O/0902/25

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. 3959837
IN THE NAME OF HOME LEISURE DIRECT LIMITED
TO REGISTER THE FOLLOWING TRADE MARK:

IN CLASS 28

AND

IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 446384
BY FUSE LONDON LIMITED

Background and pleadings

1. Home Leisure Direct Limited ("the applicant") applied to register the trade mark shown on the front of this decision ("the applicant's mark") in the UK on 22 September 2023, under number 3959837. It was accepted and published in the Trade Marks Journal on 15 December 2023 in respect of the following goods:

> Class 28: *Tables for table football; Table football tables; Indoor football tables; Indoor football (Tables for -); Football (Tables for indoor -); Tables for indoor football; Foosball tables; Gaming tables.*

2. Fuse London Limited ("the opponent") opposes the trade mark on the basis of section 5(2)(b) of the Trade Marks Act 1994 ("the Act"). The opposition is directed at all the goods. This is on the basis of its UK trade mark number 2256934, **TOTAL ACTION FOOTBALL**. The opponent's mark was filed on 29 December 2000 and became registered on 28 December 2001. It stands registered for goods in class 28. For the purposes of the opposition, the opponent only relies on the following goods:

> Class 28: *Games, toys and playthings.*

3. The opponent's mark qualifies as an 'earlier mark' in accordance with section 6 of the Act. It had been registered for more than five years at the filing date of the applicant's mark and is, therefore, subject to the use requirements in section 6A of the Act.

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

5. The applicant filed a counterstatement, denying the ground of opposition. It also indicated that it would require the opponent to provide proof of use of its mark.

6. The opponent is professionally represented by Bailey Walsh & Co. LLP, whereas the applicant is professionally represented by Trade Mark Direct. Only the opponent filed evidence in these proceedings, but the applicant and opponent both filed submissions within the evidence rounds. No hearing was requested, but the opponent

filed written submissions in lieu. This decision is taken following careful consideration of all the papers before me.

Relevance of EU law

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

Evidence

8. The opponent's evidence consists of two witness statements and five exhibits (SP1-SP5). The first witness statement is provided by Peter Cartlidge and is dated 22 October 2024. Mr Cartlidge is the co-founder and Managing Director for the opponent and has held this role since 2001. He explains the licence agreement with Toy Brokers Holdings Limited ("the licensee"). The second witness statement is provided by Simon Pilkington and is dated 22 October 2024. Simon Pilkington is the Managing Director of the licensee and has held this role since 27 April 2009. He provides evidence of use of the opponent's mark.

9. I have taken all the evidence into account in reaching my decision and will refer to it below where necessary.

Proof of use

10. Section 6A of the Act reads as follows:

> "(1) This section applies where –
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> > (a) an application for registration of a trade mark has been published,
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> > (b) there is an earlier trade mark of a kind falling within section 6(1)(a), (aa) or (ba) in relation to which the conditions set out in section 5(1), (2) or (3) obtain, and

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

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

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

(3) The use conditions are met if –

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

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

(4) For these purposes –

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

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

(5)-(5A) [Repealed]

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

11. Pursuant to the above provisions, the relevant period for assessing whether there has been genuine use of the opponent's mark is the five-year period ending with the filing date of the applicant's mark, i.e. 23 September 2018 to 22 September 2023.

12. In *easyGroup Ltd v Nuclei Ltd & Ors*[1], Arnold LJ summarised the law relating to genuine use as follows:

> "105. The principles applicable to determining whether there has been genuine use of a trade mark have been considered by the CJEU in a considerable number of cases, the principal decisions being Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, Case C-259/02 *La Mer Technology Inc v Laboratories Goemar SA* [2004] ECR I-1159, Case C-416/04 P *Sunrider Corp v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237, Case C-442/07 V*erein Radetsky-Order v Bundervsvereinigung Kamaradschaft 'Feldmarschall Radetsky'* [2008] ECR I9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode* GmbH [2009] ECR I-2759, Case C-149/11 *Leno Merken BV v Hagelkruis Beheer BV* [EU:C:2012:816], Case C-609/11 *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], Case C-141/13 *P Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089], Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434] and Joined Cases C–720/18 and C–721/18 *Ferrari SpA v DU* [EU:C:2020:854].
>
> 106. Ignoring issues which do not arise in the present case, such as use in relation to spare parts or second-hand goods and use in relation to a sub-category of goods or services, the principles may be summarised as follows:
>
> (1) Genuine use means actual use of the trade mark by the proprietor or by a third party with authority to use the mark: *Ansul* at [35] and [37]. (2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Centrotherm* at [71]; *Leno* at [29]; *Ferrari* at [32].

[1] [2023] EWCA Civ 1247

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

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: *Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37]; *Verein* at [14]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle* at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23]. (5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial raison d'être of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: *Ansul* at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34]; *Leno* at [29]-[30], [56]; *Ferrari* at [33].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed

to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no de minimis rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72]; *Leno* at [55].

