O/0921/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. 4138863

BY KINGSPER LTD

TO REGISTER:



AS A TRADE MARK IN CLASS 14

AND

IN THE MATTER OF THE OPPOSITION THERETO

UNDER NO. 451904 BY

ANDREY MEHANDZHIEV

BACKGROUND AND PLEADINGS

1. On 18 December 2024, Kingsper Ltd ("the applicant") applied to register the mark shown on the front cover of this decision as a trade mark in the United Kingdom in respect of goods in Class 14. The full specification can be found in the Annex to this decision.

2. The application was accepted and published on 10 January 2025.

3. On 13 January 2025, the application was partially opposed by Andrey Mehandzhiev ("the opponent"). The opposition is based on sections 5(2)(b), 5(3), 5(4)(a), 3(1)(b), 3(1)(c) and 3(6) of the Trade Marks Act 1994 ("the Act") and concerns the following goods: *Wrist watches*.

4. Under section 5(2)(b), the opponent relies on UK Trade Mark No. 3901519, which is shown below:



This mark has a filing date of 17 April 2023 and was registered on 14 July 2023. It is registered for the following goods in Class 14: *Watches; Watch straps; Watch boxes [presentation]; Wrist watches*. However, the opponent is relying on *Wrist watches* only. The mark qualifies as an earlier mark under section 6(1) of the Act. As it was registered less than five years before the filing date of the contested mark, the opponent is not required to have made use of it. The opponent claims that the marks are similar, as "Kingsper" *"directly evokes the dominant element of 'KING' in RICH KING"*, also contains an image of a crown and uses the same gold colour as the earlier mark. In addition, the opponent says that the designs of the applicant's wrist watches are indistinguishable from those of the opponent. Consequently, he claims that there exists a likelihood of confusion on the part of the relevant public in the UK.

5. Under section 5(3), the opponent claims that the earlier mark has established a reputation for *Wrist watches*. He claims that use of the contested marks would, without due cause, take unfair advantage of, or be detrimental to, the distinctive character

and/or reputation of the earlier mark. The reason given for the claim of detriment to reputation is as follows:

> "… Kingsper is already selling these products on their website (https://kingsper.com) despite not having a registered trademark for their brand. This is illegal, as it undermines the intellectual property protections and may mislead consumers into thinking the products are officially endorsed or connected with RICH KING. By selling products before securing trademark registration, Kingsper is also taking advantage of RICH KING's established market position without following the proper legal channels. …
>
> This is unfair because it not only dilutes RICH KING's brand value but also gives Kingsper an unjust commercial benefit from RICH KING's investment in reputation, quality, and product design, while violating intellectual property laws."

6. Under section 5(4)(a), the opponent claims to have used the sign **RICH KING** throughout the UK since 17 April 2023 for the following goods: *Wrist watches*. The opponent claims to have acquired goodwill under the sign. According to the opponent, use of the contested mark would constitute a misrepresentation to the public that would damage his reputation. Consequently, use of the contested mark would be contrary to the law of passing off.

7. I shall set out the opponent's pleadings under sections 3(1)(b) and (c) in full:

> Section 3(1)(b)
> "Kingsper's trademark lacks distinctiveness because it closely imitates RICH KING's branding with the word 'KING' and a crown emblem, which are commonly associated with us. These elements are not unique enough to create a separate identity and are likely to be seen as variants of RICH KING, failing to distinguish Kingsper's goods in the market."
>
> Section 3(1)(c)
> "Kingsper uses identical watch designs to RICH KING, further blurring the distinction."

8. Under section 3(6), the opponent claims that the application was made in bad faith, *"as it copies RICH KING's brand elements and watch designs"*, misleading consumers into thinking that the brands are connected and taking advantage of the opponent's reputation.

9. The applicant filed a counterstatement. Its defence consists of the following points:

(i) The earlier mark does not have a reputation. It is relatively new and lacks the market presence or public recognition for a section 5(3) claim to succeed;

(ii) The marks *"differ significantly in logo typography, emblem design, and aesthetic identity"* and that the use of the word "King" and crown imagery is common in the luxury watch industry;

(iii) The marks are not sufficiently similar to give rise to a likelihood of confusion;

(iv) The opponent does not enjoy goodwill in the earlier sign;

(v) The contested mark is distinct from the earlier sign and there is no misrepresentation or likelihood of confusion;

(vi) The bad faith claim is unsubstantiated and the contested mark was independently developed. The opponent does not own exclusive rights over the word "King" and crown imagery;

(vii) The claim that "Kingsper" is non-distinctive fails because it is a unique word that does not describe watches.

