

O/0808/25

TRADE MARKS ACT 1994

CONSOLIDATED PROCEEDINGS

IN THE MATTER OF APPLICATION NO. UK00003897252

TO REGISTER THE TRADE MARK:

ADAM ICON

IN CLASSES 17 and 40

BY ZAYGHAM HUSSAIN

AND THE OPPOSITION THERETO UNDER NO. OP600003016

BY M&A STYLES LTD

AND

IN THE MATTER OF APPLICATION NO. UK00003905468

TO REGISTER THE TRADE MARK:

ADAM ICON

IN CLASSES 17 and 40

BY M&A STYLES LTD

AND

IN THE MATTER OF APPLICATION NO. UK00003911359

TO REGISTER THE TRADE MARK:

ADAM ICON Upholstery Foam

IN CLASSES 17 and 40

BY MOBEEN FAROOQ

AND THE OPPOSITIONS THERETO UNDER

NOS. OP000442741 & OP000442522

BY ZAYGHAM HUSSAIN

BACKGROUND AND PLEADINGS

1. These consolidated proceedings concern the opposition to three applications for UK trade marks. One of the oppositions is against one of the earlier marks that is relied upon in the other oppositions.

The applications

<p>UK00003897252 (“the ‘252 mark”) (Opposition 60003016)</p>	<p>ADAM ICON</p> <p>Applicant: Zaygham Hussain Filing date 05 April 2023. Accepted and published in Trade Marks Journal on 14 July 2023 for goods and services in classes 17 and 40. The full specification can be found in Annex A.</p>
<p>UK00003905468 (“the ‘468 mark”) (Opposition 442522)</p>	<p>ADAM ICON</p> <p>Applicant: M & A Styles Ltd. Filing date 26 April 2023. Accepted and published in the Trade Marks Journal on 12 May 2023 in respect of the goods and services in classes 17 and 40. The full specification can be found in Annex B.</p>
<p>UK00003911359 (“the ‘359 mark”) (Opposition 442741)</p>	<p>ADAM ICON Upholstery Foam</p>

	<p>Applicant: Mobeen Farooq</p> <p>Filing date 14 May 2023.</p> <p>Accepted and published in the Trade Marks Journal on 26 May 2023 in respect of the goods and services in classes 17 and 40. The full specification can be found in Annex C.</p>
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2. The applications in oppositions 442522 and 442741 have been made by Mobeen Farooq and M&A Styles. The applicant explains that Mr Farooq is the owner of the parent company, M&A Styles Ltd.¹ As there is a direct and clear relationship between these parties, I will address the parties collectively as ‘party A’; I will address the oppositions in turn. However, as the 600003016 opposition is against the earlier right relied upon in the above oppositions, I will address this opposition first.

Opposition 600003016

3. On 8 September 2023, M&A Styles Ltd (“party A”) opposed the ‘252 mark via a form TM7F on the grounds of section 5(1), 5(2)(a) and 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opposition is directed against all of Zaygham Hussain’s (“party B”) goods. Party A relies upon one earlier mark, 3662998 (“the 998 mark”), set out below.

Adam Icon

Filing date 01 July 2021.

Accepted and published in the Trade Marks Journal on 12 May 2023.

Registration date 05 November 2021 in respect of the goods in classes 20 and 24.

The full specification can be found in **Annex D**.

¹ Witness Statement of Mr Farooq, paragraph 4

4. Party A argues that the application is identical or similar to its earlier mark, and that the contested goods are identical or similar.

5. Party B filed a Form TM8 and counterstatement denying the claims made; he submitted that there are stark differences between the goods and services and that they are intended for different consumers.

Opposition 442522

6. On 14 August 2023, party B opposed the '468 mark having filed a notice of opposition, a Form TM7, on the basis of section 5(1) of the Act. The opposition is directed against all of party A's goods. Party B relies upon one earlier mark, as set out below:

ADAM ICON

UK00003897252 ("the 252 mark")

Filing date 05 April 2023.

Accepted and published in the Trade Marks Journal on 12 May 2023 in respect of the goods and services in classes 17 and 40. The full specification can be seen in Annex A.

7. Party B argues that party A's mark is identical to their earlier mark, and that the contested goods and services are identical. Party A filed a Form TM8 and counterstatements denying the claims made.

Opposition 442741

8. On 14 August 2023, party B opposed the '359 mark on the basis of section 5(2)(b) of the Act. The opposition is directed against all of party A's goods and services. Again, Party B relies upon the '252 mark set out above.

9. Party B argues that party A's mark is similar to its earlier mark, and that the contested goods and services are identical or similar. Party A filed a Form TM8 and counterstatements denying the claims made.

The consolidated proceedings

10. The three oppositions were consolidated on 25 May 2024.

11. Only party A filed evidence in these proceedings. Neither party requested a hearing nor filed submissions in lieu. Neither party is professionally represented. I do not intend to summarise the evidence filed in these proceedings, but will refer to this, where necessary, in the decision. This decision is taken after careful consideration of the papers.

EVIDENCE

12. Party A filed evidence in the form of the witness statement of Mobeen Farooq, dated 13 September 2024. The witness statement is accompanied by one exhibit, being exhibit NR-01. The evidence adduces sales of goods bearing the parties' marks prior to the involvement of party B.

DECISION

Section 5(1)

13. Section 5(1) of the Act is as follows:

(1) A trade mark shall not be registered if it is identical with an earlier trade mark and the goods or services for which the trade mark is applied for are identical with the goods or services for which the earlier trade mark is protected.

Section 5(2)

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

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

(a) it is identical with an earlier trade mark and is to be registered for goods or services similar to those for which the trade mark is protected, or

(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.”

15. Due to their earlier filing dates, the relied upon marks in each of the oppositions constitute earlier marks within the meaning of section 6 of the Act. As the earlier marks had not completed their registration process more than five years before the filing dates of the relevant applications in issue, they are not subject to proof of use pursuant to section 6A of the Act. The parties can, therefore, rely upon all of the goods and services they have identified under each earlier right without having to demonstrate use.

RELEVANCE OF EU CASE LAW

16. Although the UK has left the EU, section 6(3)(a) of the European (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Trade Marks Act relied on in these proceedings are derived from an EU Directive. This is why this decision continues to make reference to the trade mark case law of the EU courts.

17. The following principles are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.*

Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P:

(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 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 to mind the earlier mark, 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 wrongly believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

18. As previously mentioned, my approach in this decision will involve addressing the opposition 600003016 first. This is because the application in this case is relied upon throughout the other oppositions. If this application was to be successfully opposed, the party A would not have an earlier mark to rely on the remainder of the oppositions.

Opposition OP600003016 against application UK00003897252

COMPARISON OF THE MARKS

EARLIER RIGHT Party A's mark	APPLICATION Party B's mark
ADAM ICON	Adam Icon

19. In S.A. Société LTJ Diffusion v. Sadas Vertbaudet SA, Case C-291/00, the Court of Justice of the European Union (“CJEU”) held that:

“54... a sign is identical with the trade mark where it reproduces, without any modification or addition, all the elements constituting the trade mark or where, viewed as a whole, it contains differences so insignificant that they may go unnoticed by an average consumer.”

20. The earlier mark and the contested mark are both word-only, marks consisting of the two words “Adam Icon” with no additional elements. Therefore, they are self-evidently identical.

COMPARISON OF GOODS AND SERVICES

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

“23. In assessing the similarity of the goods or services concerned, 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.”

22. Guidance on this issue has also 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.

23. In *Gérard Meric v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (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.”