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

13. Moreover, section 100 of the Act states that:

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

14. In his statement, Mr Cartlidge says that the opponent has licensed the rights in its trade mark to Toy Brokers Holdings Limited ("the licensee") under a licence agreement dated 1 January 2022, although he also states that the opponent and licensee have been working together under an agreement since 11 August 2015. As part of the licence agreement, the opponent has been receiving royalty payments from the licensee on a quarterly basis since Q1 in 2016. Between then and the date of his statement (22 October 2024), the minimum royalty payment at 6% from a total sales revenue of £949.41 for sales of table top games bearing the opponent's mark within a quarter was £56.96, whereas the maximum for a quarter was £3,455.84 from a total sales revenue of £57,459.15. He states that the opponent has received regular royalty payments from the licensee since their 2015 agreement.

15. In his statement, Mr Pilkington states that the licensee has been active in the manufacture, promotion, distribution, and sales of games, toys, and playthings both around the world and in particular the UK since 1967 under the licensee's operating subsidiary and brand, John Adams Leisure Ltd. He states that the licensee has been the exclusive licensee of the opponent's mark since 11 August 2025 as per a licence agreement dated 1 January 2022. He refers to a specific game/brand sold, "TOTAL ACTION FOOTBALL", which he states is protected by the opponent's mark and is

licenced to the licensee. Mr Pilkington says that the game “TOTAL ACTION FOOTBALL” has been available continuously since 17 September 2012 through various online retailers, including the licensee’s website (www.johnadams.co.uk), as well as physical stores such as Smyth’s, Argos, Toys R Us, and Toymaster.

16. Exhibit SP1 shows the sales data of the table-top game bearing the opponent’s mark through various retailers, starting from 2012 and showing each year up to 2024. Although the opponent did not provide the totals for any of the data, I have compiled the total goods value supplied for the years included within the relevant period (i.e. 2018 to 2023 inclusive) across all the retailers:

Year	Goods value
2018	£83,678.36
2019	£64,138.96
2020	£96,668.15
2021	£83,966.11
2022	£83,898.94
2023	£87,097.52

17. The list of retailers shown in Exhibit SP1 demonstrates that sales have been made through a relatively large number of different retailers, such as Argos, Amazon, Harrods, and Smyths. I acknowledge that a proportion of the figures for 2018 and 2023 are likely to have been from sales before and after the relevant period. This is because the relevant period started and ended in September, so the figures for 2018 may include sales made in the eight months or so prior to the relevant period, and the figures for 2023 may include sales made in the three months or so after the relevant period ended. Although I cannot be sure of what proportion of the sales from each of those years ought to be discounted, I am mindful that the figures for the relevant period in 2018 and 2023 are likely to actually be lower than the values shown above.

18. Exhibit SP2 shows screenshots of the John Adams website (www.johnadams.co.uk) obtained via the WayBack Machine. In his witness statement, Mr Pilkington states that these screenshots are taken from 9 August 2020, 28 October 2020, 19 January 2021, 25 May 2022, and 6 April 2023. Whilst I cannot explicitly see these dates, the numbers within the WayBack Machine archive web addresses corroborate with the dates given in Mr Pilkington's witness statement. For example, page eight shows "20201028…" and page 17 shows "20230406". Furthermore, some of the screenshots also contain copyright statements showing the year on the website screenshot (for example, pages 9, 17, and 21). The screenshots show the table-top football game bearing the words "TOTAL ACTION FOOTBALL" (which is available in pound sterling) available to buy at those times, such as through UK retailers including Smyths, Amazon UK, and Asda. The product on pages 10, 14, and 18 shows an example of the mark in use on the table-top football game, as shown below:

19. I find this to be acceptable variant use of the registered mark as the words appear in a reasonably basic typeface. Whilst this variant form includes the use of colour, the differing sizes of the verbal components, and the inclusion of simple geometric shapes, I find that these elements do not alter the distinctive character of the mark in the form in which it was registered. Furthermore, the listings also show the product being sold under the name "Total Action Football – Five A Side" in plain text, which I consider to be use of the mark as registered (albeit with additional wording).

20. Exhibit SP3 shows a selection of sales invoices issued between 13 February 2019 and 24 May 2023. The invoices show sales of a table-top football game sold by John Adams Leisure Ltd under the name "TOTAL ACTION FOOTBALL 5-A-SIDE". These invoices were issued to UK-based customers, with a few different locations shown across the UK such as Fife, Romford, Severn Beach, and Bromsgrove.

21. Exhibit SP4 comprises screenshots showing the table-top football game for sale on Amazon (UK). Mr Pilkington highlights that page 2 shows the date that the product was first available was 19 May 2016. In addition to this, the screenshots show reviews from verified UK purchasers within the relevant period (January and December 2022). The Amazon listing shows the variant use of the mark shown at paragraph 18 on the product itself as well as the name "IDEAL Total Action Football" within the product listing title.

