

O/0775/26

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. 4164075
IN THE NAME OF RUTH SPARKES
TO REGISTER THE FOLLOWING TRADE MARK:**



IN CLASSES 9, 41, AND 44

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 454599
BY QUIN B.V.**

Background and pleadings

1. Ruth Sparkes (“the applicant”) applied to register the trade mark shown on the front cover of this decision (“the applicant’s mark”) in the UK on 23 February 2025, under number 4164075. It was accepted and published in the Trade Marks Journal on 7 March 2025 in respect of the following goods and services:

Class 9: *Software; Computer software; Plugin software; Computer application software; Educational computer software; Mobile software.*

Class 41: *Health and wellness training; Health education; Education services relating to health.*

Class 44: *Health counselling; Health care.*

2. On 9 June 2025, Quin B.V. (“the opponent”) opposed the trade mark on the basis of section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opposition is directed at all the goods and services. The opponent relies upon its UK trade mark **Quin** (“the opponent’s mark”). The opponent’s mark was filed on 5 September 2019 and became registered on 23 June 2020. It stands registered for the following goods and services, all of which are relied upon for opposition purposes:

Class 9: *Self-learning and artificial intelligence software for healthcare; health monitoring software; downloadable software and application software for mobile phones and other digital devices for obtaining, registering, managing, checking and analyzing medical information and medical (research) data; downloadable software and application software for mobile telephones and other digital devices for determining triage, diagnoses, prognoses and treatment processes of patients, the aforementioned software also to be used in combination with GP information systems (HIS); mobile applications; all the aforementioned products in the medical and pharmaceutical fields.*

Class 35: *Compilation of statistics and management of data files in the context of health mapping and monitoring.*

Class 42: *IT consultancy, advisory and information services; development, programming, implementation, provision and maintenance of software, also for*

platforms, software applications, mobile applications, web applications and portals; platforms for artificial intelligence as software as a service (SaaS); hosting services and providing software (SaaS) and rental of software, in particular for medical applications; platform as a service (PaaS); hosting a platform with pharmaceutical and medical information as well as health management information; information technology services for the pharmaceutical and healthcare industries; design and development of software for use with medical technology; providing non-downloadable software, including via a platform, for obtaining, registering, managing, checking and analyzing medical information and medical (research) data, including that of patients; providing non-downloadable software, including through a platform, for determining triage, diagnoses, prognoses and treatment processes of patients; providing non-downloadable software, including through a platform, to facilitate health management and self-care to consumers and patients; medical and pharmaceutical research services; computer programming for medical applications; electronic storage of medical records; leasing of computer hardware and software for medical imaging; advice and information in relation to the aforementioned services; all the aforesaid services focused on medical and pharmaceutical matters.

Class 44: *Healthcare for people; medical services; providing information, advice and data on medical imaging; providing medical information, advice and data, including through a platform, on health management and self-care, including to consumers and patients; medical health assessments; medical consultation; performing diagnostics for diseases (also through artificial intelligence software); health risk assessment studies; medical advice whether or not provided on the basis of predictive (artificial intelligence) software; providing medical information, treatment plans and medical diagnoses and prognoses; medical analysis for the diagnosis, prognosis and treatment of persons; medical analysis, diagnosis, prognosis and treatment processes based on self-learning and artificial intelligence software; providing information to patients in the field of drug administration; all the aforesaid services also provided electronically, such as via the Internet.*

3. As the filing date of the opponent's mark is earlier than the filing date of the applicant's mark, the opponent's mark constitutes an earlier mark in accordance with section 6 of the Act. However, as it had not been registered for five years or more at the filing date of the application, it is not subject to the proof of use requirements specified within section 6A of the Act. As a consequence, the opponent may rely upon all of the goods and services identified without having to establish genuine use.

4. In its statement of grounds, the opponent argues that the competing marks are highly similar, and that the parties' goods are identical or similar. On this basis, the opponent submits that there is a likelihood of confusion, including a likelihood of association.

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

6. The opponent is professionally represented by Withers & Rogers LLP, whereas the applicant is not professionally represented. Neither party filed evidence. A hearing was not requested, but both parties filed submissions in lieu. This decision is taken following careful consideration of all the papers before me.