10. The counterstatement does not include a response directly dealing with the section 5(2)(b) claim. However, because the applicant makes claims about the differences between the marks and denies a likelihood of confusion elsewhere in the counterstatement, I consider that it is reasonable to deem that these denials also pertain to the section 5(2)(b) claim. This approach does not put the opponent at a disadvantage, as he has conducted its case on the assumption that the section 5(2)(b) claim is denied. I shall proceed on this basis.

EVIDENCE AND SUBMISSIONS

11. The opponent himself filed evidence in the form of a witness statement dated 31 May 2025. It is accompanied by eight appendices and goes to the reputation of, and goodwill associated with, the earlier mark and the claims of bad faith.

12. The applicant's evidence comes from Dr Anwar El Shboul, who claims to be the applicant. His witness statement is dated 23 July 2023 and is accompanied by Appendices A1-A19, B1-B7, C1 and D1-5. The evidence goes to the origin of the contested mark and the witness statement also contains submissions on the opponent's evidence. His evidence also confirms that he applied to Companies House for the incorporation of Kingsper Ltd as a limited company.

13. The opponent filed submissions in reply on 27 August 2025. In a section headed "Legal Grounds for Refusal", he specifically refers to section 3(6), section 5(2)(b) and passing off. As there appears to have been no formal withdrawal of the claims under sections 5(3), 3(1)(b) and 3(1)(c), I shall address them in my decision. I also note that the opponent requests that the IPO *"prevent further infringement of rights under the Copyright, Designs and Patents Act 1988 and related IP laws"*. The IPO has no jurisdiction over infringement cases, which must be brought before the Court. There are several Appendices attached to these submissions. However, as they have not been filed in proper evidential format (i.e. with a statement of truth), I shall disregard them.

14. Neither party requested to be heard and both parties filed written submissions in lieu of a hearing on 29 September 2025 in the case of the opponent and 14 October 2025 in the case of the applicant.

REPRESENTATION

15. Both parties have represented themselves in these proceedings.

RELEVANCE OF EU LAW

16. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained

EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

DECISION

Section 5(2)(b)

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

> "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."

18. The following standard summary of the principles applicable to the assessment of the likelihood of confusion was approved by the Supreme Court in *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc & Anor* [2025] UKSC 25:

> a) the likelihood of confusion must be appreciated globally, taking account of all relevant factors;
>
> b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them they have kept in their mind, and whose attention varies according to the category of goods or services in question;
>
> c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

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

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

f) and beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

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

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

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

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

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

Comparison of goods

19. The only goods in the applicant's specification that are being challenged by the opponent are *Wrist watches.* The applicant has not denied that the goods at issue are

either identical or similar, so I may take this as admitted: see *SKYCLUB Trade Mark*, BL O/044/21, paragraphs 24-25. However, the two parties' terms are clearly identical.

Average consumer and the purchasing process

20. The average consumer is deemed to be reasonably well informed and reasonably circumspect: see *Hearst Holdings Inc & Anor v A.V.E.L.A. Inc & Ors*, [2014] EWHC 439 (Ch), paragraph 60. For the purposes 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: see *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel BV*, Case C-342/97, paragraph 26.

21. In *Iconix*, the Supreme Court approved the comments of Arnold LJ in *Lidl Great Britain Ltd & Anor v Tesco Stores Ltd & Anor (Rev1)* [2024] EWCA Civ 262, where he pointed out that:

> "16. First, the average consumer is both a legal construct and a normative benchmark. They are a legal construct in that consumers who are ill-informed or careless and consumers with specialised knowledge or who are excessively careful are excluded from consideration. They are a normative benchmark in that they provide a standard which enables the courts to strike a balance between the various competing interests involved, including the interests of trade mark owners, their competitors and customers.
>
> 17. Secondly, the average consumer is neither a single hypothetical person nor some form of mathematical average, nor does assessment from the perspective of the average consumer involve a statistical test. They represent consumers who have a spectrum of attributes such as gender, age, ethnicity and social group. … It follows that assessment from the perspective of the average consumer does not involve the imposition of a single meaning rule akin to that applied in defamation law (but not malicious falsehood). … if having regard to the perceptions and expectations of the average consumer, the court considers that a significant proportion of the relevant public is likely to be confused, then a finding of infringement may properly be made.