22. Exhibit SP5 shows a screenshot of the table-top football game sold for sale on the website for another retailer (Austins UK). Mr Pilkington states that the TOTAL ACTION FOOTBALL game is currently sold through this retailer and has been since 23 June 2016. The screenshots show both the variant use of the mark shown at paragraph 18 on the product itself, as well as the words "TOTAL ACTION FOOTBALL FIVE A SIDE GAME" as the product name. The game is available in pound sterling.

23. The evidence is not without its limitations. For example, there are no details as to the spend on marketing activities to promote the mark in the UK. There are also no details in relation to the size of the relevant market or the share of that market held by goods bearing the opponent's mark. Also, whilst the selection of invoices in Exhibit SP3 show that the goods were sold to a few different addresses within the UK, there were only four different addresses shown. However, as one of these is an Amazon distribution centre, I therefore recognise that it is likely that the goods will be distributed wider than its location. Although Exhibit SP1 shows a wide range of retailers, there is nothing to demonstrate where these retailers are located within the UK.

24. However, an assessment of genuine use is a global assessment, which includes looking at the evidential picture as a whole.[2] The evidence establishes that goods bearing the opponent's mark were sold in various retailers, and Exhibit SP3, whilst

[2] *New Yorker SHK Jeans GmbH & Co. KG v OHIM,* Case T-415/09

limited, shows that at least some of these retailers were located in different areas of the UK. In addition to this, whilst there is no indication of market share, the figures provided in Exhibit SP1 show that around £500,048 was generated through the sale of goods bearing the opponent's mark during the relevant period. On the face of it, the figures provided seem modest in the context of the UK market for games, toys and playthings, which I understand to be reasonably large. However, as the authorities cited above show, use does not need to be quantitatively significant for it to be considered genuine. Taking the evidential picture as a whole, i.e. the turnover figures, evidence of sales and the evidence of the websites, I am satisfied that there has been genuine use of the mark. Whilst the actual use has been made by John Adams Leisure Ltd, use of a mark by a third party with the consent of the proprietor is acceptable to show use of the opponent's mark.

25. In determining a fair specification for the opponent's mark, I remind myself that fair protection is not to be achieved by identifying and defining particular examples of goods for which there has been genuine use but, rather, the particular categories of goods they should realistically be taken to exemplify.[3] I must consider how the average consumer would fairly describe the goods shown in evidence.[4] All of the sales figures, invoices, and screenshots show the mark in conjunction with a five-a-side table-top football game. The mark is registered for *games, toys and playthings*. Whilst I accept that the goods shown in the evidence would fall within one or more of these categories, they are very broad categories which would include many other goods which are substantially different from the football game offered by the licensee and that there is no evidence of the licensee providing. Furthermore, whilst I recognise that this is not determinative, the licensee itself describes the product as a "five-a-side table-top football game…". Taking into account the evidence filed, it is my view that the average consumer would fairly describe the product offered by the licensee as being a table-top game. I therefore find that the opponent may only rely upon *table-top games* for the purposes of this opposition.

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

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

Section 5(2)(b)

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

> "5(2) A trade mark shall not be registered if because-
>
> (b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark".

27. Section 5A states: […] "Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only."

28. I am guided by the following principles which 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.

> *The principles*
>
> (a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;
>
> (b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

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

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

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

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

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

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

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

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

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

Comparison of goods

29. In *Canon*[5], the Court of Justice of the European Union ("CJEU") stated, at paragraph 23 of its judgment, that when considering whether goods are similar, all the relevant factors relating to the goods should be taken into account. The CJEU stated that those factors include their nature, intended purpose, method of use and whether they are in competition with each other or are complementary.

30. The relevant factors identified by Jacob J. (as he then was) in *Treat*[6] for assessing similarity were:

(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.

31. In *Kurt Hesse v OHIM*[7], the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*[8], the General Court ("GC") stated that "complementary" means:

[5] Case C-39/97
[6] [1996] R.P.C. 281
[7] Case C-50/15 P
[8] Case T-325/06

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

32. In *Gérard Meric v OHIM*[9], the GC confirmed that even if goods are not worded identically, they can still be considered identical if one term falls within the scope of another (or vice versa):

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

33. The goods to be compared as follows:

The opponent's goods	The applicant's goods
Class 28: Table-top games.	Class 28: Tables for table football; Table football tables; Indoor football tables; Indoor football (Tables for -); Football (Tables for indoor -); Tables for indoor football; Foosball tables; Gaming tables.