Relevance of EU law

7. 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 2018¹ requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

Section 5(2)(b)

8. Section 5(2)(b) of the Act reads as follows:

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

(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

¹ As amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023

public, which includes the likelihood of association with the earlier trade mark.”

9. Section 5A states: [...] “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.”

10. 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*:²

- (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, in certain circumstances, be dominated by one or more of its components;

² [2025] UKSC 25

- (f) and beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;
- (g) a lesser degree of similarity between the goods or services may be offset by a greater degree of similarity between the marks, and vice versa;
- (h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;
- (i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;
- (j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;
- (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

11. In *Canon*,³ the Court of Justice of the European Union (“CJEU”) stated, at paragraph 23 of its judgment, that when considering whether goods and services are similar, all the relevant factors relating to the goods and services should be taken into account. The CJEU stated that those factors include their nature, intended purpose, method of use and whether they are in competition with each other or are complementary.

12. The relevant factors identified by Jacob J. (as he then was) in *Treat*⁴ for assessing similarity were:

³ Case C-39/97

⁴ [1996] R.P.C. 281

- (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.

13. In *Kurt Hesse v OHIM*,⁵ 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 Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*,⁶ the General Court (“GC”) stated that “complementary” means:

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

14. In *Avnet Incorporated v Isoact Limited*,⁷ Jacob J. stated:

“In my view, specifications for services should be scrutinised carefully and they should not be given a wide construction covering a vast range of activities. They

⁵ Case C-50/15 P

⁶ Case T-325/06

⁷ [1998] F.S.R. 16

should be confined to the substance, as it were, the core of the possible meanings attributable to the rather general phrase.”

15. In *Gérard Meric v OHIM*,⁸ the GC confirmed that even if goods and services are not worded identically, they can still be considered identical if one term falls within the scope of another (or vice versa):

“29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 *Institut fur 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.”

16. The goods and services to be compared are as follows:

The opponent's goods and services	The applicant's goods and services
<u>Class 9</u>: Self-learning and artificial intelligence software for healthcare; health monitoring software; downloadable software and application software for mobile phones and other digital devices for obtaining, registering, managing, checking and analyzing medical information and medical (research) data; downloadable software and application software for mobile telephones and other digital devices for determining triage, diagnoses, prognoses and treatment processes of patients, the aforementioned software also to be used in combination with GP information systems (HIS); mobile applications; all the aforementioned products in the medical and pharmaceutical fields.	<u>Class 9</u>: Software; Computer software; Plugin software; Computer application software; Educational computer software; Mobile software. <u>Class 41</u>: Health and wellness training; Health education; Education services relating to health. <u>Class 44</u>: Health counselling; Health care.

⁸ Case T- 133/05

Class 35: *Compilation of statistics and management of data files in the context of health mapping and monitoring.*

Class 42: *IT consultancy, advisory and information services; development, programming, implementation, provision and maintenance of software, also for platforms, software applications, mobile applications, web applications and portals; platforms for artificial intelligence as software as a service (SaaS); hosting services and providing software (SaaS) and rental of software, in particular for medical applications; platform as a service (PaaS); hosting a platform with pharmaceutical and medical information as well as health management information; information technology services for the pharmaceutical and healthcare industries; design and development of software for use with medical technology; providing non-downloadable software, including via a platform, for obtaining, registering, managing, checking and analyzing medical information and medical (research) data, including that of patients; providing non-downloadable software, including through a platform, for determining triage, diagnoses, prognoses and treatment processes of patients; providing non-downloadable software, including through a platform, to facilitate health management and self-care to consumers and patients; medical and pharmaceutical research services; computer programming for medical applications; electronic storage of medical*

records; leasing of computer hardware and software for medical imaging; advice and information in relation to the aforementioned services; all the aforesaid services focused on medical and pharmaceutical matters.

Class 44: Healthcare for people; medical services; providing information, advice and data on medical imaging; providing medical information, advice and data, including through a platform, on health management and self-care, including to consumers and patients; medical health assessments; medical consultation; performing diagnostics for diseases (also through artificial intelligence software); health risk assessment studies; medical advice whether or not provided on the basis of predictive (artificial intelligence) software; providing medical information, treatment plans and medical diagnoses and prognoses; medical analysis for the diagnosis, prognosis and treatment of persons; medical analysis, diagnosis, prognosis and treatment processes based on self-learning and artificial intelligence software; providing information to patients in the field of drug administration; all the aforesaid services also provided electronically, such as via the Internet.