24. In this instance, party A has not identified the earlier goods and contested goods and services it considers to be most similar and why. In these circumstances, I remind myself of the case of *Abus August Bremicket Sohne KG v Muhammad Ali (O/0911/24)* Mr Iain Purvis K.C., sitting as the Appointed Person, found that:

“28. [...] it is for the Opponent to put forward the combinations of goods on which it relies for similarity (or identity). If it fails to identify a particular combination, it cannot expect the Hearing Officer to do the job for it. [This] approach [...] would place an intolerable burden on Hearing Officers in cases of this nature in which there will be thousands of potential combinations of goods which could be relied on, and for each combination a slightly different argument for similarity could be made. Furthermore, such an approach would be unfair on the Applicant for the mark, since they will have had no opportunity

to address points on similarity taken by the Hearing Officer if those points are not first raised by the Opponent.”

25. Therefore, I will proceed by only comparing goods that I consider offer the best prospect of a finding of similarity.

26. The goods and services in question are as follows:

<p style="text-align: center;">M&A Styles Ltd’s goods Party A (“the 998 mark”)</p>	<p style="text-align: center;">Zaygham Hussain’s goods and services Party B (“the ‘252 mark”)</p>
<p>Class 20: Cushions; Stadium cushions; Air cushions; Cushions [furniture]; Seat cushions; Chair cushions; Cushions (upholstery); Pet cushions; Cushions (Pet -); Soft furnishings [cushions]; Neck support cushions; Bean bag cushions; Stadium seats (Cushions for -); Cushions filled with hair; Japanese floor cushions (zabuton); Inflatable neck support cushions; Baby head support cushions; Nap mats [cushions or mattresses]; Anti-roll cushions for babies; Head support cushions for babies; Inflatable cushions, not for medical use; Air cushions, not for medical purposes; Inflatable cushions, other than for medical purposes; Beds, bedding, mattresses, pillows and cushions; Back support cushions, not for medical purposes; Plastic mesh cushioning sheets for lining shelves;</p>	<p>Class 17: Flexible foam; flexible polyurethane foam; flexible foam materials; cut to size foam; upholstery foam; foam for use in upholstery; foam in the form of crumb; shredded foam; foam materials cut to size; foam materials for use in manufacture; foam materials in the form of blocks, sheets, rolls, blanks; shredded polyurethane foams; ether foams; closed cell foams; closed cell polyethylene foams; closed cell cross-linked polyethylene foam; closed cell cross-linked polyethene foam; Flower arrangements (Foam supports for -) [semi-finished products]; Foam for use as heat insulation; Foam for use as heat shields; Foam for use as motor compartment linings; Foam for use in sound absorption; Foam for use in sound insulation; Foam glass for use as an</p>

Spring assemblies (Non-metallic -) for incorporation into cushions; Support cushioning for use in car safety seats for babies; Cushions adapted to support the face [other than for medical use]; Cushions [other than for medical use] for supporting infants being examined; Air cushions in the nature of furniture [not for medical purposes]; Mattress pads; Chair pads; Padded furniture; Seat pads; Sleeping pads; Sleeping bag pads; Suction pads [fixings]; Pillows; Scented pillows; Inflatable pillows; Maternity pillows; Throw pillows; Travel pillows; Air pillows; Bath pillows; Nursing pillows; Neck pillows; Latex pillows; Bamboo pillows; Stuffed pillows; Accent pillows; Head supporting pillows; Neck-supporting pillows; Bean bag pillows; U-shaped pillows; Memory foam pillows; Storage boxes for pillows [furniture]; Head positioning pillows for babies; Air pillows, not for medical purposes; Water pillows, other than for medical purposes; Support pillows for use in baby seating; Support pillows for use in baby car safety seats; Neck pillows [other than for medical or surgical use]; Inflatable pillows [other than for medical use] for fitting around the neck; Seat pads being parts of furniture; Seats; Foam mattresses; Bench seating; Booster seats; Foam

insulating materials; Foam in the form of blocks for use as heat insulation; Foam insulation for use in building and construction; Foam insulation materials for use in building and construction; Foam rubber; Foam sheeting for use as a building insulation; Foam supports for floral arrangements; Foam supports for flower arrangements [semi-finished products].

Class 40:

Foam converting services, cutting and fabricating foam from bulk; processing of goods by cutting, namely converting bulk stock into products of a required shape and size; processing of foam materials by cutting, namely converting bulk stock into products of a required shape and size.

camping mattresses; Bath seats; Office seats; Shower seats; Love seats; Metallic seats; Chairs [seats]; Seats [furniture]; Seating furniture; Floating inflatable seats; Adjustable seat carriers; Floatable [inflatable] seats; Seats for children; Seats of metal; High seats [furniture]; Display cases; Fitted cupboards; Fitted furniture; Curtain fittings; Fittings for curtains; Fitted bedroom furniture; Fitted kitchen furniture; Clothes covers; Covers (Garment -) [storage]; Corner protectors of plastics; Tree protectors, not of metal; Tree protectors [tubes] not of metal; Curtain pins; Curtain rollers; Curtain rings; Rings (Curtain -); Curtain poles; Curtain rods; Rods (Curtain -); Hooks (Curtain -); Curtain tracks; Bamboo curtains; Curtains (Bamboo -); Curtain rails; Rails (Curtain -); Curtain hooks; Curtain runners; Bead curtains; Rollers (Curtain -); Curtain embraces for holding back curtains; Decorative bead curtains; Shower curtain rods; Shower curtain rails; Metal curtain rods; Shower curtain hooks; Curtain tie-backs; Curtain suspension fittings; Shower curtain rings; Rings for curtains; Poles for curtains; Curtain suspending apparatus; Metal curtain rails; Metal curtain rings; Curtain suspension devices; Curtain embraces of plastics for holding back

curtains; Curtain embraces of metal for holding back curtains; Support rails for curtains; Non-metal curtain rails; Rods for net curtains; Support rods for curtains; Curtains (Bead -) for decoration; Bead curtains for decoration; Non-metal curtain rings; Non-metal curtain rods; Supports for fixing curtain poles; Supports for fixing curtain rods; Supports for supporting curtain poles; Curtain hooks made of metal; Supports for supporting curtain rods; Curtain hooks made of plastics; Tie back hooks of brass [curtain];Curtain holders, not of textile material; Tie back hooks made of plastics [curtain];Expanding rails of plastics for net curtains; Tie back hooks made of wood [curtain];Curtain drawing devices, other than electrically operated; Indoor blinds, and fittings for curtains and indoor blinds; Mattresses; Mattresses (Spring -);Straw mattress; Air mattresses; Mattress toppers; Spring mattresses; Mattress bases; Latex mattresses; Camping mattresses; Mattresses [other than child birth mattresses]; Bed mattresses; Mattress (Straw -);Straw mattresses; Futon mattresses [other than childbirth mattresses];Inner sprung mattresses; Fire resistant mattresses; Portable mattresses for automobiles; Mattresses made of flexible wood; Floating inflatable

mattresses [airbeds]; Beds incorporating inner sprung mattresses; Sleeping mats for camping [mattresses]; Air mattresses for use when camping; Inflatable mattresses for use when camping; Inflatable mattresses, other than for medical purposes; Air mattresses, not for medical purposes; Spring assemblies (Non-metallic -) for incorporation into mattresses; Bedding for cots [other than bed linen]; Bedding for nursery cots [other than bed linen]; Cots; Safety cots; Travel cots; Bumper guards for cots, other than bed linen; Cots for babies; Beds; Beds (Hospital -); Feather beds; Dog beds; Wooden beds; Cat beds; Water beds; Hospital beds; Beach beds; Infant beds; Portable beds; Bed slats; Chair beds; Bed rails; Sofa beds; Camp beds; Foldaway beds; Bed chairs; Divan beds; Bed heads; Bed-settees; Adjustable beds; Bunk beds; Children's beds; Folding beds; Bed bases; Transportable beds; Bed frames; Beds of wood; Air bed lounge; Bedding, except linen; Beds for birds; Portable infant beds; Beds for animals; Bean bag beds; Beds for pets; Rods for beds; Furniture incorporating beds; Inflatable pet beds.

