

O/0784/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00004173223

IN THE NAME OF AIAURA GROUP

TO REGISTER THE FOLLOWING SERIES OF TWO TRADE MARKS:



IN CLASS 09

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. OP000454887

BY AURA BLOCKCHAIN CONSORTIUM

BACKGROUND AND PLEADINGS

1. On 13 March 2025, AIAURA Group (“the Applicant”) applied to register the series of two trade marks shown on the cover page of this decision in the UK. The application was accepted and published in the Trade Marks Journal on 28 March 2025 in respect of the following goods:

Class 09: Software

2. On 26 June 2025, AURA BLOCKCHAIN CONSORTIUM (“the Opponent”) opposed the application under section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opposition is aimed at all of the Applicant’s goods contained within the application.
3. The Opponent relies upon the following International Registrations (the Opponent’s marks):



AURA
BLOCKCHAIN
CONSORTIUM

International Registration designating the UK no. WO0000001713298
(the “298” mark)

UK designation date: 04 October 2022

International Registration date: 04 October 2022

Priority date: 05 April 2022 ¹

Protection conferred date: 31 August 2023

Relying upon all of the goods for which its mark is protected, namely:

Class 09: Software and software applications for tracking and processing customer payments as well as for tracking and procuring goods purchased by the customer; software for the management of multi-modal transport operations and

¹ This is claimed from the Swiss Federal Institute of Intellectual Property under filing no. 784990

the traceability of physical and financial flows; software for the management, supervision and traceability of the goods distribution supply chain; software for managing and checking freight transactions on a blockchain; downloadable electronic publications; downloadable electronic payment software enabling users to purchase goods via the Internet; downloadable computer software enabling cryptocurrency extraction and management; downloadable software for the management, supervision and traceability of product distribution logistics via a cryptocurrency system; software and software applications enabling the authentication of goods; downloadable software that can represent goods virtually, namely, virtual art objects, digital collectibles and non-fungible tokens.



International Registration designating the UK no. WO0000001740514
(the “514” mark)

UK designation date: 13 April 2023

International Registration date: 13 April 2023

Protection conferred date: 16 November 2023

Relying upon all of the goods for which its mark is protected, namely:

Class 09: Software and software applications for tracking and processing customer payments as well as for tracking and supplying products purchased by customers; software for the management of multi-modal transport operations and the traceability of physical and financial flows; software for the management, supervision and traceability of the goods distribution supply chain; software for managing and checking freight transactions on a blockchain;

downloadable electronic publications; downloadable electronic payment software enabling users to purchase goods via the Internet; downloadable computer software enabling cryptocurrency extraction and management; downloadable software for the management, supervision and traceability of product distribution logistics via a cryptocurrency system; software and software applications enabling the authentication of goods; downloadable software that can represent goods virtually, namely, virtual art objects, digital collectibles and non-fungible tokens; virtual reality software; computer programs featuring virtual goods for use in virtual environments; downloadable mobile applications; downloadable digital files authenticated by non-fungible tokens (NFTs); downloadable computer software for use as a digital wallet; downloadable electronic game programs; holograms.

4. By virtue of their earlier filing dates, the above International Registrations constitute earlier marks within the meaning of section 6 of the Act. However, as they had not been protected for five years or more at the filing date of the application, they are not subject to the use requirements specified within section 6A of the Act. Consequently, the opponent may rely upon all of the goods for which the earlier marks are protected without having to establish genuine use.
5. The Opponent submits that the respective marks are visually, aurally and conceptually similar, and that the goods are identical, or alternatively similar to a high degree.
6. The Applicant filed a counterstatement denying that the marks and the goods are similar.

7. The Opponent is represented by Wynne-Jones IP Limited, while the Applicant is unrepresented. Both parties filed evidence but neither requested a hearing. However, each party submitted written submissions in lieu of the same.