34. In its statement of grounds, the opponent argues that the applicant's goods fall entirely within the scope of the opponent's goods, and therefore they are identical. In its counterstatement, the applicant accepts that the goods are identical or similar. However, in its later submissions, the applicant argues in response to the evidence filed by the opponent that there are "material differences" between the parties' goods. It has provided two photos which it purports to show the parties' respective goods and argues that "whilst both indoor games are based loosely on the concept of football, the difference in mechanics is significant" and therefore the parties' goods "serve different

[9] Case T- 133/05

market segments". In its submissions, I note that the opponent has highlighted that the applicant had already accepted the issue of the goods being identical or similar in its counterstatement. However, it is my view that it would not be fair to hold the applicant to that initial concession, since it was made prior to the evidence being filed on the basis of a different specification than that I am now considering as a result of assessing the evidence. I have therefore taken into account the applicant's later submissions in relation to the goods.

35. It is my understanding that the applicant's goods are tables with a game integrated within the table itself, whereas the opponent's *table-top games* are games that are separate from a table but designed to be played on top of one. However, it is my view that the goods are highly similar. The goods' users will be those seeking an indoor game which is operated by the hands. Their use is the same, as the goods are used to entertain. Their nature overlaps as they are both played in a similar manner and could both be based on the same subject (i.e., football), but differs as *table-top games* are a game played on top of a regular table, whereas the applicant's goods contain the game within them. They will be sold through the same trade channels, and are likely to be placed in the same aisles as each other. They are not complementary to each other as one is not essential for the other. However, they may be in competition where consumers may choose which type of hand-operated football game to buy. Taking all these factors into account, I find that the goods are highly similar to one another.

Average consumer and the purchasing act

36. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods in question: *Lloyd Schuhfabrik Meyer*[10].

37. 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*[11], Birss J (as he then was) described the average consumer in these terms:

[10] Case C-342/97
[11] [2014] EWHC 439 (Ch)

"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."

38. The average consumer for the goods will be members of the general public. The cost of purchase is likely to vary depending on the sophistication of the game and if it includes electronic technology (such as an electronic scoring system) or not. The goods will be purchased on a reasonably infrequent basis. Several factors may influence the average consumer when purchasing the goods, such as, inter alia, the type of material, the functionality, and the type (or lack therefore) of technology within the item. I therefore consider that the average consumer will pay around a medium level of attention when selecting the goods. The goods are likely to be self-selected from shelves within retail outlets, via online retailers, or in catalogues. Visual considerations are therefore likely to be the primary factor when purchasing the goods. However, I do not discount the role that aural selection may play when purchasing, such as through word-of-mouth recommendations or when placing telephone orders.

Comparison of 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 *Bimbo SA v OHIM*[12]*,* that:

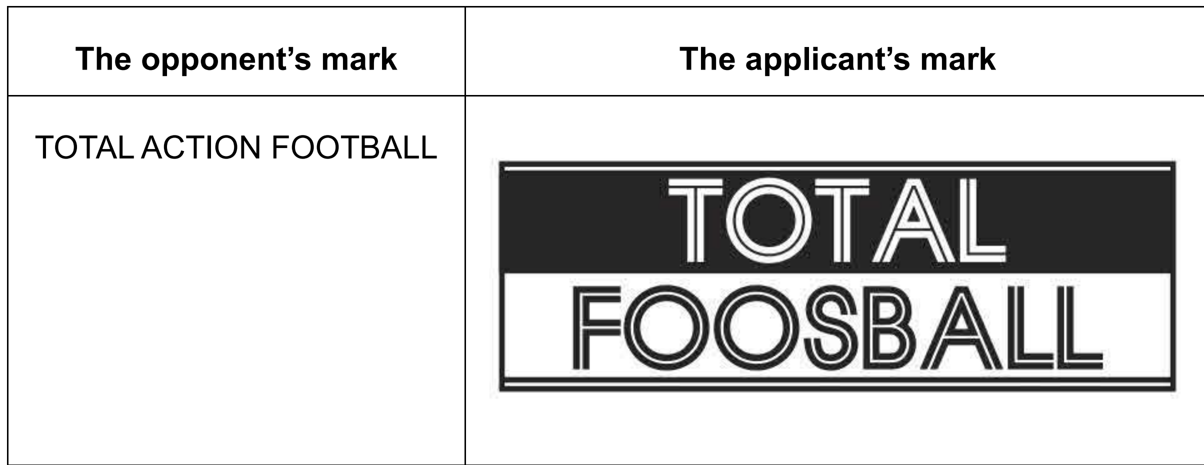
"…it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall

[12] Case C-591/12P

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

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

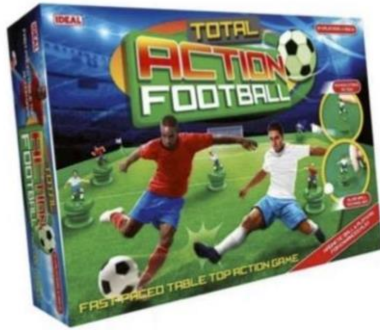
41. The respective trade marks are shown below:

