit; kirsch; mead [hydromel]; perry; piquette; pre-mixed alcoholic beverages, other than beer-based; rice alcohol; rum; sake; vodka; whisky; gin.

Class 35:

Presentation of timepieces and jewelry products on all communication media for retail sale; Online advertising; providing information and advice to consumers concerning clocks and watches, jewelry and articles to be sold online; retail sale services connected with the sale of jewelry and timepieces, via global computer networks, by catalog, by mail and via other electronic means; customer loyalty services and customer club services for commercial, promotional or advertising purposes; membership club services in the nature of providing discounts to members of night clubs and restaurants; retail services in relation to downloadable virtual goods, namely, horological and chronometric instruments and parts thereof, watches, timepieces, precious metals and their alloys, jewelry, virtual precious and semi-precious stones, non-medicated cosmetics and toiletry preparations, non-medicated dentifrices, perfumery and essential oils, scented water and fragrances, bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations, hygiene and beauty care utensils, stickers and temporary tattoos, paper and cardboard, printed matter and printed publications, bookbinding material, photographs, writing instruments, stationery and office requisites (except furniture), drawing materials and materials for artists, paintbrushes, instructional and teaching materials, plastic sheets and bags for wrapping and packaging, bags, leather and imitation leather goods, animal skins and hides, luggage and carrying bags, umbrellas and parasols, walking sticks, whips, harness and saddlery, accessories for animals (collars, leashes, clothing), household or kitchen utensils and containers, cookware and tableware (except forks, knives and spoons), articles for cleaning purposes, unworked or semi-worked glass (except building glass), glassware, porcelain and earthenware drinking vessels, furniture, textiles, eyewear, eyeglasses and sunglasses, smart watches, cash registers, calculating devices, computers and

computer peripheral devices, diving suits and divers' masks, ear plugs and nose clips for divers and swimmers, gloves for divers, breathing apparatus for underwater swimming, fire-extinguishing apparatus, clothing, footwear, headwear, belts, neckties, gloves, hosiery, scarves and shawls, furs, coffee and artificial coffee, tea, cocoa and chocolate, preparations made from cereals, edible ices, sweeteners, salt, sweets and candy, biscuits, decorations, fruit beverages and fruit juices, syrups and other preparations for making non-alcoholic beverages, mineral and aerated waters, non-alcoholic beverages, beers and alcohol-free beer, non-alcoholic cocktails, alcoholic beverages (except beer), alcoholic preparations for making beverages, aperitifs, liqueur, wine, alcoholic essences and extracts, digesters (liqueurs and spirits), cocktails, rice alcohol, rum, sake, vodka, whisky, gin.

Class 36:

Financial and monetary services; Financial investment services; venture capital financing; insurance services; insurance brokerage; insurance brokerage services; insurance services relating to travel; fundraising; financial sponsorship; issue and redemption of tokens of value; non-fungible token based payment verification services; financial services relating to virtual goods, digital collectibles and non-fungible tokens; investment of funds for charitable purposes; real estate consultancy services; real estate management; rental of real estate; providing information to members of a club in the field of real estate; information, advisory and consultancy services relating to all the aforesaid.

Class 41:

Education; training; entertainment (excluding casino games and games of chance); sporting and cultural activities; commercial teaching services; entertainment club services; organization of entertainment events; preparation of film events, music events, cultural and sporting events and live entertainment events, organization of recreational events; organization of nightclubs, museum services (presentations, exhibitions); organization and management of conferences, courses and congresses; conducting of training workshops; publication services; organization of competitions (excluding casino games and games of chance); organization of cultural events; organization of receptions and parties; organization of sporting events; nightclub entertainment; online entertainment services; sports club services [health and fitness

training]; sports club services [fitness and health]; personal trainer services [fitness training]; entertainment services via social clubs; live entertainment; live music concerts; organization of live shows; entertainment services for companies; guest reception service (entertainment); interactive entertainment services; cinematographic entertainment services; providing of recreation facilities; organization of sports competitions; timing of sports events; provision of non-downloadable electronic publications online; entertainment services, namely virtual and/or online, and/or augmented reality services relating to all of the above; information, advice and consultancy services relating to all of the above.

Class 43:

Services for providing food and beverages; restaurant services; bar services; cocktail bar services; cafés, café services; catering services; restaurant (food) services; food and beverage preparation services; self-service restaurant services; hotel services; accommodation agency services [hotels, boarding houses]; Rental of rooms as temporary accommodation; temporary accommodation reservation; rental of holiday accommodation; hospitality services [temporary accommodation]; hospitality services [food and beverages]; itinerant catering services; mobile restaurant services; mobile cafe services for the provision of food and beverages; provision of food and beverages through a mobile truck; online booking of restaurant tables; alcoholic beverage service; take-away services [preparation of meals]; private catering services for members; private bar services for members; guest houses; restaurant services with possibility of home delivery; providing campground facilities; reservation of temporary accommodation via the Internet; agency services for booking temporary accommodation; private residence club services, namely providing temporary accommodation for club members; retirement home services; day-care centers; animal boarding services; rental of chairs, tables, table linen and glassware; rental of cooking apparatus; rental of drinking water fountains (dispensers); rental of lighting apparatus; temporary accommodation; bar and restaurant services; catering services; information services for restaurants and bars; temporary accommodation reservation; reservation services for restaurants and bars; furniture rental; lamp and lighting rentals; information, advice and consultancy services relating to any of the above (including virtual, online or augmented reality services).