EVIDENCE

8. The Applicant's evidence came in the form of the witness statement of Jessica Raby dated 15 December 2025, which is accompanied by four exhibits (exhibit A to D). Ms Raby is the founder and director of the Applicant's company.
9. The Opponent's evidence came in the form of the witness statement of Liam Peters, dated 16 February 2026, which is accompanied by two exhibits (exhibit LP1 and LP2). Mr Peters is a partner and chartered trade mark attorney at the Opponent's representative firm.
10. I do not propose to summarise the evidence and submissions in full, but I can confirm that in reaching this decision, I have taken full account of all the material before me and will refer to it where appropriate.

RELEVANCE OF EU LAW

11. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

DECISION

Section 5(2)(b): legislation and case law

12. The opposition is based upon section 5(2)(b) of the Act which 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 public, which includes the likelihood of association with the earlier trade mark”

13. 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, in certain circumstances, be dominated by one or more of its components;

(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; and

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

Comparison of goods

14. Section 60A of the Act provides:

“(1) For the purpose of this Act goods and services-

(a) are not to be regarded as being similar to each other on the ground that they appear in the same class under the Nice Classification.

(b) are not to be regarded as being dissimilar from each other on the ground that they appear in different classes under the Nice Classification.

(2) In subsection (1), the “Nice Classification” means the system of classification under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, which was last amended on 28 September 1979.”

15. In *Gérard Meric v OHIM*, Case T- 133/05, the General Court (“GC”) stated that:

“29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 *Institut für Lernsysteme v OHIM* – Educational Services (ELS) [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark.”

16. The goods to be compared are:

Opponent’s goods	Applicant’s goods
The “298” mark Class 09: Software and software applications for tracking and processing customer	 Class 09: Software.

payments as well as for tracking and procuring goods purchased by the customer; software for the management of multi-modal transport operations and the traceability of physical and financial flows; software for the management, supervision and traceability of the goods distribution supply chain; software for managing and checking freight transactions on a blockchain; downloadable electronic publications; downloadable electronic payment software enabling users to purchase goods via the Internet; downloadable computer software enabling cryptocurrency extraction and management; downloadable software for the management, supervision and traceability of product distribution logistics via a cryptocurrency system; software and software applications enabling the authentication of goods; downloadable software that can represent goods virtually, namely, virtual art objects, digital collectibles and non-fungible tokens.

The “514” mark

Class 09:

Software and software applications for tracking and processing customer payments as well as for tracking and

supplying products purchased by customers; software for the management of multi-modal transport operations and the traceability of physical and financial flows; software for the management, supervision and traceability of the goods distribution supply chain; software for managing and checking freight transactions on a blockchain; downloadable electronic publications; downloadable electronic payment software enabling users to purchase goods via the Internet; downloadable computer software enabling cryptocurrency extraction and management; downloadable software for the management, supervision and traceability of product distribution logistics via a cryptocurrency system; software and software applications enabling the authentication of goods; downloadable software that can represent goods virtually, namely, virtual art objects, digital collectibles and non-fungible tokens; virtual reality software; computer programs featuring virtual goods for use in virtual environments; downloadable mobile applications; downloadable digital files authenticated by non-fungible tokens (NFTs); downloadable computer software for use as a digital wallet; downloadable electronic game programs; holograms.	
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17. The Opponent submits that the Applicant's goods consist exclusively of "Software" whereas its registrations contain various types of qualified software. Consequently, the Opponent contends that its goods are wholly caught by the Applicant's broad term.
18. The Applicant, on the other hand, submits that it provides AI-driven recruitment software, talent analytics and internal mobility platforms, directed at HR professionals, recruitment agencies and enterprise software buyers, whereas the Opponent provides blockchain authentication and NFT infrastructure directed at luxury goods and supply chain traceability markets. Consequently, the Applicant contends that these goods serve different functions, target different users and operate through entirely unrelated commercial channels. It also states that there is no competition, no complementarity, and no shared consumer between the respective goods.