17. In its submissions in lieu, the opponent submits that the parties' goods in class 9 and the services in class 44 are identical under the principle in *Meric*.⁹ It also argues that the applicant's services in class 41 are similar to the opponent's goods in class 9. This is on the basis that, "[w]hilst the nature may differ, the trade channels (i.e. doctors, medical professionals and/or health professionals...), purpose (to assist with informing

⁹ Page 5 of the opponent's submissions in lieu

and educating consumers) and end user (those looking to be educated or trained) ... are the same”.¹⁰ Alternatively, it also submits that its services in class 42 are similar to the applicant’s services in class 41 on the basis that “the trade channels (i.e. doctors, medical professionals and/or health professionals...), purpose (to assist with informing and educating consumers) and end user (those looking to be educated or trained) ... are the same”.¹¹

18. In her counterstatement,¹² the applicant submits that the parties’ goods and services “differ significantly”. She argues that her company is a “UK-based, AI-powered support chatbot for children and young people in schools”. She also submits that the opponent “operates a Dutch digital health platform that offers symptom checking and GP access tools”. She therefore argues that “[i]ts clinical services, purpose and user base are entirely distinct from those of Quinly”.

19. Insofar as the applicant’s comments regarding the different contexts that the parties’ goods and services are used within are concerned, as per the CJEU judgement in *O2 Holdings Limited, O2 (UK) Limited v Hutchison 3G UK Limited*¹³ (particularly paragraph 66), it is necessary to consider all the circumstances in which the applicant’s mark might be used. As a result, even though the applicant has suggested that the parties’ goods and services are used in different commercial contexts, my assessment must take into account only the opponent’s specification and any potential conflict with the applicant’s specification. Any differences between the actual goods and services provided by the parties are not relevant unless those differences are apparent from the competing marks and their specifications. Furthermore, the applicant’s comments regarding the opponent’s platform being Dutch can have no bearing on my assessment. This is because the opponent’s mark has been registered for less than five years, and therefore the opponent was not required to show use of its mark in the UK. As a registered national UK trade mark, it has protection in the UK.

¹⁰ As above

¹¹ Page 6 of the opponent’s submissions in lieu

¹² At Q8

¹³ Case C-533/06

20. For the purposes of comparing 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.¹⁴ I have therefore assessed the applicant's goods and services by dividing the terms into groups as per below.

Class 9:

Software.

21. I am of the view that the applicant's wide goods include the opponent's narrower software goods (such as *health monitoring software*). The parties' goods are therefore identical under the principle in *Meric*.

Computer software; Plugin software; Computer application software.

22. It is my view that these software goods include *health monitoring software*, which may be supplied as computer or plug-in software, and vice versa. The parties' goods are therefore identical under the principle in *Meric*.

Educational computer software.

23. It is my view that the opponent's term *self-learning [...] software for healthcare* is included in the applicant's term. The parties' goods are therefore identical under the principle in *Meric*.

Mobile software.

24. It is my understanding that mobile applications are a type of software. As such, the applicant's broader goods include the opponent's narrower term *mobile applications*. The parties' goods are therefore identical under the principle in *Meric*.

Class 41:

Health and wellness training; Health education; Education services relating to health.

¹⁴ *Separode Trade Mark* (BL O/399/10) and *BVBA Management, Training en Consultancy v. Benelux-Merkenbureau* [2007] ETMR 35 at paragraphs 30 to 38

25. It is considered that the applicant's services are similar to the opponent's services *providing medical information, advice and data, including through a platform, on health management and self-care, including to consumers and patients* in class 44. The services broadly relate to healthcare or medical issues, although the opponent's services informational or advisory in nature whereas the applicant's services are educational. The broad purpose of the services overlaps as they both relate to giving healthcare information to the user, although the core purpose of the applicant's services is specifically used to train the user in the vocation of healthcare, whereas the opponent's services are used to inform users about health. Although the applicant's services will be primarily used by healthcare students or professionals, it is my view that they will also be used by members of the general public who may wish to learn about healthcare. There is therefore an element of overlap with the opponent's services, which will also primarily be used by members of the public interested in healthcare. It is my view that the average consumer will be aware of the close relationship which may exist between the providing medical information, advice and data, and education services relating to healthcare (such as a university hospital/teaching hospital, which will offer both services). I am of the view that there will therefore be a perceived concurrence of channels of trade between the parties' services. However, they are not complementary as one is not essential for the other. Furthermore, I am of the view that they are not in competition with each other, as users will not typically substitute one for the other. Taking these factors into account, I find that there is a medium degree of similarity between the services. I have also considered the opponent's other goods and services, but it is my view that none of them put the opponent in a more favourable position.