The opponent's mark	The applicant's mark
TOTAL ACTION FOOTBALL	

42. In its submissions, the opponent submits that the word "TOTAL" is the dominant component in the applicant's mark on the basis that the word "FOOSBALL" is descriptive of the goods. It also argues that, as "FOOTBALL" within the opponent's mark is also descriptive, "TOTAL ACTION" is the distinctive component of the opponent's mark, with "TOTAL" being the more dominant of the two words due to its placement at the front of the mark. In its counterstatement, the applicant submits that the opponent "wrongly and artificially dissects the mark to compare TOTAL v TOTAL ACTION" as the dominant components within the competing marks. In its counterstatement, the applicant argues that the shared first word "TOTAL" lacks distinctiveness on account of it being "in common use in relation to software and online access"[13] which it argues renders the term "quasi-descriptive" in relation to the goods. The applicant therefore submits that the marks should be compared as wholes, arguing that the comparison should be "TOTAL FOOSBALL v TOTAL ACTION FOOTBALL". In its submissions, the applicant also argues that the image of the

[13] It appears to me that the reference to "software and online access" in its counterstatement is an error, especially as I note that the applicant correctly refers to the class 28 in its later submissions.

packaging in Exhibit SP5 shows the use of the mark as follows:



43. It argues that “ACTION” is “the dominantly displayed element” of the trade mark, and that “the common word TOTAL is subservient to the point of being readily overlooked”. It therefore submits that it is “evidently not the case” that the other elements within the mark are negligible to warrant comparing solely on the basis of the word “TOTAL”. However, I must clarify that these matters will have no material bearing on the comparison which follows, nor can they in law. This is because it is necessary to consider all the circumstances in which a mark might be used.[14] The opponent’s mark is a word-only mark, and as such, it is protected in whatever case, colour, or typeface (as per *LA Superquimica v European Union Intellectual Property Office (EUIPO)*[15] at [39]). The current use with a basic typeface shown on the packaging does not preclude the opponent from using its mark in a different manner to what is shown in the images in the evidence. Furthermore, since the way in which goods are marketed may vary over time and depend upon the parties’ wishes (or those of any potential successors in title), it is not appropriate to take into account the way in which the word mark currently appears or how the goods are marketed.[16] As a result, even though the applicant has suggested the ways in which its mark may be used, the following comparison must take into account the word-only mark as registered.

44. The opponent’s mark is a word-only mark written in uppercase. It is my view that the word “FOOTBALL” would be seen as a designating the kind of goods, i.e. gaming tables or table-top games that are related to football. The word “TOTAL” is defined by The Oxford English Dictionary in several ways, including as an adjective meaning “complete in nature… manifesting every characteristic or the whole nature of an

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[14] O2 Holdings Limited, O2 (UK) Limited v Hutchison 3G UK Limited, Case C-533/06
[15] Case T-24/17
[16] Devinlec Développement Innovation Leclerc SA v OHIM, Case C-171/06P

activity, person, etc.; all-encompassing, all-inclusive...". The Oxford English Dictionary defines "action" in several ways, including "something that you do", "a physical movement" or "things that are happening, especially exciting or important things". It is my view that, based on their inherent meanings, the words combine to form a unit which strongly alludes to the concept of a complete or all-encompassing, action-packed football game. On this basis, it is my view that the overall impression of the mark lies in all three words in combination.

45. The applicant's mark is a composite mark which contains the verbal elements "TOTAL FOOSBALL" in a stylised typeface. The verbal elements are set on differing monochrome shades as their backgrounds and there is a reasonably plain border around these elements. It is my view that the verbal element "FOOSBALL" is descriptive of the goods, which are all related to gaming tables or football table games. The Oxford English Dictionary defines "foosball" as "A table football game in which players rotate rods attached to opposing ranks of miniature representations of footballers in order to direct a ball into their opponent's goal. Also: the ball used in this game". Whilst I recognise that the term originates from the US, it is my view that the average consumer of the goods in the UK would be aware of this word and recognise it as denoting table football; in my experience, it is an imported term used in the UK. It is my view that the average consumer would view the word "TOTAL" as qualifying the proceeding word "FOOSBALL" in the applicant's mark to mean a complete or all-encompassing foosball game. It is therefore considered that the words combine to form a unit. Due to the size of the verbal elements, and also the principle that the eye is naturally drawn to elements of marks which can be read (see paragraph 37 of *Wassen International Ltd v OHIM (SELENIUM-ACE)*[17]), it is considered that the words "TOTAL FOOSBALL" dominate the overall impression of the opponent's mark. The stylised typeface, the use of monochrome shades, and the use of basic geometric shapes with borders as a background to the words still contribute to the mark's overall impression, but to a lesser degree.

[17] Case T-312/03

Visual comparison

46. In its statement of grounds, the opponent argues that the competing marks bear a high degree of similarity, although it does not specify the level of visual similarity. In its counterstatement, the applicant argues that the marks have a low level of visual similarity due to their different overall impressions.