Software

19. I consider the Applicant's term '*Software*' broad enough to cover the Opponent's goods listed above. It is my view that the Opponent's terms would be included in the more general category contained within the Applicant's specification. The above goods of the Opponent contain a number of various types of software in both registrations and therefore, bearing in mind the principle of *Meric*, are considered identical.
20. Whilst I note the Applicant's submissions regarding the goods that it provides, it is well established that the comparison of goods and services must be conducted on the basis of the specifications relied upon by the parties, rather than by reference to their actual trading activities. The fact that the Applicant may currently provide a narrower range of goods than those covered by its specification is therefore irrelevant to the assessment.

The average consumer and the nature of the purchasing act

21. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question (see *Lloyd Schuhfabrik Meyer*, Case C-342/97).
22. In *Iconix* (cited above), the Supreme Court approved the comments of Arnold LJ in *Lidl Great Britain Ltd & Anor v Tesco Stores Ltd & Anor (Rev1)* [2024] EWCA Civ 262, where he pointed out that:
 - (a) Consumers who are ill-informed or careless, or consumers with specialised knowledge or who are excessively careful are excluded from consideration;
 - (b) The average consumer provides a standard which enables the courts to strike a balance between the competing interests involved, such as trade mark owners, their competitors and consumers;
 - (c) The average consumer is neither a single hypothetical person nor a mathematical average; assessment from the perspective of the average consumer does not involve a statistical test. There is no single meaning rule and if, having regard to the perceptions and expectations of the average consumer, the court considers that a significant proportion of the relevant public is likely to be confused, a finding of infringement may properly be made;
 - (d) Assessment from the perspective of the average consumer is intended to facilitate adjudication of trade mark disputes by providing an objective criterion, by promoting consistency of assessment and by enabling courts and tribunals to determine such issues so far as possible without the need for evidence;

(e) The average consumer's level of attention varies according to the category of goods or services in question; and

(f) the average consumer rarely has the opportunity to make direct comparisons between trade marks (or between trade marks and signs) and must instead rely upon the imperfect picture of the trade mark they have kept in their mind.

23. The Opponent submits that the average consumer should be assessed by reference to the Applicant's specification as filed, namely the broad term "software", rather than any particular software product or field of use. Consequently, it argues that the relevant public comprises both members of the general public who routinely purchase and use software, and specialist consumers with interests in more technical areas such as blockchain and NFTs. Given the breadth of the goods and the diversity of the relevant consumers, the Opponent contends that the average level of attention will be medium. The purchasing process is said to be primarily visual, with software typically selected and purchased online, although aural considerations may also play a role. The Opponent further argues that internet searches are likely to be a common method by which consumers locate the parties' goods, increasing the significance of the signs as entered and remembered by consumers. In that regard, it submits that consumers are likely to focus on the elements "AURA" or "AIAURA", with "AI" being perceived merely as an abbreviation of "artificial intelligence", thereby increasing the likelihood of confusion.

24. The Applicant submits that the average consumer for its goods and services ² is a professional business-to-business purchaser, such as HR directors, talent acquisition professionals, and recruitment managers procuring enterprise software. These consumers are said to be well-informed, commercially experienced, and likely to exercise a high degree of attention when making purchasing decisions. The Applicant contends that, in light of the distinct commercial fields in which the parties operate, namely recruitment technology

² I note that the application only includes goods in class 09, but the Applicant's submissions refer to the services it provides.

on the one hand and blockchain authentication services on the other, confusion is unlikely to arise.