Class 44:

Health counselling.

26. I am of the view that the applicant's term *health counselling* is included as a narrower type of services within the opponent's term *healthcare for people*. The services are therefore identical under the principle in *Meric*.

Health care.

27. It is my view that the applicant's wider term *health care* includes the opponent's term *healthcare for people*. The services are therefore identical under the principle in *Meric*.

Average consumer and the purchasing act

28. In *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc & Anor*,¹⁵ the Supreme Court approved the comments of Arnold LJ in *Lidl Great Britain Ltd & Anor v Tesco Stores Ltd & Anor (Rev1)*,¹⁶ where he pointed out that:

- (a) Consumers who are ill-informed or careless, or consumers with specialised knowledge or who are excessively careful are excluded from consideration;
- (b) The average consumer provides a standard which enables the courts to strike a balance between the competing interests involved, such as trade mark owners, their competitors and consumers;
- (c) The average consumer is neither a single hypothetical person nor a mathematical average; assessment from the perspective of the average consumer does not involve a statistical test. There is no single meaning rule and if, having regard to the perceptions and expectations of the average consumer, the court considers that a significant proportion of the relevant public is likely to be confused, a finding of infringement may properly be made;
- (d) Assessment from the perspective of the average consumer is intended to facilitate adjudication of trade mark disputes by providing an objective criterion, by promoting consistency of assessment and by enabling courts and tribunals to determine such issues so far as possible without the need for evidence;

¹⁵ [2025] UKSC 25

¹⁶ [2024] EWCA Civ 262

- (e) The average consumer's level of attention varies according to the category of goods or services in question; and
- (f) the average consumer rarely has the opportunity to make direct comparisons between trade marks (or between trade marks and signs) and must instead rely upon the imperfect picture of the trade mark they have kept in their mind.

29. In its submissions in lieu, the opponent argues that the “goods and services in question are available at a range of price points but are all intended for use by the general public, as well as professionals”.¹⁷ It also argues that “[g]iven this variation in pricing, the level of attention paid by consumers will differ accordingly and may range from low to high”.¹⁸ The applicant does not specifically comment on the level of attention paid by the average consumer.

30. The average consumer for the software goods will be members of the general public, as well as professional users. The cost of purchase and frequency of purchase will vary depending on the type of software. Several factors may influence the average consumer when purchasing the goods, such as useability, technical function, and the compatibility of the software with existing systems. Based on these factors, I find that the average consumer is likely to pay a medium level of attention when purchasing the goods, although this will be higher for trade professionals. I bear in mind that in relation to the assessment of the likelihood of confusion, it is the group of consumers with the lowest level of attention which must be taken into consideration.¹⁹ The goods will be selected from specialist retailers or online. The customer will self-select the goods by selecting the image of their desired product when purchasing online. The visual component will therefore dominate the purchasing process, but I do not discount aural considerations, such as word-of-mouth recommendations, or placing telephone orders.

31. The average consumer for the services will be the public at large, as well as trade or professional customers. depending on the type of services at issue. Several factors

¹⁷ Opponent's submissions in lieu, page 6

¹⁸ As above

¹⁹ See Case T-247/12, *Argo Group International Holdings Ltd. v OHIM* and *Idem* T -356/14 [25]-[26]

may influence consumers, such as the expertise and reputation of the organisation providing the services, the availability of the provider, and the suitability for their needs. Taking into account all of these factors, it is my view that the average consumer is likely to pay a medium to high degree of attention, with professional users being on the higher end of the scale.²⁰ The consumer will choose the services 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. The visual component is therefore likely to dominate the selection process, but I also do not discount the role that aural selection may play, especially when receiving word-of-mouth recommendations and when discussing the services with others via the telephone.