47. The competing marks are similar as they have the identical first word “TOTAL”. The opponent’s mark contains the word “FOOTBALL” as its final word, whereas the applicant’s mark’s final word is “FOOSBALL”. Both these words are eight letters long and share the same first three letters and the same last four letters. The competing marks differ as the opponent’s mark contains the word “ACTION” which is not present in the applicant’s mark. The final word of the opponent’s mark is the word “FOOTBALL”, whereas the final word in the applicant’s mark is “FOOSBALL”. These words therefore differ as to their fourth letter. Furthermore, although the stylised typeface, the use of monochrome shades, and the use of basic geometric shapes with borders as a background to the words play a lesser role in the overall impression of the applicant’s mark, the use of them still represents a point of visual difference between the marks.

48. The beginnings of words tend to have more visual and aural impact than the ends[18], which, in my view, results in the visual difference created by the additional word “ACTION” being slightly less significant. Furthermore, whilst the use of the borders and stylised typeface create minor points of difference between the competing marks, the use of black text on a white background and white text on a black background does not create a significant difference between the competing marks as it is considered that they merely act as a somewhat decorative background for the words. Moreover, whilst the words ‘FOOTBALL’ and ‘FOOSBALL’ differ as to their fourth letter, it is considered that the shared use of the same first three letters and same final four letters within the words results in a high visual similarity between these two words within the competing marks. Bearing in mind my analysis of the marks’ overall impressions, I am of the view that the marks are visually similar to a low to medium degree.

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

Aural comparison

49. In its counterstatement, the opponent refers to the marks bearing a high degree of similarity overall but does specifically comment on the level of aural similarity. In its counterstatement, the applicant argues that the marks have a low to medium aural similarity.

50. The competing marks are aurally similar as they both contain the same first word “TOTAL”. The final word in the opponent’s mark is “FOOTBALL”, whereas the final word in the applicant’s mark is “FOOSBALL”. These words are aurally similar as the beginning of the first syllable will be pronounced “FOO”, and the second syllable in both words will be pronounced “BALL”. The competing marks differ as the opponent’s mark contains “ACTION” as its second word, which is not present in the opponent’s mark. In addition to this, the first syllable of “FOOTBALL” will be pronounced as “FOOT” in the opponent’s mark, whereas the first syllable of “FOOSBALL” will be pronounced as “FOOS”.

51. The beginnings of words tend to have more visual and aural impact than the ends, as per *El Corte Ingles*, which, in my view, results in the aural difference created by the additional word “ACTION” being slightly less significant. I am also of the view that the aural difference between “FOOTBALL” and “FOOSBALL” has a limited impact on the marks’ overall aural identities, because the only phonetic difference between the two words is only a minor change which occurs at the end of the first syllable. Bearing in mind my analysis of the marks’ overall impressions, I am of the view that the marks are aurally similar to a medium degree.

Conceptual comparison

52. In its statement of grounds, the opponent states that the marks are highly similar but does not specifically comment on the conceptual similarity. In its statement of grounds, the applicant submits that the marks have a low level of conceptual similarity. It argues that the words “FOOSBALL” and “FOOTBALL” are not synonyms due to having distinct and separate meanings.

53. Whilst I acknowledge the applicant’s submissions in relation to “FOOTBALL” and “FOOSBALL” not being synonyms, it is my view that there is a conceptual overlap

between the two words when taken in the context of the class 28 goods, i.e., tables for playing table football and tabletop games (including football games). This is because the average consumer would not understand the word "FOOTBALL" as being a reference to the sport played with an actual football using the foot, but would actually understand it as denoting the type of game (i.e., one relating to the table version of football) in relation to the class 28 goods. I am therefore of the view that the two terms' conceptual meanings overlap given that they both relate to football or football games, albeit in different forms.

54. The opponent's mark contains the additional word "ACTION" as its second word, whereas it is not present in the applicant's mark. As stated previously, it is my view that the opponent's mark would be understood as a unitary phrase which strongly alludes to the idea of an all-encompassing, action-packed football game, and the applicant's mark would be understood as being an all-encompassing foosball game. The marks' conceptual identities are therefore similar in that they both contain the idea of a complete or all-encompassing football-related game. However, the competing marks differ as only the opponent's mark refers to the notion of "action", which strongly alludes to the idea of action-packed when taken in the context of the class 18 goods. Bearing in mind my analysis of the marks' overall impressions, I find that the marks are conceptually similar to a low to medium degree.

Distinctive character of the earlier trade mark

55. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*[19], 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-

[19] Case C-342/97

> 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)."