25. Firstly, in response to the Applicant's submission regarding its actual consumer of its goods and services, marketing strategies, including the targeting of specific consumers, are temporary and may change over time.³ As such, it is not appropriate to take marketing factors and the targeting of specific consumers into account in my assessment. That said, I will now go on to make an assessment as to who the average consumer could be for the goods at issue.
26. The goods contained in the Applicant's specification, namely "software", are not limited to any specific field. Because these goods are framed in such wide terms the relevant consumers could include the general public as well as professional business users. The Opponent's goods, however, have been qualified to relate to payments, distribution supply chain, cryptocurrency, freight transactions, as well as software that can represent goods virtually, namely, virtual art objects, digital collectibles and non-fungible tokens. These particular goods are more specialised and therefore are considered to be targeted at professional consumers, rather than the general public.
27. The level of attention paid by the average consumer will depend on the complexity of the goods in question. For instance, goods such as "software for the management of multi-modal transport operations and the traceability of physical and financial flows" are likely to be relatively technical and customers are likely to assess the cost, suitability, and functionality with considerable care. They are also likely to be purchased infrequently. In such cases, a relatively high degree of attention can be expected. By contrast, general software goods, which could include casual purchases such as free downloadable mobile apps or mobile games for example, are likely to be purchased more frequently by the general public. They are typically less involved purchases and will require between a low and medium level of attention. Regardless of the identity of the

³ *Devinlec Développement Innovation Leclerc SA v OHIM*, Case C-171/06P

average consumer, considerations such as technical reviews of the software, price, quality, ease of use, suitability of the product and the reputation of the provider would be taken into account before purchasing.

28. In all instances, the purchasing process is likely to be primarily visual, with consumers selecting the relevant goods either following online research or through in person examination. I also recognise that aural factors may have some influence, particularly where purchases are made by telephone or where consumers rely on word-of-mouth recommendations.

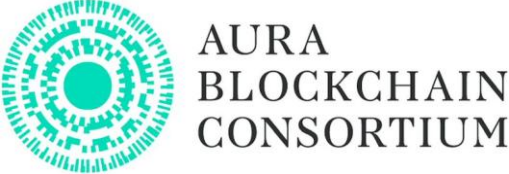
Comparison of trade marks

29. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the trade marks must be assessed by reference to the overall impressions created by the trade marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgement 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”.

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

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

The Opponent's marks	The Applicant's mark (series of 2)
The “298” mark 	Mark 1 
The “514” mark 	Mark 2 

32. 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 and again will refer to them as I see necessary.

Overall Impression

33. Firstly, I note that the application comprises a series of two marks. The first consists of the word “AIAURA”, positioned above the phrase “UNLOCKING HUMAN TALENT”, which appears in a smaller font. All of the word elements are presented in white. To the left of these word elements is a turquoise circular device incorporating a hand motif. All of elements appear on a dark blue

background. The second mark contains the same elements, but with the device positioned above the word elements rather than alongside them.

34. In my view, the word “AIAURA” is the dominant element of the marks. By contrast, the phrase “UNLOCKING HUMAN TALENT” plays a secondary role in the overall impression, owing to its laudatory and non-distinctive nature. While the figurative element will not go unnoticed, consumers are likely to focus primarily on “AIAURA”, which makes the greatest contribution to the marks’ overall impression.
35. Although presented as a single word, I consider that a significant proportion of average consumers will perceive “AIAURA” as comprising the elements “AI” and “AURA”. While it is well established that consumers generally perceive a trade mark as a whole and do not engage in an analytical examination of its individual components, they may nevertheless identify and separate verbal elements that convey a readily understood meaning to them.⁴ Consequently, I find that “AURA” plays an independent distinctive role within the mark. This is because the letters “AI” will be readily recognised as an abbreviation of “artificial intelligence”, a term that is non-distinctive, if not descriptive, in relation to the relevant goods. I nevertheless acknowledge that a small proportion of consumers will perceive “AIAURA” as a single invented word and will not further dissect it into its constituent elements.
36. Finally, the stylisation, including the typeface and colour scheme, contributes little to the marks’ overall impression.
37. For the purposes of this decision, I will refer to both marks collectively as the “Applicant’s mark”, as the differing arrangement of the elements does not alter their distinctive character. Accordingly, the assessment below applies equally to both marks in the series.
38. The Opponent’s “298” mark consists of the words “AURA BLOCKCHAIN CONSORTIUM”, displayed over three lines, with each word appearing above

⁴ *Usinor SA v OHIM*, Case T-189/05

the next. To the left of the wording is a turquoise circular figurative device comprising a solid central circle surrounded by concentric segmented rings.