Comparison of marks

32. 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 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 CJEU stated at paragraph 34 of its judgment in *Bimbo SA v OHIM*²¹ 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.”

33. 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.

²⁰ See *Argo Group* cited above

²¹ Case C-591/12P

34. The respective trade marks are shown below:

The opponent's mark	The applicant's mark
Quin	

35. Neither party makes any specific submissions on the marks' distinctive and dominant components.

36. The opponent's mark is a plain word mark which solely consists of the word "Quin". As a word-only mark with no additional elements, the overall impression of the opponent's mark lies in the word "Quin".

37. The applicant's mark is a figurative mark. Whilst some consumers may view the mark as a figurative element in orange/red next to the letters "uinly" in grey, I am of the view that these consumers would not constitute a significant proportion of consumers. Instead, it is my view that a significant proportion of consumers will read the mark in totality as the word "Quinly", as they will perceive the mark to consist of a stylised letter "Q" followed by the letters "uinly". With no other elements within the mark, I am of the view that the overall impression of the applicant's mark lies in the word "Quinly".

Visual comparison

38. In its submissions in lieu, the opponent submits that "consumers tend to recall the initial element of a mark most readily", and that the additional letters "-LY" in the applicant's mark "do not create a significant visual... difference".²² In her counterstatement, the applicant submits that her mark has "unique typography and branding, and contains the suffix "-ly", which changes its look".²³

39. I bear in mind that the beginnings of marks tend to have more visual impact than the ends.²⁴ The competing marks are visually similar as the opponent's mark is the word "Quin", which is identical to the first four letters in the applicant's mark. The

²² Opponent's submissions in lieu, page 4

²³ Applicant's counterstatement, Q8

²⁴ See paragraph 81 of *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02.

competing marks differ visually as the applicant's mark also contains the suffix "-ly" and the highly stylised letter 'Q', which do not feature in the opponent's mark. Bearing in mind my analysis of the marks' overall impressions, I am of the view that the marks are visually similar to a medium degree.

Aural comparison

40. In its submissions in lieu, the opponent submits that "the respective marks are ...aurally highly similar". In her submissions in lieu, the applicant submits that "[t]he suffix LY changes pronunciation".

41. The opponent's mark is a one-syllable word which will be pronounced as "Quin". The applicant's mark is a two-syllable word which will be pronounced as "Quin-ly". The competing marks are therefore aurally similar as the opponent's mark is identical to the first syllable of the applicant's mark. The competing marks differ aurally as the applicant's mark also contains the second syllable "-ly" at the end of the mark (where aural differences may have less impact).²⁵ Bearing in mind my analysis of the marks' overall impressions, I am of the view that the marks are aurally similar to a medium to high degree.

Conceptual comparison

42. In its submissions in lieu, the opponent submits that its mark "Quin" will be understood as "a forename, a surname or used as a noun to identify a quintuplet".²⁶ It argues that the marks are "conceptually neutral" on the basis that the applicant's mark "is a fanciful word that has no meaning".²⁷ The applicant does not specifically comment on the level of conceptual similarity between the competing marks.

43. The opponent's suggestions that "Quin" will be understood either as a name or as referring to a quintuplet are both consistent with my own understanding of "Quin". It is my view that a significant proportion of average consumers in the UK will primarily understand the opponent's mark "Quin" as a name. However, if I am wrong in this

²⁵ *El Corte Inglés*, cited above

²⁶ Opponent's submissions in lieu, page 4

²⁷ *Ibid.*

finding, I am of the view that a significant proportion of consumers will understand the opponent's mark "Quin" as relating to "quintuplet".

44. Notwithstanding the established principle that consumers normally perceive a trade mark as a whole, consumers will break down the mark into verbal elements which suggest a concrete meaning or resemble words known to them (*Usinor SA v OHIM*).²⁸ Consequently, it is my view that the presence of 'Quin' at the beginning of the applicant's mark will be recognised by a significant proportion of consumers and will attach the same meaning in the same way as the opponent's mark 'Quin', i.e. as a name or as relating to quintuplet, along with the addition of the suffix "-ly". Consequently, insofar as the marks as wholes convey any concept, they are identical.