Class 24:

Cushion covers; Cushions (Covers for -);Cushion covering materials; Covers for cushions; Woven fabrics for cushions; Textile piece goods for making cushion covers; Bed pads; Shams (Pillow -); Pillow slips; Pillow covers; Pillow cases; Pillow shams; Covers for pillows; Pillowcases [pillow slips]; Ticks (mattress and pillow coverings); Fitted bed sheets; Textile sheets; Cot sheets; Valance sheets; Bed sheets; Sheets [textile]; Crib sheets; Contour sheets; Towel sheet; Bath sheets; Valanced bed sheets; Sleeping bags [sheeting]; Bed sheets of plastic [not being incontinence sheets]; Bed sheets of plastic, not being incontinence sheets; Bath sheets (towels); Flat bed sheets; Bed sheets of paper; Duvet covers; Covers for duvets; Textile covers for duvets; Duvets; Covers for eiderdown and duvets; Duvets filled with goose down; Duvets filled with goose feathers; Cot covers; Comforters [covers]; Quilt covers; Eiderdown covers; Sofa covers; Mattress covers; Table covers; Bed covers; Canopy covers; Chair covers; Bed coverings; Bean bag covers; Throws (furniture coverings); Valanced bed covers; Ticks [mattress covers]; Bed warmer covers; Toilet seat covers; Afghans [knitted covers];Coverings for furniture; Coverings for windows; Contoured

mattress covers; Fabrics for manufacturing sun protectors; Curtains; Lace curtains; Net curtains; Curtain linings; Pleated curtains; Curtain fabrics; Vinyl curtains; Blackout curtains; Curtain valences; Curtaining materials; Curtain material; Fabric curtains; Shower curtains; Moquettes [curtains]; Window curtains; Door curtains; Swags [curtains];Curtain fabric;Ready made curtains; Curtains for windows; Curtain holders (Textile -);Shower room curtains; Curtains for showers; Curtains of textile; Textile curtain pelmets; Curtains of plastic; Curtains and lace curtains of textiles or plastic; Indoor and outdoor curtains; Draperies [thick drop curtains];Fabrics for making curtains; Curtain holders of cloth; Curtains made of plastics; Curtains of textile material; Curtain holders of textile material; Curtains of textiles or plastic; Curtains made of textile fabrics; Curtain loops of textile material; Curtains made from textile materials; Curtain tie-backs of textile; Curtain holders of textile materials; Fire-retardant textile shower curtains; Ready made curtains of plastics; Curtains made of textile materials; Curtains of textile or plastic; Ready made curtains of textiles; Curtain loops made of textile materials; Shower curtains made of plastic material; Textile

<p>piece goods for making curtains; Curtaining material being textile piece goods; Curtain holders or tiebacks of textile; Shower curtains of textile or plastic; Small curtains made of textile materials; Drapes in the nature of curtains; Curtains [made up or in the piece];Textile fabrics for use in the manufacture of curtains; Covers for mattresses; Mattress slips [other than incontinence]; Protective loose covers for mattresses and furniture; Cot bumpers [bed linen]; Cot blankets; Bed skirts; Bed canopies; Blankets (Bed -); Bed spreads; Bed linen; Bed quilts; Bed throws; Bed valances; Bed blankets; Linen (Bed -); Bed clothes; Comforters (bedding); Silk bed blankets; Canopies (bed linen); Valances for beds; Comforters for beds; Infants' bed linen; Quilt bedding mats; Fabric bed valances; Quilted blankets [bedding].</p>	
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Class 17

Flexible foam; flexible polyurethane foam; flexible foam materials; cut to size foam; upholstery foam; foam for use in upholstery; foam materials cut to size; foam materials for use in manufacture; foam materials in the form of blocks, sheets, rolls, blanks; closed cell foams; closed cell polyethylene foams; closed cell cross-linked polyethylene foam; closed cell cross-linked polyethene foam; foam in the form of crumb; shredded foam; shredded polyurethane foams; ether foams.

27. As per the case of *Separode*, I have collated these goods to compare because they are all different types of foam that can be used for a shared purpose, for example, to upholster furniture. In the absence of any specific comparisons being provided by the party A, I consider that the best comparator is “*padding furniture*” in the party A’s specification. I consider that the goods will differ in nature, method of use and purposes. This is on the basis that party B’s foam products are used in the process of making furniture, whereas Party A’s furniture, particularly sofas, are used to sit on. The trade channels and users will differ; Party B’s goods are likely to be sold by specialist companies to businesses who will use the foam to manufacture whole or completed goods, whilst Party A’s goods are finished products that will be purchased by the general public. The goods are not in competition as foam products are not a substitute for a sofa or other furniture products. Neither are the goods complementary: consumers will not reasonably believe that they derive from the same undertaking, as the foam products are not typically sold by the same companies that sell finished furniture products. Raw materials that are subject to a transformation process are essentially different from the finished products which incorporate, or are covered by, those raw materials.² Therefore, the goods are dissimilar.

28. I also compared the above foam products with “*cushion covering materials*”, “*woven fabric for cushions*” and “*textile piece goods for making cushion covers*” in class 24. Whilst I recognise that these goods will all be both used in the creation of furniture, it is my view that the precise nature, method of use and purpose differ; one is a foam used inside furniture to pad it and make in comfortable, whilst the other is a fabric used to give furniture its finished aesthetic appearance. Further, I consider that the trade channels would differ, this is on the basis that companies that produce and manufacture foam products for manufacturing furniture are unlikely to also produce fabrics. The goods, although important to one another for the purpose of manufacturing the same end product, are not complementary in the same way as outlined in the way that wine glasses are not complementary to wine.³ This is because it is unlikely that customers will believe that they originate from the same undertaking. Therefore, I find these goods to be dissimilar.

² *El du Pont de Nemours and Company v OHIM*, T-288/12, paragraph 43

³ *Sandra Amalia Mary Elliot v LRC Holdings Limited* BL O/255/13

Flower arrangements (Foam supports for -) [semi-finished products]; Foam for use as heat insulation; Foam for use as heat shields; Foam for use as motor compartment linings; Foam for use in sound absorption; Foam for use in sound insulation; Foam glass for use as an insulating materials; Foam in the form of blocks for use as heat insulation; Foam insulation for use in building and construction; Foam insulation materials for use in building and construction; Foam rubber; Foam sheeting for use as a building insulation; Foam supports for floral arrangements; Foam supports for flower arrangements [semi-finished products].

29. The remaining goods within class 17 are all different types of foams that are used for various purposes that do not appear to be obviously linked to upholstery or furniture in any way and that are instead typically materials that are used within the manufacturing process. Consequently, there is no obvious cross over in similarity between these goods and party A's goods. I consider these goods to be dissimilar.

Class 40

29. Foam converting services, cutting and fabricating foam from bulk; processing of goods by cutting, namely converting bulk stock into products of a required shape and size; processing of foam materials by cutting, namely converting bulk stock into products of a required shape and size.

30. I am unable to see any obvious similarity between these services and any of party A's goods. It is my view that the goods and services differ in nature, as one is services and the other is goods. In addition, I consider that the method of use and the purposes of the goods and services will differ as party A's goods are finished goods that are used to sit, sleep or cover items, whereas party B's services are to cut foam. The goods and services differ in trade channels as Party B's services are likely to be sold by specialist companies to businesses who will use cut foam to manufacture whole or completed goods for customers, whilst Party A's goods are finished products that will be purchased by the general public at, for example, homeware stores. Even if the services are compared with "*cushion covering materials*", "*woven fabric for cushions*" and "*textile piece goods for making cushion covers*", I consider that the trade

channels will differ, as companies that produce and manufacture foam products for manufacturing furniture are unlikely to also produce fabrics. The services will be used by the general public and businesses, whereas the goods will be purchased predominantly by the general public. However, any overlap is to such a degree that it will not engage similarity. I do not consider that the goods and services are complementary, as it is not my view that the average consumer would be of the view that the goods and services at issue would originate from the same undertaking. In addition, it is also not my view that they are in competition. Taking all of the above into account, I consider that the goods and services are dissimilar.