39. In my view, the word “AURA” plays the dominant role in the overall impression of the mark. The words “BLOCKCHAIN CONSORTIUM” play a lesser role, as they are likely to be perceived as descriptive of the nature of the undertaking or organisation providing the goods. Although the device element is visually striking and will not go unnoticed, consumers are likely to focus primarily on the word elements that can be read,⁵ particularly “AURA”, which makes the greatest contribution to the overall impression of the mark.
40. The Opponent’s “514” mark consists of the words “AURA NFT” accompanied, to the left, by the same turquoise circular figurative device as appears in the “298” mark. In my view, the word “AURA” again plays the dominant role in the overall impression of the mark. The element “NFT” plays a lesser role, as it is likely to be understood by a significant proportion of consumers as an abbreviation for non-fungible token, and is therefore descriptive of the goods concerned. Although the device element will not go unnoticed, consumers are again likely to focus primarily on the word elements, particularly “AURA”, which makes the greatest contribution to the overall impression of the mark.

Visual Comparison

41. Visually, the marks coincide in the presence of the letters “AURA”, which constitutes the dominant and most distinctive verbal element of both of the Opponent’s marks. However, the Applicant’s mark contains the additional letters “AI” as a prefix, creating the single word “AIAURA”. The Opponent’s marks also contain the additional words “BLOCKCHAIN CONSORTIUM” and the letters “NFT” respectively, while the Applicant’s mark contains the phrase “UNLOCKING HUMAN TALENT”. These elements contribute to the visual differences, although they are likely to play a lesser role in the overall impression due to their descriptive/non-distinctive nature. Whilst the device elements in the Opponent’s marks are different to the device in the Applicant’s

⁵ *MigrosGenossenschafts-Bund v EUIPO*, T-68/17.

mark, they are all presented in a circular motif, which is a point of visual similarity. Bearing in mind the overall impressions of the respective marks I find them to be visually similar to between a low and medium degree.

Aural Comparison

42. Aurally, the Opponent's "298" mark contains three English dictionary words (AURA BLOCKCHAIN CONSORTIUM), with each word being pronounced in accordance with its respective dictionary definition. The Opponent's "514" mark contains the word "AURA" followed by the letters "NFT", each of which will be pronounced as individual letters. However, in both marks, I consider it likely that consumers will place greater emphasis on "AURA", with "BLOCKCHAIN CONSORTIUM" and "NFT" being understood as descriptive wording indicating a consortium operating in the blockchain field, and a reference to non-fungible token respectively. The device element in both marks will not be articulated in any way.
43. The Applicant's mark contains the word "AIAURA" together with the phrase "UNLOCKING HUMAN TALENT". The element "AURA" within the Applicant's mark will be pronounced identically to the word "AURA" in the Opponent's marks. However, in the Applicant's mark it is preceded by the prefix "AI", which I consider is likely to be pronounced as the individual letters "A" and "I", such that the word as a whole will be articulated as "A-I-AURA". Given its non-distinctive and promotional nature, I consider it unlikely that consumers will articulate the phrase "UNLOCKING HUMAN TALENT". Likewise, the figurative element will not be verbalised. Taking these factors into account and bearing in mind the overall impressions of the marks, I find them to be aurally similar to a medium degree.