Distinctive character of the earlier mark

45. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*,²⁹ the CJEU stated that:

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

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

²⁸ Case T-189/05

²⁹ Case C-342/97

originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

46. Registered trade marks possess various degrees of inherent distinctive character; marks which are suggestive or allusive of a characteristic of the goods and services tend to be at the lower end of the scale, whereas invented words with no allusive qualities tend to be at the higher end of the scale. A range of marks will fall in between, such as dictionary words with no obvious connection to the goods and services.

47. Although the distinctiveness of a mark can be enhanced by virtue of the use made of it, the opponent has not filed any evidence of use. As such, I have only the inherent position to consider.

48. In their submissions, neither party comments on the level of inherent distinctiveness of the opponent’s mark. As stated previously, the word is likely to be understood by a significant proportion of consumers either as a name or by a significant proportion of consumers as relating to “quintuplet”. Even if the word is understood by consumers as an abbreviation of the word “quintuplet”, I do not consider that “quin” would be seen as designating the type of goods and services, or even as alluding to them. This is because I have no evidence before me to suggest that any of the goods and services (especially healthcare services in class 44) exist specifically in relation to quintuplets. It is therefore my view that the word “Quin” does not appear to share any descriptive, non-distinctive, or otherwise allusive meaning in relation to the goods and services. Consequently, I find that it has a medium level of inherent distinctive character.

Global assessment – conclusions on likelihood of confusion

49. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods and services down to the responsible undertakings being the same or related. There is no set formula for establishing a likelihood of confusion between marks; it is a global assessment where a number of factors need to be borne in mind.

50. One such factor is the interdependency principle, i.e. a lesser degree of similarity between the competing marks may be offset by a greater degree of similarity between the respective goods and services, and vice versa. As mentioned above, it is necessary for me to keep in mind the distinctive character of the applicant's mark, the average consumer for the goods and services, and the nature of the purchasing process. In doing so, I must be mindful that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that they have retained in their mind.

51. In its submissions in lieu, the opponent submits that, due to the high degree of similarity between the respective marks, there is both the risk of direct and indirect confusion by the average consumer.³⁰ In her submissions in lieu, the applicant submits that "[t]aking the marks and applied for goods and services as a whole, there is no likelihood of confusion, whether direct or indirect".³¹

52. Earlier in this decision I found that the applicant's class 9 goods and class 44 services are identical to the opponent's goods and services, and the applicant's class 41 services have a medium degree of similarity. The average consumer of the goods and services will be the general public and trade customers. The average consumer is likely to pay a medium degree of attention when selecting the class 9 goods, and a medium to high amount of attention when selecting the class 41 and 44 services, although this will be higher for professional users. The goods and services will primarily be selected through visual means, although I do not discount an aural element to the selection process. I have found the marks to be visually similar to a medium degree, aurally similar to a medium to high degree, and, insofar as the marks convey any concept, they are identical. The earlier mark has a medium level of inherent distinctive character.

53. It is my view that, particularly when accounting for imperfect recollection, I consider that the average consumer may misremember the marks for each other, notwithstanding when the level of attention paid is on the higher end of the scale. It is my view that the identical concept of 'Quin' within the marks creates a conceptual hook which will enable consumers to recall the marks. Furthermore, I am of the view that

³⁰ Page 6 of the opponent's submissions in lieu

³¹ The applicant's submissions in lieu.

consumers will misremember the stylisation of the letter “Q”, and the addition of “-ly”, which is placed at the end of the opponent’s mark where differences are more likely to be overlooked. Moreover, the marks’ level of visual and aural similarities, the medium level of inherent distinctiveness, and the identical nature of the class 9 goods and class 44 services and medium degree of similarity between the class 41 services are all factors which support this finding. Consequently, I find that there exists the likelihood of direct confusion.

Conclusion

54. The opposition under section 5(2)(b) has been successful. Subject to any successful appeal, the application will be refused registration.

Costs

55. The opponent has been successful and is entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 1/2023. In the circumstances I award the opponent the sum of £700 as a contribution towards the cost of the proceedings. The sum is calculated as follows:

Official fees: £100

Preparing a statement: £250

Preparing submissions in lieu £350

56. I therefore order Ruth Sparkes to pay Quin B.V. the sum of £700. 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

K SERRAVALLE

For the Registrar