31. As a level of similarity is required between the competing goods and services in order for there to be a likelihood of confusion under the Act,⁴ and no similarity has been found, the opposition OP60003016 fails in relation to the remaining section 5(1) and 5(2)(a) grounds. Party B can therefore rely on its mark as an earlier mark in oppositions 442522 and 442741.

Opposition OP000442522 against application UK00003905468

COMPARISON OF THE TRADE 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 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

⁴ eSure Insurance v Direct Line Insurance [2008] ETMR 77 CA

impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

33. 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 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.

EARLIER RIGHT Party B’s mark (“the ‘252 mark”)	APPLICATION Party A’s mark (“the ‘468 mark”)
ADAM ICON	ADAM ICON

34. In S.A. Société LTJ Diffusion v. Sadas Vertbaudet SA, Case C-291/00, the Court of Justice of the European Union (“CJEU”) held that:

“54... a sign is identical with the trade mark where it reproduces, without any modification or addition, all the elements constituting the trade mark or where, viewed as a whole, it contains differences so insignificant that they may go unnoticed by an average consumer.”

35. The earlier mark and the contested mark are both word-only marks consisting of the two words “ADAM ICON” with no additional elements. Therefore, they are self-evidently identical.

COMPARISON OF THE GOODS AND SERVICES

36. The goods and services in question are as follows:

Party B’s goods and services	Party A’s goods and services
Class 17:	Class 17:

Flexible foam; flexible polyurethane foam; flexible foam materials; cut to size foam; upholstery foam; foam for use in upholstery; foam in the form of crumb; shredded foam; foam materials cut to size; foam materials for use in manufacture; foam materials in the form of blocks, sheets, rolls, blanks; shredded polyurethane foams; ether foams; closed cell foams; closed cell polyethylene foams; closed cell cross-linked polyethylene foam; closed cell cross-linked polyethene foam; Flower arrangements (Foam supports for -) [semi-finished products]; Foam for use as heat insulation; Foam for use as heat shields; Foam for use as motor compartment linings; Foam for use in sound absorption; Foam for use in sound insulation; Foam glass for use as an insulating materials; Foam in the form of blocks for use as heat insulation; Foam insulation for use in building and construction; Foam insulation materials for use in building and construction; Foam rubber; Foam sheeting for use as a building insulation; Foam supports for floral arrangements; Foam supports for flower arrangements [semi-finished products].

Class 40:

Flexible foam; flexible polyurethane foam; flexible foam materials; cut to size foam; upholstery foam; foam for use in upholstery; foam in the form of cumb; shredded foam; foam materials cut to size; foam materials for use in manufacture; foam materials in the form of blocks, sheets, rolls, blanks; shredded polyurethane foams; ether foams; closed cell foams; closed cell polyethylene foams; closed cell cross-linked polyethylene foam; closed cell cross-linked polyethene foam; Flower arrangements (Foam supports for -) [semi-finished products]; Foam for use as heat insulation; Foam for use as heat shields; Foam for use as motor compartment linings; Foam for use in sound absorption; Foam for use in sound insulation; Foam glass for use as an insulating materials; Foam in the form of blocks for use as heat insulation; Foam insulation for use in building and construction; Foam insulation materials for use in building and construction; Foam rubber; Foam sheeting for use as a building insulation; Foam supports for floral arrangements; Foam supports for flower arrangements [semi-finished products].

Class 40:

<p>Foam converting services, cutting and fabricating foam from bulk; processing of goods by cutting, namely converting bulk stock into products of a required shape and size; processing of foam materials by cutting, namely converting bulk stock into products of a required shape and size.</p>	<p>Foam converting services, cutting and fabricating foam from bulk; processing of goods by cutting, namely converting bulk stock into products of a required shape and size; processing of foam materials by cutting, namely converting bulk stock into products of a required shape and size.</p>
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37. The goods and services under the competing marks are clearly identical.

38. As a consequence of the marks being identical and the goods and services under the marks being identical, opposition OP000442522 succeeds under section 5(1) of the Act.

Opposition OP000442741 against application UK00003911359

COMPARISON OF THE MARKS

39. 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 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.”

40. 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 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.

<p>EARLIER RIGHT Party B's mark ("the '252 mark")</p>	<p>APPLICATION Party A's mark ("the '359 mark")</p>
<p>ADAM ICON</p>	<p>ADAM ICON Upholstery Foam</p>

41. Overall, party B's mark consists of the words 'Adam Icon'. The mark is a word only mark and as there are no other elements to contribute to the overall impression of the mark, it lies in the words themselves.

42. Party A's mark consists of the words 'ADAM ICON Upholstery Foam'. I consider the greater role in the overall impression is played by the words 'ADAM ICON'. I consider this to be the case because the words 'Upholstery Foam' are descriptive of Party A's goods and allusive of its services. In addition, this is further supported by the capitalisation of the text 'Adam ICON', whereas the remainder of the text is in title case. I consider that 'Upholstery Foam' will therefore play a lesser role in the overall impression of the mark.

43. Visually, the marks share the words 'ADAM ICON'. They differ in the presence of the words 'Upholstery Foam' in party A's mark. Taking this into account, I consider the marks to be similar to a medium degree.

44. Aurally, the marks will share the pronunciation of the shared element of 'ADAM ICON'. However, they will differ in the pronunciation of 'Upholstery Foam' in party A's mark. Taking this into account, I consider the marks to be similar to a medium degree.

45. In both marks, I consider that the average consumer will see the name ‘Adam’, but will not see ‘Icon’ as a name; it is not something that would be interpreted as a name. I consider that the average consumer will see ‘Icon’ as meaning someone or something worthy of reverence or respect. Regardless, I consider that ‘Adam Icon’ will be perceived the same in both marks by the average consumer. In relation to the name ‘Adam’ remind myself that Philip Harris, sitting as the Appointed Person in *Georgine Ratelband v Walmart Apollo, LLC* (BL O/1212/23) considered the question of the conceptual comparability of names. He held that conceptual comparison between names is perfectly possible, even where the names do not give rise to a concept over and above that of their being recognised as names. As such, the marks share this key concept, as well as the concept evoked by Icon. However, party A’s mark also gives rise to the concept of upholstery foam. Overall, I find the marks to be conceptually similar to a medium degree.

COMPARISON OF GOODS AND SERVICES

46. The goods and services in question are as follows:

Party B’s goods and services	Party A’s goods and services
<p>Class 17: Flexible foam; flexible polyurethane foam; flexible foam materials; cut to size foam; upholstery foam; foam for use in upholstery; foam in the form of crumb; shredded foam; foam materials cut to size; foam materials for use in manufacture; foam materials in the form of blocks, sheets, rolls, blanks; shredded polyurethane foams; ether foams; closed cell foams; closed cell polyethylene foams; closed cell cross-linked</p>	<p>Class 17: Polyamide foams Cuts; cut to Size Foam; Molded foam for packing; Polyurethane foam [semi-finished]; Polyurethane foam in blocks; Foam supports for floral arrangements; Packing foam in sheet; Polyurethane foam for insulating purposes; Low-density polyurethane foam for insulation; Foam for use as heat insulation; Foam for use in sound absorption; Low-density polyurethane</p>