Conceptual Comparison

44. The Opponent submits that the word “AURA” is defined as a feeling or particular quality of something⁶, I agree. In my view the consumer will attribute this meaning to the word “AURA” due to it being an ordinary dictionary word. The words "BLOCKCHAIN CONSORTIUM" in the Opponent’s “298” mark are likely to be understood by the relevant consumer as describing a consortium, group, or organisation involved with blockchain technology. As such, those words have a descriptive or at least highly allusive character in relation to the goods concerned. In totality the mark will convey the concept of an association, alliance or collaborative group operating in the blockchain sector under the name "AURA". As for the Opponent’s “514” mark, I find that the letters “NFT” will be recognised as an abbreviation for “non-fungible token” and will be understood by many consumers as referring to digital assets recorded on a blockchain. Consequently, "NFT" is likely to be perceived as descriptive, or at least strongly allusive in relation to the goods concerned.
45. Conceptually, I consider that a significant proportion of consumers will perceive the Applicant’s mark as comprising the elements “AI” and “AURA”. Those consumers are likely to recognise “AI” as an abbreviation for “artificial intelligence” and will perceive “AURA” in accordance with its ordinary dictionary meaning as above. The figurative element does not convey any clear or immediately identifiable concept. Nevertheless, the marks share the conceptual reference to “AURA” plus a reference to technology i.e. blockchain, NFT and AI, and, taking all elements into account, I find them to be conceptually similar to a medium degree.
46. I also appreciate that there will be some consumers, albeit a small proportion, who will perceive the word “AIAURA” as a single invented word with no immediate conceptual meaning. In this regard the marks are not considered conceptually similar due to the Opponent’s marks conveying a recognisable concept whereas the Applicant’s mark does not.

Distinctive character of the earlier trade marks

⁶ See Opponent’s submissions dated 6 October 2025.

47. 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:

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

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

48. 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. However, as the Opponent has not filed any evidence of use of its marks, I only have the inherent position to consider.

49. The Opponent submits that the element “AURA” plays an independent distinctive role and is the dominant component of its earlier marks. It argues that consumers will focus on, search for, and refer to its goods by the term “AURA”. The Opponent further contends that “AURA” possesses a high degree of inherent distinctiveness in relation to the relevant goods because it has no direct descriptive or allusive connection to them. Although it is a dictionary word, its meaning is unrelated to the goods at issue, which the Opponent argues makes it highly distinctive.
50. The Applicant submits that the term “Aura” is widely used in the technology sector by unrelated companies in areas such as cybersecurity, telecoms, and wellness apps. At exhibit B of its evidence, it provides examples of companies using “Aura” as part of their names or products. As a result, the Applicant claims that this undermines the Opponent’s argument that the term “Aura” is highly distinctive.
51. The Opponent, however, challenges this evidence and states that it should not be given any weight in the consideration of inherent distinctiveness. It states that the screenshots at exhibit B of the Applicant’s evidence are undated and therefore it is unclear if the use by the third parties was prior to the filing date of the application. Further, the Opponent submits that it is unclear from the evidence if the use relates to the UK. It claims that the Applicant specifically identifies that some of the third parties are based outside of the UK. Finally, the Opponent argues that the distinctiveness of the word “AURA” must be assessed in relation to the relevant goods. It states that the examples of use in the evidence shows use in relation to cybersecurity, video generation, mental health and wellbeing, video analytics, smart home security, digital photo frames and automotive radar, and that this is irrelevant to the assessment of the distinctiveness of the term in relation to software insofar as it relates to the Opponent’s Goods.

