

**BL O/0820/25**

THE MATTER OF THE TRADE MARKS ACT 1994

IN THE MATTER OF INTERNATIONAL REGISTRATION DESIGNATING THE UK  
NUMBER 1,743,375 IN THE NAME OF ROBERT SULIĆ

AND IN THE MATTER OF THE OPPOSITION UNDER NO 444,670 IN THE NAME OF  
ANTONIO NUNO CORREIA RAMOS MARQUES

AND IN THE MATTER OF AN APPEAL FROM THE DECISION OF LAURA BAILEY  
(O/464/25) DATED 27 MAY 2025

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DECISION

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**Introduction**

1. This is an appeal from the decision of Laura Bailey, for the Registrar, dated 27 May 2025 (O/464/25). Antonio Nuno Correia Ramos Marques successfully opposed the request of Robert Sulić for protection of an international trade mark in the United Kingdom (No 1,743,375) under section 5(2)(b) of the Trade Marks Act 1994. Mr Sulić appeals.
2. Robert Sulić applied for protection of the following figurative mark for “vodka” in Class 33:



3. The application for protection was opposed by Antonio Nuno Correia Ramos Marques based on two earlier marks. The first earlier mark is the word mark THE OLD BLACK SWAN SPECIAL LONDON (No. 3,594,948) which is registered in Class 30, 32 and 33. The second earlier mark is the word mark BLACK SWAN DISTILLERY (No 3,597,805) in Class 32 and 33. Both the earlier marks covered “Distilled beverages” and “Spirits [beverages]” in Class 33.

**Standard of appeal**

4. The standard of appeal is by way of review. Neither surprise at a Hearing Officer’s conclusion nor a belief that the Hearing Officer has reached the wrong decision will suffice to justify interference in this sort of appeal. Before that is warranted, it is

necessary for me to be satisfied that there was a distinct and material error of principle in the decision in question or that the Hearing Officer's findings were rationally insupportable. The principles to be applied were summarised by Joanna Smith J in *Axogen Corporation v Aviv Scientific Ltd* [2022] EWHC 95 (Ch), [24] and further explained in *Lifestyle Equities CV v Amazon UK Services Ltd* [2024] UKSC 8, [49] and *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc* [2025] UKSC 25, [93] and [94].

5. When considering this appeal, and applying these principles, it is important to remember the high bar set.

### **The appeal**

6. The Grounds of Appeal in this case are entirely unsatisfactory. They make statements which mix up legal and factual matters, rely on irrelevant things, and the sole reference to a statutory provision is to one which does not exist. It does not matter whether these were drafted by the Appellant without any assistance or some form of generative AI was used. It is not acceptable, even from a litigant in person, to provide grounds which makes the task of appellate review so difficult. Indeed, the difficulty was made more profound because neither side provided any written submissions and both declined a hearing. This means this appeal has to be determined based on the Appellant's confused set of criticisms of the Hearing Officer's decision.
7. Nevertheless, I will address the Appellant's challenges to the decision as far as is possible from the Grounds of Appeal as drafted.
8. The Appellant's first complaint is that the Respondent's specification is very broad and that broad specifications are "red flags" suggesting bad faith. There has been no application by the Appellant to declare either of the earlier marks invalid on this basis and so the marks must be treated as valid and protected to their full extent. This has been established in relation to challenges to a mark's distinctiveness (C-196/11 *Formula One*, EU:C:2012:314, [47]) and so logically must apply to other absolute grounds as well, including section 3(6) of the Trade Marks Act 1994. I therefore reject this challenge.
9. The second challenge is incredibly vague but to the extent I understand it, it has two elements. First, it is said that the Hearing Officer failed to take into account that the specifications for the earlier marks are very long. This can be dealt with quickly as it is an irrelevant consideration. The assessment of the similarity of the goods must be made with each and every good and service (however long the specification); however, in practice, where goods are found to be identical it is not necessary to consider other less similar goods or services as well. Accordingly, once the Hearing Officer correctly identified goods covered by the earlier marks (Distilled beverages and Spirits [beverages]) which encompassed the single good (Vodka) covered by the Appellant's Mark it was quite proper to conclude that all the marks cover identical goods (see T-133/05 *Meric v OHIM* [2006] ECR II-2737, [29]).

10. There was a second allegation that the Respondent had not “manufactured” the goods covered by its specification. However, as the marks were both registered in July 2021 there is no obligation for the Respondent to prove use of the marks: see Trade Marks Act 1994, s 6A. Accordingly, this challenge is irrelevant.
11. The Appellant’s third complaint relates to the Hearing Officer’s Decision at [11(b)] which was as follows:

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
12. It is said by the Appellant that this statement is unjustified because no evidence was presented that the consumer will have a rare chance to compare the marks and no reason is given for the level of the average consumer’s attention (as well as a few other similar comments). These criticisms are all totally misguided. This was not a finding of fact based upon evidence or otherwise, but it reflects a statement of one of the principles of law. These principles are distilled from a range of court decisions over the years (as explicitly stated by the Hearing Officer: Decision, [11]) and apply to all cases. Indeed, this summary of principles was recently approved by the Court of Appeal in *easyGroup Ltd v Easy Live (Services) Ltd* [2025] EWCA Civ 946, [21].
13. The Appellant’s fourth criticism is that Hearing Officer took an approach to the comparison of marks which is contrary to neuroscience (and relied on a short marketing article to support this statement: Sallie Bale, ‘Brand Distinctiveness: From Differentiation to Memorable Marketing’, 20 June 2023, [www.thelaneagency.com/blog/brand-distinctiveness](http://www.thelaneagency.com/blog/brand-distinctiveness)). Leaving aside that the source relied upon for a scientific proposition is entirely inappropriate, and the fact that the rules of expert evidence would apply to such evidence, the comparison of marks is undertaken in accordance with the principles of law already mentioned. Some of these principles are normative in nature, rather than strictly based on how things happen in the real world. Therefore, it was not open to the Hearing Officer to take a different approach based on ‘neuroscience’ or otherwise.
14. The fifth criticism is that the Respondent provided no evidence of actual confusion. However, it has long been established that there is no need to show actual confusion for a Hearing Officer to find there to be a *likelihood* of confusion.
15. Finally, the Appellant provided trade mark certificates for similar marks that have been registered in other jurisdictions (these were annexed to the Statement of Grounds). The Appellant says that these other registrations suggest that the trade mark should be registered in the United Kingdom as well. This argument is flawed. State of the register evidence is unhelpful at the best of times (see *British Sugar v James Robertson* [1996] RPC 281 at 305; *Brewster’s TM App* [2018] RPC 18, [11]), and furthermore there is no evidence that the registrations provided by the Appellant were opposed by the Respondent or anyone else based on comparable earlier marks.

16. The Appellant finishes off its grounds by asking for costs under “rule 84(3)”. Not only are costs dealt with in rule 67 of the Trade Marks Rules 2008, but there is no rule 84 at all.

**Conclusion**

17. This appeal is therefore dismissed in its entirety. As the Respondent played no part in the appeal, I make no order as to costs.

PHILLIP JOHNSON  
THE APPOINTED PERSON  
8 September 2025

**Representation:**

For the Appellant: Nikolina Sulić (litigant-in person) narrative Grounds of Appeal only

The Respondent played no part in the proceedings.