<p>polyethylene foam; closed cell cross-linked polyethene foam; Flower arrangements (Foam supports for -) [semi-finished products];Foam for use as heat insulation; Foam for use as heat shields; Foam for use as motor compartment linings; Foam for use in sound absorption; Foam for use in sound insulation; Foam glass for use as an insulating materials; Foam in the form of blocks for use as heat insulation; Foam insulation for use in building and construction; Foam insulation materials for use in building and construction; Foam rubber; Foam sheeting for use as a building insulation; Foam supports for floral arrangements; Foam supports for flower arrangements [semi-finished products].</p> <p>Class 40: Foam converting services, cutting and fabricating foam from bulk; processing of goods by cutting, namely converting bulk stock into products of a required shape and size; processing of foam materials by cutting, namely converting bulk stock into products of a required shape and size.</p>	<p>foam for packing; Polyurethane foam in blocks for insulating; Foam for use as heat shields; Foam for use in sound insulation; Insulating materials made of polyurethane foam; Laminates containing polyamide foams for thermal insulation; Foam for use as motor compartment linings; Foam supports for flower arrangements [semi-finished products]; Polyethylene synthetic resin [semi-processed] for foam mouldings; Polyurethane foam in sections for use in manufacture; Polyurethane foam sheeting for use as building insulation; Foam sheeting for use as building insulation; Foam insulation materials for use in building and construction; Polyurethane foam in strips for use in manufacture; Molded foam insulated container packing for commercial transportation; Polyurethane foam in blocks for use in flower arranging; Foam in the form of blocks for use as heat insulation; Foam Cuts; Cut to Size Foam; Upholstery Foam; Chair Foam; Seat Foam; Foam Cushion; Polyurethane foam in blocks; Low-density polyurethane foam for insulation; Polyurethane foam in blocks for insulating; Low-density polyurethane foam for packing; Polyurethane foam [semi-finished];Polyurethane foam in strips for use in manufacture;</p>
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	<p>Polyurethane foam sheeting for use as building insulation; Polyurethane foam for insulating purposes; Foam for use as heat insulation; Polyurethane foam in sections for use in manufacture; Polyurethane foam in blocks for use in flower arranging; Foam for use as heat shields; Foam sheeting for use as a building insulation; Foam in the form of blocks for use as heat insulation; Insulating materials made of polyethylene foam; Polyethylene synthetic resin [semi-processed] for foam mouldings; Polyamide foams; Foam insulation for use in building and construction; Foam supports for floral arrangements; Granules of rubber mixed with polyurethane binder.</p> <p>Class 40:</p> <p>Foam converting services, cutting and fabricating foam from bulk; the processing of goods by cutting, namely converting bulk stock into products of a required shape and size; the processing of foam materials by cutting, namely converting bulk stock into products of a required shape and size, Foam Cutting Service, Foam Cut, Cut to Size Foam, Custom Size Foam, Foam Sheets, Foam Blocks.</p>
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Class 17

Polyamide foams Cuts; cut to Size Foam; Foam Cuts; Cut to Size Foam.

47. The above goods in party A's specification are either self-evidently identical or would be encompassed by "cut to size foam" in party B's specification; therefore, they are identical on the principle outlined in *Meric*.

Polyurethane foam [semi-finished]; Polyurethane foam in blocks.

48. The above goods in party A's specification are encompassed by the term "polyurethane foam" in party B's specification. Therefore, they are identical on the principle outlined in *Meric*.

Foam supports for floral arrangements; Foam supports for flower arrangements [semi-finished products]; Polyurethane foam in blocks for use in flower arranging.

49. The above goods in party A's specification are either self-evidently identical to "foam supports for flower arrangements" in party B's specification, or they are worded differently but are identical goods.

Foam for use as heat insulation; Foam in the form of blocks for use as heat insulation; Laminates containing polyamide foams for thermal insulation; Polyurethane foam for insulating purposes; Low-density polyurethane foam for insulation; Polyurethane foam in blocks for insulating; Insulating materials made of polyurethane foam; Low-density polyurethane foam for insulation; Polyurethane foam in blocks for insulating; Polyurethane foam for insulating purposes.

50. The above goods in party A's specification, although worded differently, are self-evidently identical to the term "foam for use as heat insulation" in party B's specification.

Foam for use as heat shields; Foam for use as heat shields.

51. The above goods in party A's specification are self-evidently identical to the term "*foam for use in heat shields*" in party B's specification.

Polyurethane foam sheeting for use as building insulation; Foam sheeting for use as building insulation; Foam insulation materials for use in building and construction; Polyurethane foam sheeting for use as building insulation; Foam insulation for use in building and construction.

52. The above goods in party A's specification are encompassed by the term "*foam insulation for use in building and construction*" in party B's specification. Therefore, I consider the goods to be identical on the principle outlined in *Meric*.

Foam for use in sound absorption; Foam for use in sound insulation;

53. The above goods in party A's specification are either self-evidently identical or identical on the principle outlined in *Meric* to "*foam for use in sound insulation*" in party B's specification, as the goods are encompassed by party B's term.

Foam for use as motor compartment linings;

54. It is my understanding that foam for use as motor compartment lining is used throughout many parts of a vehicle and has various uses. One area in which I understand that it is used is in the engine compartment as insulation to keep the heat and noise in the engine from reaching the interior of the vehicle. Taking this into account, I consider that this term is encompassed by party B's terms "*foam for use in sound insulation*" and "*foam for use as heat insulation*". Therefore, I find the goods to be identical on the principle outlined in *Meric*.

Upholstery Foam; Chair Foam; Seat Foam; Foam Cushion; Polyurethane foam in sections for use in manufacture; polyurethane foam in strips for use in manufacture;

55. The above goods in party A's specification are either identical on the principle outlined in *Meric*, as they are encompassed by the term, or are self-evidentially identical to "*upholstery foam*" in party B's specification.

Low-density polyurethane foam for packing; Polyurethane foam [semi-finished]; Polyurethane foam in strips for use in manufacture; Polyurethane foam in blocks.

The terms above in party A's specification are either self-evidently identical or identical on the principle outlined in *Meric* to the following term in party B's specification: "*polyurethane foam*".

Moulded foam for packing; Packing foam in sheet; Low-density polyurethane foam for packing; Moulded foam insulated container packing for commercial transportation .

56. It is my understanding that polyurethane foam is the base material used to create some packing foam. As party B's "*polyurethane foam*" has not been limited to a specific form, I consider that it can encompass party A's above terms. Taking this into account, I consider that the goods are identical on the principle outlined in *Meric*.

Polyethylene synthetic resin [semi-processed] for foam mouldings; Polyethylene synthetic resin [semi-processed] for foam mouldings.

57. These goods are used in the production of foam mouldings. I understand that synthetic resins are used as bonding agents. But I have been provided with no evidence to show how they are used in foam mouldings. A resin has a different physical nature from any of party B's class 17 goods, which are foams, or indeed any of its other goods. The purpose is also different. In addition, I do not consider that the users are shared. It is possible that there will be some overlap in trade channels. The goods are not in competition, and I also do not consider that there would be any complementarity. This is because, although foam is essential for the use of the contested goods, the difference in their physical nature leads me to find that the average consumer would not assume that they come from the same undertaking. Notwithstanding the possible overlaps in trade channels and users, I find that these goods are dissimilar to party B's goods.

Polyamide foams

58. It is my understanding that polyamide foam is a closed cell foam. I consider that these goods are encompassed by the term “closed cell foams” in party B’s specification. Therefore, I consider the goods to be identical on the principle outlined in *Meric*.

Granules of rubber mixed with polyurethane binder

59. I understand that this is a form of synthetic resin. However, I have been provided with no evidence to show how they are used. A resin has a different physical nature from any of party B’s class 17 goods. Without any further evidence or submissions, it is difficult for me to conduct a comparison any further. I consider that the method of use and purpose of the goods will differ. I do not consider that there is any competition or complementarity between the goods. There is a possibility that there will be an overlap in trade channels and users. However, due to the difference in physical nature, I do not consider that the average consumer would assume that they come from the same undertaking. Even taking into consideration a possible overlap in trade channels and users, I find that the goods are dissimilar to party B’s goods.