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

57. Although the opponent has filed evidence of use, I do not consider this evidence to be sufficient for the purposes of demonstrating that the opponent's mark had an enhanced degree of distinctive character at the relevant date of 22 September 2023. Whilst I acknowledge that the evidence demonstrates genuine use of the opponent's mark, and sales of TOTAL ACTION FOOTBALL-branded goods into the UK, it is considered that the evidence does not show what share of the relevant market was held by goods sold under the opponent's mark. Whilst the evidence contains sales figures for 2018 to 2023, I am unable to ascertain how significant those sales were. On the face of it, the sales figures are likely to only represent a very small proportion of the relevant UK market. In addition to this, the evidence contains no figures in relation to advertising spend in the UK, and there is no evidence of any advertising activities having been conducted, so there is nothing to demonstrate the extent to which the average consumer of the goods within the UK has been exposed to the opponent's mark. Taking all of these factors into account, it is my view that the evidence submitted does not support the establishment of enhanced distinctiveness. I therefore only have the inherent position to consider.

58. As stated previously, the words will be understood based on their ordinary, dictionary-defined meanings. The word “TOTAL” would be understood by the average consumer as referring to the concept of being complete or all-encompassing. In the context of the goods, it is my view that the word “ACTION” strongly alludes to the idea of an action-packed game. The word “FOOTBALL” will be understood as denoting the kind of goods, i.e., gaming tables etc. relating to the game of football. In totality, the mark will be understood as referring to a complete or all-encompassing, action-packed football game. This is strongly allusive of the goods relied upon. Taking the mark as a whole, I find that the opponent’s mark has a very low level of inherent distinctiveness.

Global assessment – conclusions on likelihood of confusion

59. 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 down to the responsible undertakings being the same or related. There is no set formula for establishing a likelihood of confusion between marks; it is a global assessment where a number of factors need to be borne in mind.

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

61. In its statement of grounds, the opponent argues that there is a likelihood of confusion due to the high level of similarity between the competing mark opponent’s marks and the identical nature of the goods. In its counterstatement, the applicant submits that, although the competing marks contain some of the same or similar letters, the differences between them would prevent a likelihood of confusion. In its counterstatement, the applicant further states “Simply because both marks contain the

term ‘TOTAL’, does not mean that the consumer would be confused between them. The word has a low level of distinctiveness in relation to class 28 with more than 80 live registered UK trade marks containing the word TOTAL…. Thus the relevant public would be used to seeing this quasi-descriptive element in relation to such goods… and would not make any assumptions as to the ownership based on it”.

62. However, I do not consider the applicant’s comments regarding other ‘TOTAL’ marks to be relevant for the purpose of assessing whether there is a likelihood of confusion. In *Zero Industry Srl v OHIM*[20], the GC stated that:

> “73. As regards the results of the research submitted by the applicant, according to which 93 Community trade marks are made up of or include the word ‘zero’, it should be pointed out that the Opposition Division found, in that regard, that ‘… there are no indications as to how many of such trade marks are effectively used in the market’. The applicant did not dispute that finding before the Board of Appeal but none the less reverted to the issue of that evidence in its application lodged at the Court. It must be found that the mere fact that a number of trade marks relating to the goods at issue contain the word ‘zero’ is not enough to establish that the distinctive character of that element has been weakened because of its frequent use in the field concerned (see, by analogy, Case T-135/04 *GfK v OHIM – BUS(Online Bus)* [2005] ECR II-4865, paragraph 68, and Case T-29/04 *Castellblanch v OHIM – Champagne Roederer (CRISTAL CASTELLBLANCH)* [2005] ECR II-5309, paragraph 71). “

63. As there is no evidence that the registered marks are in use or that consumers have become accustomed to differentiating between them, they cannot have any bearing on whether there exists a likelihood of confusion between the opponent’s mark and the applicant’s mark. Moreover, the mere fact that the other marks are on the register cannot be taken as evidence per se that they are peacefully coexisting.

64. Earlier in this decision I found that the applicant’s goods are highly similar to the opponent’s goods. The average consumer of the class 28 goods will be the general public and is likely to pay a medium amount of attention when purchasing the goods. I have found the marks to be visually similar to a low to medium degree, aurally similar

[20] Case T-400/06

to a medium degree, and conceptually similar to a low to medium degree. The earlier mark has a very low level of inherent distinctive character.

65. The addition of the second word “ACTION” in the opponent’s mark constitutes a fairly significant difference between the marks, and it is unlikely that the average consumer would overlook this additional word. Furthermore, the presentation of the applicant’s mark plays a lesser role but is not negligible. It is my view that these differences are likely to be sufficient to prevent the average consumer from mistaking one mark for the other. Moreover, whilst I acknowledge that a low level of distinctiveness does not necessarily preclude a finding of a likelihood of confusion (see paragraph 45 of *L’Oréal SA v OHIM*[21]), it is my view that the opponent’s mark’s low level of distinctiveness is also a factor pointing away from direct confusion. I therefore find that there is no likelihood of direct confusion, even in respect of the goods which are highly similar.