52. Having considered the evidence at hand I agree with the Opponent that it fails to demonstrate that the word “Aura” is in common use amongst companies providing the relevant goods in the present opposition. The evidence is directed primarily at demonstrating the existence of third-party use. It does not establish how the relevant consumer perceives the word “AURA”, nor does it demonstrate that consumers have been exposed to such use to an extent that the distinctive character of the earlier marks has been diluted. In particular, the Applicant has provided no evidence regarding the scale, duration, geographical reach, or commercial significance of the identified businesses, nor any evidence showing that consumers have become accustomed to distinguishing between multiple unrelated undertakings using the word “AURA”. In those circumstances, I am unable to conclude that the third-party use relied upon by the Applicant has diminished the distinctive character of the word “AURA” in the minds of the relevant public.
53. I will consider the distinctive character of each of the Opponent’s marks in turn.
54. The Opponent’s “298” mark consists of the words “AURA BLOCKCHAIN CONSORTIUM” accompanied by a circular figurative element. I agree with the Opponent that, while the words “BLOCKCHAIN CONSORTIUM” will be understood as descriptive of the nature of the undertaking providing the goods, the word “AURA” has no direct meaning or relationship to those goods. Although “Aura” is a dictionary word, it is neither descriptive nor allusive of the goods at issue. In addition, whilst the circular figurative element is relatively simple, it does contribute something to the overall distinctive character of the mark. Taking these factors into account, I find that the Opponent’s “298” mark possesses an above average degree of inherent distinctive character.
55. The same conclusion applies to the Opponent’s “514” mark. While the letters “NFT” will be widely understood as an abbreviation for “non-fungible token” and are therefore descriptive of the relevant goods, the word “AURA” has no meaning in relation to them. Coupled with the same circular figurative element, this results in a mark which, considered as a whole, possesses an above average degree of inherent distinctive character.

Likelihood of confusion

56. 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.
57. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The factors are interdependent, and, for instance, a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa. It is necessary for me to keep in mind the distinctive character of the earlier mark, the average consumer for the goods and services, and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he has retained in his mind.
58. Throughout the course of this decision, I have determined that:
- The goods are *Meric* identical.
 - The average consumers are professional businesses seeking software to aid their business functions who will demonstrate a relatively high level of attention during the purchasing process. For the broader terms such as software at large the average consumers are members of the general public who will demonstrate between low and medium level of attention during the purchasing process depending on the goods concerned. The purchasing process is mainly visual but aural considerations may play a part.

- The marks at issue are visually similar to between a low and medium degree. Aurally, the marks similar to a medium degree. Conceptually, the marks range from being not similar where the consumer perceives “AIAURA” as a single invented word, or similar to a medium degree due to the shared concept of “AURA” (i.e. where the consumer perceives “AIAURA” as comprising the elements “AI” and “AURA”).
- The level of inherent distinctive character of the Opponent’s marks is considered above average.

59. I acknowledge that both marks contain the word “AURA”. However, the marks differ in several respects. The Opponent’s marks include the additional words “BLOCKCHAIN CONSORTIUM” and “NFT”, whereas the Applicant’s marks contain the prefix “AI” attached to “AURA” and the phrase “UNLOCKING HUMAN TALENT”. Further, the figurative elements differ in that the Applicant’s marks incorporate a hand device, while the Opponent’s marks feature a different circular figurative element. In my view, these differences are unlikely to be overlooked. Therefore, despite the overlap created by the commonality of the word “AURA” in both marks, in my view this will be outweighed by the differences. Consequently, it is unlikely that the competing marks will be mistaken or misremembered for one another. Rather, the aforementioned differences are likely to be sufficient to enable consumers to differentiate between them. In my judgement, taking all the above factors into account, the differences between the competing trade marks are likely to enable consumers, even those paying a low level of attention, to avoid mistaking the marks for one another, notwithstanding the principles of imperfect recollection and interdependency. As a result, I find that there is no likelihood of direct confusion, even in relation to goods that are identical.

60. That leaves indirect confusion to be considered. In respect of such, I remind myself of the case of *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, wherein Mr Iain Purvis Q.C., as the Appointed Person, explained that:

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

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

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

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

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

61. These three categories are not exhaustive. Rather, they were intended to be illustrative of the general approach.⁷

62. In *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271 (Ch), Arnold J (as he then was) considered the impact of the CJEU's judgment in *Bimbo*, Case C-591/12P, on the court's earlier judgment in *Medion v Thomson*. The judge said:

"18. The judgment in *Bimbo* confirms that the principle established in *Medion v Thomson* is not confined to the situation where the composite trade mark for which registration is sought contains an element which is identical to an earlier trade mark, but extends to the situation where the composite mark contains an element which is similar to the earlier mark. More importantly for present purposes, it also confirms three other points.