Class 40

Foam converting services, cutting and fabricating foam from bulk; the processing of goods by cutting, namely converting bulk stock into products of a required shape and size

60. The aforementioned services appear in both parties’ specifications and, therefore, are self-evidently identical.

61. The remainder of party A’s service, being “*the processing of foam materials by cutting, namely converting bulk stock into products of a required shape and size, Foam Cutting Service, Foam Cut, Cut to Size Foam, Custom Size Foam, Foam Sheets, Foam Blocks*” are encompassed by the terms “*foam converting services,*

cutting and fabricating foam from bulk; the processing of goods by cutting, namely converting bulk stock into products of a required shape and size” in party B’s specification and are, therefore, identical on the principle outlined in Meric.

62. As a level of similarity is required between the competing goods and services in order for there to be a likelihood of confusion under the Act,⁵ for those goods where there is no similarity has been found, there will be no likelihood of confusion. No similarity has been found with the following goods:

Class 17: Granules of rubber mixed with polyurethane binder; polyethylene synthetic resin [semi-processed] for foam mouldings; polyethylene synthetic resin [semi-processed] for foam mouldings.

THE AVERAGE CONSUMER AND THE NATURE OF THE PURCHASING ACT

63. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties’ goods and services. I must then determine the manner in which the goods and services are likely to be selected by the average consumer. 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 (as he was then) described the average consumer in these terms:

“60. 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.”

⁵ *eSure Insurance v Direct Line Insurance* [2008] ETMR 77 CA

64. I consider that the average consumer of the goods and services at issue are likely to be a business or a tradesperson, although I accept that some of the goods, such as foam for flower arranging or insulating materials, will also be purchased by a member of the general public. The goods cover a number of different trades, such as the motor manufacturing industry, floristry, furniture manufacturing, and construction, but whichever trade they practise, the professional consumer would be keen to use high quality materials that are fit for purpose. These consumers are likely to purchase the goods and services on a relatively frequent basis. They are likely to pay a fairly high degree of attention during the purchasing process, although it is unlikely to be at the very highest level.

65. Where the average consumer is a member of the general public, the level of attention will depend on the purpose for which they are buying the goods and services. They are likely to pay a slightly higher degree of attention when purchasing insulating foam than when buying foam for flower arranging. The price of the goods and services will vary, but they are unlikely to be particularly costly. The average consumer will buy the goods less frequently than the trade consumer. Even so, the level of attention is unlikely to rise above medium.

66. The goods and services will be purchased from specialist suppliers, although some, such as insulating materials, will be available in DIY stores, and upholstery materials and foam for flower arranging may be purchased from craft retailers. They are likely to be bought online or in physical shops. The average consumer will make the purchase after seeing the mark used on websites, catalogues or on the goods themselves in a shop. The purchasing process is largely visual, although there may be a role for advice from sales staff, and the goods and services may also be ordered over the telephone.

DISTINCTIVE CHARACTER OF THE EARLIER MARK

67. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 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).”

68. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities.

69. As party B has not filed any evidence to show that the distinctiveness of its mark has been enhanced through use, I only have the inherent position to consider.

70. As mentioned above, the earlier mark contains two words. In the context of the goods and services for which it is registered, neither of the words is descriptive or allusive to the goods and services at issue. I do not consider that the word ‘Adam’ has significance in relation to foam goods and foam related services. Rather, it is a fairly common name in the UK. I do consider that the name ‘Adam’ followed by the

word 'Icon' does add to the distinctiveness of the mark (as it is an unusual combination); I find that the earlier mark has an above medium degree of distinctive character, but not high.

LIKELIHOOD OF CONFUSION

71. 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 scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods or services and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the opponent's trade 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 they have retained in their mind.

72. I have found the marks to be visually, aurally and conceptually similar to a medium degree. I have identified the average consumer as the general public and tradespeople who will purchase the goods by both aural and visual means. I have concluded that a medium degree of attention to a fairly high degree will be paid by the average consumer during the purchasing process. I have found the earlier mark to be inherently distinctive to an above medium degree, but not high.

73. Taking the above factors into account, I consider that the differences between the marks are insufficient to avoid confusion, particularly when the principle of imperfect recollection is considered. In my view, it is plausible that the average consumer will overlook the words 'Upholstery foam', especially given the descriptive nature of that element. I consider it likely that the marks will be misremembered or

mistakenly recalled as each other. Consequently, I consider there to be a likelihood of direct confusion. In the event that I am wrong in my finding of direct confusion, I will proceed to consider indirect confusion.

74. Indirect confusion involves the recognition by the average consumer of the differences between the marks. Mr Purvis QC (as he was then) in the *L.A Sugar Limited* case sets out that there are three main categories of indirect confusion and that indirect confusion 'tends' to fall into one of them.⁶ Indirect confusion was described in the following terms by Iain Purvis Q.C.,(as he was then) sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10:

“16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when 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).

⁶ Paragraphs 16 & 17 of *L.A Sugar Limited v By Black Beat Inc*, Case BL-O/375/10

(b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand 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).”

75. Whilst I note that the examples set out by Mr Purvis are not exhaustive, I note the case of *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors*,⁷ wherein Arnold LJ referred to the comments of James Mellor QC (as he was then) sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he stated that a finding of a likelihood of indirect confusion is not a consolidation prize and that there needs to be a reasonably special set of circumstances in order to get indirect confusion where there is no likelihood of direct confusion. Arnold LJ agreed, pointing out that there must be a “proper basis” for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

76. Even if the differences are taken into account, I consider the presence of the identical “Adam Icon” element will lead the average consumer to think that the marks came from the same or related undertaking. I make this finding on the basis that “Adam Icon” plays a greater role in both parties’ marks. Further, I am of the view that the word “Upholstery Foam” will be put down to a form of brand variation or alternative mark, particularly given its descriptive/allusive nature in relation to the goods and services at issue.

OUTCOME

77. Opposition 600003016 fails.

78. Opposition 442522 succeeds in its entirety.

⁷ [2021] EWCA Civ 1207

79. Opposition 442741 is partially successful. The opposition has succeeded for the following goods and services, which will be refused:

Class 17

Polyamide foams Cuts; cut to Size Foam; Molded foam for packing; Polyurethane foam [semi-finished]; Polyurethane foam in blocks; Foam supports for floral arrangements; Packing foam in sheet; Polyurethane foam for insulating purposes; Low-density polyurethane foam for insulation; Foam for use as heat insulation; Foam for use in sound absorption; Low-density polyurethane foam for packing; Polyurethane foam in blocks for insulating; Foam for use as heat shields; Foam for use in sound insulation; Insulating materials made of polyurethane foam; Laminates containing polyamide foams for thermal insulation; Foam for use as motor compartment linings; Foam supports for flower arrangements [semi-finished products]; Polyurethane foam in sections for use in manufacture; Polyurethane foam sheeting for use as building insulation; Foam sheeting for use as building insulation; Foam insulation materials for use in building and construction; Polyurethane foam in strips for use in manufacture; Molded foam insulated container packing for commercial transportation; Polyurethane foam in blocks for use in flower arranging; Foam in the form of blocks for use as heat insulation; Foam Cuts; Cut to Size Foam; Upholstery Foam; Chair Foam; Seat Foam; Foam Cushion; Polyurethane foam in blocks; Low-density polyurethane foam for insulation; Polyurethane foam in blocks for insulating; Low-density polyurethane foam for packing; Polyurethane foam [semi-finished]; Polyurethane foam in strips for use in manufacture; Polyurethane foam sheeting for use as building insulation; Polyurethane foam for insulating purposes; Foam for use as heat insulation; Polyurethane foam in sections for use in manufacture; Polyurethane foam in blocks for use in flower arranging; Foam for use as heat shields; Foam sheeting for use as a building insulation; Foam in the form of blocks for use as heat insulation; Insulating materials made of polyethylene foam; Polyamide foams; Foam insulation for use in building and construction; Foam supports for floral arrangements; Granules of rubber mixed with polyurethane binder.