66. This leaves indirect confusion to be considered. In *L.A. Sugar Limited v By Back Beat Inc*[22], Mr Iain Purvis Q.C., as the Appointed Person, explained that:

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

[21] Case C-235/05 P
[22] BL O/375/10

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

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

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

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

69. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors*[23], Arnold LJ approved Mr Purvis's formulation but added:

"13. As James Mellor QC sitting as the Appointed Person pointed out in *Cheeky Italian Ltd v Sutaria* (O/219/16) at [16] 'a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion'. Mr Mellor went on to say that, if there is no likelihood of direct confusion, 'one needs a reasonably special set of circumstances for a finding of a likelihood of indirect confusion'. I would prefer to say that there must be a proper basis for concluding that there is a likelihood of indirect confusion given that there is no likelihood of direct confusion."

70. It is not sufficient that a mark merely calls to mind another mark (as per *Duebros Limited v Heirler Cenovis GmbH*[24]). This is mere association not indirect confusion. A

[23] [2021] EWCA Civ 1207
[24] BL O/547/17

finding of indirect confusion should not be made merely due to a shared element within marks.

71. I also consider the relevance of *Medion v Thomson*[25] and the subsequent case law. In *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another*[26], Arnold J. (as he then was) considered the impact of the CJEU's judgment in *Bimbo*[27], on the court's earlier judgment in *Medion.* The judge said:

> "18. The judgment in *Bimbo* confirms that the principle established in *Medion v Thomson* is not confined to the situation where the composite trade mark for which registration is sought contains an element which is identical to an earlier trade mark, but extends to the situation where the composite mark contains an element which is similar to the earlier mark. More importantly for present purposes, it also confirms three other points.
>
> 19. The first is that the assessment of likelihood of confusion must be made by considering and comparing the respective marks — visually, aurally and conceptually — as a whole. In *Medion v Thomson* and subsequent case law, the Court of Justice has recognised that there are situations in which the average consumer, while perceiving a composite mark as a whole, will also perceive that it consists of two (or more) signs one (or more) of which has a distinctive significance which is independent of the significance of the whole, and thus may be confused as a result of the identity or similarity of that sign to the earlier mark.
>
> 20. The second point is that this principle can only apply in circumstances where the average consumer would perceive the relevant part of the composite mark to have distinctive significance independently of the whole. It does not apply where the average consumer would perceive the composite mark as a unit having a different meaning to the meanings of the separate components. That includes the situation where the meaning of one of the

[25] Case C-120/04
[26] [2015] EWHC 1271 (Ch)
[27] Case C-591/12P

> components is qualified by another component, as with a surname and a first name (e.g. BECKER and BARBARA BECKER).
>
> 21. The third point is that, even where an element of the composite mark which is identical or similar to the earlier trade mark has an independent distinctive role, it does not automatically follow that there is a likelihood of confusion. It remains necessary for the competent authority to carry out a global assessment taking into account all relevant factors."

72. It is my view that the average consumer, paying a medium level of attention, would notice the differences between the marks but would not assume an economic link between the two undertakings. This is on the basis that the word "Total" is not so strikingly distinctive that the average consumer would assume that only the opponent was using it. The same is true of the similar words 'FOOTBALL' and 'FOOSBALL', both being descriptive of the goods at issue. Furthermore, it is my view that the competing marks will be understood as units with none of the verbal components being an independent element which has a distinctive significance independent of the whole. As the competing marks will be understood as units, there is no sharing of an independent distinctive element which would give rise to indirect confusion. Furthermore, the visual, aural, and conceptual differences between the marks are not consistent with a brand extension or sub-brand of a house mark, so the average consumer is unlikely to interpret it in this manner. For instance, I see no reason why an undertaking would dissect a unitary phrase and remove the word "ACTION", resulting in a different mark. Whilst I acknowledge that the categories in *L.A. Sugar* are not exhaustive, I can see no other basis for concluding that the average consumer would perceive the marks to be from the same, or economically linked, undertakings. Rather, it is my view that consumers would perceive the similarities between the marks as purely coincidental; in my view, they would be attributed to different undertakings referring to their goods using similar strongly allusive language. I therefore find that there is no likelihood of indirect confusion between the competing marks, notwithstanding the similarity between the goods.

Final remarks

73. The opposition under section 5(2)(b) has failed its entirety. Subject to any successful appeal, the application will continue to registration.

Costs

74. The applicant has been successful and is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice 1/2023. In the circumstances I award the opponent the sum of £750 as a contribution towards the cost of the proceedings. The sum is calculated as follows:

Preparing a statement and considering the other side's statement: £250
Considering and commenting on the other side's evidence: £500

75. I note that the applicant considered and responded to the opponent's evidence. However, the relevant part of the scale covers preparing evidence and considering and commenting on the other side's evidence. The applicant did not file any evidence of its own and, as such, I have awarded a below-scale figure for this activity.

76. I therefore order Fuse London Limited to pay Home Leisure Direct Limited the sum of £750. 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 29th day of September 2025

K SERRAVALLE
For the Registrar