19. The first is that the assessment of likelihood of confusion must be made by considering and comparing the respective marks – visually, aurally and conceptually – as a whole. In *Medion v Thomson* and subsequent case law, the Court of Justice has recognised that there are situations in which the average consumer, while perceiving a composite mark as a whole, will also perceive that it consists of two (or more) signs one (or more) of which has a distinctive significance which is independent of the significance of the whole, and thus may be confused as a result of the identity or similarity of that sign to the earlier mark.

20. The second point is that this principle can only apply in circumstances where the average consumer would perceive the relevant part of the composite mark to have distinctive significance independently of the whole. It does not apply where the average consumer would perceive the composite mark as a unit having a different meaning to the

⁷ As was confirmed by the Court of Appeal in *Liverpool Gin Distillery and others v Sazerac Brands, LLC and others* [2021] EWCA Civ 1207, paragraph 12.

meanings of the separate components. That includes the situation where the meaning of one of the components is qualified by another component, as with a surname and a first name (e.g. BECKER and BARBARA BECKER).

21. The third point is that, even where an element of the composite mark which is identical or similar to the earlier trade mark has an independent distinctive role, it does not automatically follow that there is a likelihood of confusion. It remains necessary for the competent authority to carry out a global assessment taking into account all relevant factors.”

63. I recognise that indirect confusion has its limits and that such a finding should not be made merely because the competing marks share a common element. In this connection, it is not sufficient that a mark merely calls to mind another mark.⁸ It has also been emphasised that, where there is no direct confusion, there must be a proper basis for finding indirect confusion.⁹ The average consumer tends to perceive trade marks as wholes and I am conscious not to artificially dissect the Applicant’s marks. However, the word “AURA” plays an independent distinctive role within the Applicant’s marks, i.e., it has a distinctive significance which is independent of the significance of the whole. The same is true of the Opponent’s mark due to the descriptive nature of the words “BLOCKCHAIN CONSORTIUM” and “NFT” respectively, as well as fairly simple figurative elements. It is a dominant element of the Applicant’s mark and is identically reproduced in the Opponent’s mark. This shared element would, in my opinion, not be considered as coincidental use but would instead point to the same origin. Further it is my view that the Applicant’s mark may be seen as a sub-brand dedicated to software that utilises artificial intelligence (AI), and that the different stylisation will be seen simply as alternative stylisations used by the same undertaking. Consequently, I find that there is a likelihood of indirect confusion.

⁸ *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17

⁹ See the Court of Appeal’s comments in *Liverpool Gin Distillery*, paragraph 13.

Conclusion

64. The opposition under Section 5(2)(b) of the Act has succeeded. Subject to any successful appeal, the application will be refused.

Costs

65. As the Opponent has been successful, it is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice ("TPN") 1/2023.¹⁰ In the circumstances, I award the Opponent the sum of £1000. The sum is calculated as follows:

Official Fee	£100
Preparing the notice of opposition and considering the counterstatement	£250
Considering and commenting on the other side's evidence ¹¹	£300
Preparation of written submissions	£350
Total	£1000

66. I therefore order **AIAURA Group** to pay **AURA BLOCKCHAIN CONSORTIUM** the sum of **£1000**. This sum is to be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

¹⁰ As the proceedings were commenced after 01 February 2023

¹¹ Given the limited relevance of the evidence to the matters at issue, I consider it appropriate to reduce the costs award.

Dated this 27th day of August 2026

Oliver Rose'Meyer

For the Registrar