Class 40

Foam converting services, cutting and fabricating foam from bulk; the processing of goods by cutting, namely converting bulk stock into products of a required shape and size; the processing of foam materials by cutting, namely converting bulk stock into products of a required shape and size, Foam Cutting Service, Foam Cut, Cut to Size Foam, Custom Size Foam, Foam Sheets, Foam Blocks.

80. The application will continue for the following goods and services, which were unsuccessful, they will proceed to registration:

Class 17: Granules of rubber mixed with polyurethane binder; *polyethylene synthetic resin [semi-processed] for foam mouldings; polyethylene synthetic resin [semi-processed] for foam mouldings.*

COSTS

81. Zaygham Hussain has been successful in oppositions 442522 and 600003016, and has a greater level of success in relation to opposition 442741. As he was successful, Mr Hussain would normally be entitled to a contribution towards his costs. However, as Mr Hussain is unrepresented, at the conclusion of the evidence rounds, the tribunal wrote to him and invited him to indicate whether he intended to make a request for an award of costs. Mr Hussain was informed that, if so, he should complete a Pro Forma, providing details of his actual costs and accurate estimates of the amount of time spent on various activities associated with the proceedings. He was informed that *“if the pro-forma is not completed and returned, costs, other than official fees arising from the action (excluding extensions of time) may not be awarded”*.

82. Mr Hussain did not file a completed Pro Forma and therefore I make an award of costs which covers only the official fees arising from the actions, that being £200

(2 X £100). I note that Mr Farooq is the Director of M&A Styles Ltd, therefore, accordingly, I find Mr Farooq and M&A Styles Ltd are jointly and severally liable for the payment of the award of costs to Mr Hussain. 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 2nd day of September 2025

**A KLASS
For the Registrar**

Annex A

Class 17: Flexible foam; flexible polyurethane foam; flexible foam materials; cut to size foam; upholstery foam; foam for use in upholstery; foam in the form of crumb; shredded foam; foam materials cut to size; foam materials for use in manufacture; foam materials in the form of blocks, sheets, rolls, blanks; shredded polyurethane foams; ether foams; closed cell foams; closed cell polyethylene foams; closed cell cross-linked polyethylene foam; closed cell cross-linked polyethene foam; Flower arrangements (Foam supports for -) [semi-finished products]; Foam for use as heat insulation; Foam for use as heat shields; Foam for use as motor compartment linings; Foam for use in sound absorption; Foam for use in sound insulation; Foam glass for use as an insulating materials; Foam in the form of blocks for use as heat insulation; Foam insulation for use in building and construction; Foam insulation materials for use in building and construction; Foam rubber; Foam sheeting for use as a building insulation; Foam supports for floral arrangements; Foam supports for flower arrangements [semi-finished products].

Class 40: Foam converting services, cutting and fabricating foam from bulk; processing of goods by cutting, namely converting bulk stock into products of a required shape and size; processing of foam materials by cutting, namely converting bulk stock into products of a required shape and size.

Annex B

Class 17: Flexible foam; flexible polyurethane foam; flexible foam materials; cut to size foam; upholstery foam; foam for use in upholstery; foam in the form of cumb; shredded foam; foam materials cut to size; foam materials for use in manufacture; foam materials in the form of blocks, sheets, rolls, blanks; shredded polyurethane foams; ether foams; closed cell foams; closed cell polyethylene foams; closed cell cross-linked polyethylene foam; closed cell cross-linked polyethene foam; Flower arrangements (Foam supports for -) [semi-finished products]; Foam for use as heat insulation; Foam for use as heat shields; Foam for use as motor compartment linings; Foam for use in sound absorption; Foam for use in sound insulation; Foam glass for use as an insulating materials; Foam in the form of blocks for use as heat insulation; Foam insulation for use in building and construction; Foam insulation materials for use in building and construction; Foam rubber; Foam sheeting for use as a building insulation; Foam supports for floral arrangements; Foam supports for flower arrangements [semi-finished products].

Class 40: Foam converting services, cutting and fabricating foam from bulk; processing of goods by cutting, namely converting bulk stock into products of a required shape and size; processing of foam materials by cutting, namely converting bulk stock into products of a required shape and size.

Annex C

Class 17: Polyamide foams Cuts; cut to Size Foam; Molded foam for packing; Polyurethane foam [semi-finished]; Polyurethane foam in blocks; Foam supports for floral arrangements; Packing foam in sheet; Polyurethane foam for insulating purposes; Low-density polyurethane foam for insulation; Foam for use as heat insulation; Foam for use in sound absorption; Low-density polyurethane foam for packing; Polyurethane foam in blocks for insulating; Foam for use as heat shields; Foam for use in sound insulation; Insulating materials made of polyurethane foam; Laminates containing polyamide foams for thermal insulation; Foam for use as motor compartment linings; Foam supports for flower arrangements [semi-finished products]; Polyethylene synthetic resin [semi-processed] for foam mouldings; Polyurethane foam in sections for use in manufacture; Polyurethane foam sheeting for use as building insulation; Foam sheeting for use as building insulation; Foam insulation materials for use in building and construction; Polyurethane foam in strips for use in manufacture; Molded foam insulated container packing for commercial transportation; Polyurethane foam in blocks for use in flower arranging; Foam in the form of blocks for use as heat insulation; Foam Cuts; Cut to Size Foam; Upholstery Foam; Chair Foam; Seat Foam; Foam Cushion; Polyurethane foam in blocks; Low-density polyurethane foam for insulation; Polyurethane foam in blocks for insulating; Low-density polyurethane foam for packing; Polyurethane foam [semi-finished]; Polyurethane foam in strips for use in manufacture; Polyurethane foam sheeting for use as building insulation; Polyurethane foam for insulating purposes; Foam for use as heat insulation; Polyurethane foam in sections for use in manufacture; Polyurethane foam in blocks for use in flower arranging; Foam for use as heat shields; Foam sheeting for use as a building insulation; Foam in the form of blocks for use as heat insulation; Insulating materials made of polyethylene foam; Polyethylene synthetic resin [semi-processed] for foam mouldings; Polyamide foams; Foam insulation for use in building and construction; Foam supports for floral arrangements; Granules of rubber mixed with polyurethane binder.

Class 40: Foam converting services, cutting and fabricating foam from bulk; the processing of goods by cutting, namely converting bulk stock into products of a

required shape and size; the processing of foam materials by cutting, namely converting bulk stock into products of a required shape and size, Foam Cutting Service, Foam Cut, Cut to Size Foam, Custom Size Foam, Foam Sheets, Foam Blocks.

Annex D

Class 20: Cushions; Stadium cushions; Air cushions; Cushions [furniture]; Seat cushions; Chair cushions; Cushions (upholstery); Pet cushions; Cushions (Pet -); Soft furnishings [cushions]; Neck support cushions; Bean bag cushions; Stadium seats (Cushions for -); Cushions filled with hair; Japanese floor cushions (zabuton); Inflatable neck support cushions; Baby head support cushions; Nap mats [cushions or mattresses]; Anti-roll cushions for babies; Head support cushions for babies; Inflatable cushions, not for medical use; Air cushions, not for medical purposes; Inflatable cushions, other than for medical purposes; Beds, bedding, mattresses, pillows and cushions; Back support cushions, not for medical purposes; Plastic mesh cushioning sheets for lining shelves; Spring assemblies (Non-metallic -) for incorporation into cushions; Support cushioning for use in car safety seats for babies; Cushions adapted to support the face [other than for medical use]; Cushions [other than for medical use] for supporting infants being examined; Air cushions in the nature of furniture [not for medical purposes]; Mattress pads; Chair pads; Padded furniture; Seat pads; Sleeping pads; Sleeping bag pads; Suction pads [fixings]; Pillows; Scented pillows; Inflatable pillows; Maternity pillows; Throw pillows; Travel pillows; Air pillows; Bath pillows; Nursing pillows; Neck pillows; Latex pillows; Bamboo pillows; Stuffed pillows; Accent pillows; Head supporting pillows; Neck-supporting pillows; Bean bag pillows; U-shaped pillows; Memory foam pillows; Storage boxes for pillows [furniture]; Head positioning pillows for babies; Air pillows, not for medical purposes; Water pillows, other than for medical purposes; Support pillows for use in baby seating; Support pillows for use in baby car safety seats; Neck pillows [other than for medical or surgical use]; Inflatable pillows [other than for medical use] for fitting around the neck; Seat pads being parts of furniture; Seats; Foam mattresses; Bench seating; Booster seats; Foam camping mattresses; Bath seats; Office seats; Shower seats; Love seats; Metallic seats; Chairs [seats]; Seats [furniture]; Seating furniture; Floating inflatable seats; Adjustable seat carriers; Floatable [inflatable] seats; Seats for children; Seats of metal; High seats [furniture]; Display cases; Fitted cupboards; Fitted furniture; Curtain fittings; Fittings for curtains; Fitted bedroom furniture; Fitted kitchen furniture; Clothes covers; Covers (Garment -) [storage]; Corner protectors of plastics; Tree

protectors, not of metal; Tree protectors [tubes] not of metal; Curtain pins; Curtain rollers; Curtain rings; Rings (Curtain -);Curtain poles; Curtain rods; Rods (Curtain -);Hooks (Curtain -);Curtain tracks; Bamboo curtains; Curtains (Bamboo -);Curtain rails; Rails (Curtain -); Curtain hooks; Curtain runners; Bead curtains; Rollers (Curtain -); Curtain embraces for holding back curtains; Decorative bead curtains; Shower curtain rods; Shower curtain rails; Metal curtain rods; Shower curtain hooks; Curtain tie-backs; Curtain suspension fittings; Shower curtain rings; Rings for curtains; Poles for curtains; Curtain suspending apparatus; Metal curtain rails; Metal curtain rings; Curtain suspension devices; Curtain embraces of plastics for holding back curtains; Curtain embraces of metal for holding back curtains; Support rails for curtains; Non-metal curtain rails; Rods for net curtains; Support rods for curtains; Curtains (Bead -) for decoration; Bead curtains for decoration; Non-metal curtain rings; Non-metal curtain rods; Supports for fixing curtain poles; Supports for fixing curtain rods; Supports for supporting curtain poles; Curtain hooks made of metal; Supports for supporting curtain rods; Curtain hooks made of plastics; Tie back hooks of brass [curtain];Curtain holders, not of textile material; Tie back hooks made of plastics [curtain];Expanding rails of plastics for net curtains; Tie back hooks made of wood [curtain];Curtain drawing devices, other than electrically operated; Indoor blinds, and fittings for curtains and indoor blinds; Mattresses; Mattresses (Spring -);Straw mattress; Air mattresses; Mattress toppers; Spring mattresses; Mattress bases; Latex mattresses; Camping mattresses; Mattresses [other than child birth mattresses]; Bed mattresses; Mattress (Straw -);Straw mattresses; Futon mattresses [other than childbirth mattresses];Inner sprung mattresses; Fire resistant mattresses; Portable mattresses for automobiles; Mattresses made of flexible wood; Floating inflatable mattresses [airbeds];Beds incorporating inner sprung mattresses; Sleeping mats for camping [mattresses];Air mattresses for use when camping; Inflatable mattresses for use when camping; Inflatable mattresses, other than for medical purposes; Air mattresses, not for medical purposes; Spring assemblies (Non-metallic -) for incorporation into mattresses; Bedding for cots [other than bed linen];Bedding for nursery cots [other than bed linen];Cots; Safety cots; Travel cots; Bumper guards for cots, other than bed linen; Cots for babies; Beds; Beds (Hospital -); Feather beds; Dog beds; Wooden beds; Cat beds; Water beds; Hospital beds; Beach beds; Infant beds; Portable beds; Bed slats; Chair beds; Bed rails; Sofa beds; Camp beds; Foldaway beds; Bed chairs; Divan beds; Bed heads; Bed-settees; Adjustable beds; Bunk beds; Children's beds; Folding beds;

Bed bases; Transportable beds; Bed frames; Beds of wood; Air bed lounge; Bedding, except linen; Beds for birds; Portable infant beds; Beds for animals; Bean bag beds; Beds for pets; Rods for beds; Furniture incorporating beds; Inflatable pet beds.

Class 24: Cushion covers; Cushions (Covers for -); Cushion covering materials; Covers for cushions; Woven fabrics for cushions; Textile piece goods for making cushion covers; Bed pads; Shams (Pillow -); Pillow slips; Pillow covers; Pillow cases; Pillow shams; Covers for pillows; Pillowcases [pillow slips]; Ticks (mattress and pillow coverings); Fitted bed sheets; Textile sheets; Cot sheets; Valance sheets; Bed sheets; Sheets [textile]; Crib sheets; Contour sheets; Towel sheet; Bath sheets; Valanced bed sheets; Sleeping bags [sheeting]; Bed sheets of plastic [not being incontinence sheets]; Bed sheets of plastic, not being incontinence sheets; Bath sheets (towels); Flat bed sheets; Bed sheets of paper; Duvet covers; Covers for duvets; Textile covers for duvets; Duvets; Covers for eiderdown and duvets; Duvets filled with goose down; Duvets filled with goose feathers; Cot covers; Comforters [covers]; Quilt covers; Eiderdown covers; Sofa covers; Mattress covers; Table covers; Bed covers; Canopy covers; Chair covers; Bed coverings; Bean bag covers; Throws (furniture coverings); Valanced bed covers; Ticks [mattress covers]; Bed warmer covers; Toilet seat covers; Afghans [knitted covers]; Coverings for furniture; Coverings for windows; Contoured mattress covers; Fabrics for manufacturing sun protectors; Curtains; Lace curtains; Net curtains; Curtain linings; Pleated curtains; Curtain fabrics; Vinyl curtains; Blackout curtains; Curtain valences; Curtaining materials; Curtain material; Fabric curtains; Shower curtains; Moquettes [curtains]; Window curtains; Door curtains; Swags [curtains]; Curtain fabric; Ready made curtains; Curtains for windows; Curtain holders (Textile -); Shower room curtains; Curtains for showers; Curtains of textile; Textile curtain pelmets; Curtains of plastic; Curtains and lace curtains of textiles or plastic; Indoor and outdoor curtains; Draperies [thick drop curtains]; Fabrics for making curtains; Curtain holders of cloth; Curtains made of plastics; Curtains of textile material; Curtain holders of textile material; Curtains of textiles or plastic; Curtains made of textile fabrics; Curtain loops of textile material; Curtains made from textile materials; Curtain tie-backs of textile; Curtain holders of textile materials; Fire-retardant textile shower curtains; Ready made curtains of plastics; Curtains made of textile materials; Curtains of textile or plastic; Ready made curtains of textiles; Curtain loops made of textile materials; Shower curtains made of plastic material; Textile piece

goods for making curtains; Curtaining material being textile piece goods; Curtain holders or tiebacks of textile; Shower curtains of textile or plastic; Small curtains made of textile materials; Drapes in the nature of curtains; Curtains [made up or in the piece]; Textile fabrics for use in the manufacture of curtains; Covers for mattresses; Mattress slips [other than incontinence]; Protective loose covers for mattresses and furniture; Cot bumpers [bed linen]; Cot blankets; Bed skirts; Bed canopies; Blankets (Bed -); Bed spreads; Bed linen; Bed quilts; Bed throws; Bed valances; Bed blankets; Linen (Bed -); Bed clothes; Comforters (bedding); Silk bed blankets; Canopies (bed linen); Valances for beds; Comforters for beds; Infants' bed linen; Quilt bedding mats; Fabric bed valances; Quilted blankets [bedding].