> 18. Thirdly, assessing from the perspective of the average consumer is designed to facilitate adjudication of trade mark disputes by providing an objective criterion, by promoting consistency of assessment and by enabling courts and tribunals to determine such issues so far as possible without the need for evidence. …
>
> 19. Fourthly, the average consumer's level of attention varies according to the category of goods or services in question.
>
> 20. Fifthly, the average consumer rarely has the opportunity to make direct comparisons between trade marks (or between trade marks and signs) and must instead rely upon the imperfect picture of the trade mark they have kept in their mind."

22. The average consumer of wrist watches is a member of the general public. The price of those goods is likely to vary, from the relatively inexpensive to the highly costly, and wrist watches are unlikely to be frequently purchased. Even where the cost is relatively low, the average consumer will consider factors such as the appearance of the watch and its technical specification. Consequently, I take the view that they will pay at least a medium degree of attention during the purchasing process, although this may rise if the watch is being bought for a special occasion or as a gift.

23. The average consumer is likely to buy a watch from a retail outlet, either by self-selection or by asking a member of staff for it. The latter method is likely to be employed in the case of more expensive watches, where there is a risk of theft and the goods are likely to be kept in locked cabinets, but in such circumstances the consumer will inspect the goods before purchasing and see any marks that have been placed on the goods themselves or on presentation boxes. The average consumer may also have done some research, for example on the internet, before making the purchase. Where goods are cheaper, they may be self-selected from shelves or from websites and catalogues, but the average consumer may still seek assistance from sales staff. Consequently, I find that the visual aspect of the mark will dominate the selection process, but that there may also be an aural component.

Comparison of marks

24. It is clear from *SABEL BV v Puma AG*, Case C-251/95, that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details: see, in particular, paragraph 23 of that judgment. 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 Court of Justice of the European Union ("CJEU") stated in *Bimbo SA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)*, Case C-519/12 P, that:

> "34. … it is necessary to ascertain in each individual case, the overall impression made on the target public by the sign for which the 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."

25. Artificial dissection of the marks would therefore be wrong, although it is necessary for me to take into account their distinctive and dominant components and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

26. The respective marks are shown below:

Contested mark	**Earlier mark**
KINGSPER LONDON	RICH KING

Overall impression of the marks

27. Both are composite marks, consisting of verbal and figurative elements. The contested mark is the word "KINGSPER" in large upper-case letters in a standard, serif typeface. Below this is the word "LONDON" in smaller upper-case letters in the same

typeface. Above the words is a crown device with five points of equal length, each topped with a triangle. The bottom part of the crown displays three triangles. At the top of the device there are two slightly curved lines which turn at a roughly 90°-angle to the centre. Very small triangles can be seen above these lines and there is a device at the top and centre which appears to have a triangular top and a partial diamond at the bottom, with three small shapes (possibly triangular) going down towards the middle of the crown's points. The whole mark is shown in gold. It is settled case law that the average consumer tends to identify marks more by the words than by the devices: see *Migros-Genossenschafts-Bund v European Union Intellectual Property Office (EUIPO)*, Case T-68/17, paragraph 52. The word "LONDON" would be perceived as a reference to the origin of the goods and so I find that the most distinctive element of the earlier mark is the word "KINGSPER", which will, in my view, be understood to be an invented word. The device will make a lesser contribution to the overall impression of the mark, with that of the gold colour and the word "LONDON" lower still.

28. The earlier mark consists of the words "RICH" and "KING" separated by a crown device. The words are in capital letters in a standard, sans serif typeface. The crown has five points, with the second and fourth being shorter than the others. All the points are topped with a small dark circle. The first and fifth points are joined by a line in the shape of the letter "V" and the sides of the third point extend to the base of the crown. The opponent submits that the effect of these is to create his initials "AM", but I do not consider that the average consumer will study the device in the detail required to discern those letters. With the exception of the small circles, the device is shown in outline. The mark is gold in colour, and the letters are shaded so that they are lighter in the middle. As with the contested mark, I consider that the words "RICH KING" are the most distinctive part of this mark. In my view, the average consumer will perceive them as a unit, with the word "RICH" describing a particular characteristic of the "KING". The device plays a lesser role, and the colour a smaller role than that.

Visual comparison

29. Both marks are in gold, although the style of the typeface is bolder in the earlier mark than it is in the contested mark. They also contain five-pointed crowns, although there are some differences in the detail that I have highlighted in the previous two

paragraphs. These include whether the points are the same height, how the points are topped, whether the device is an outline or is filled in. The presentation of the devices in relation to the words also differs: the contested mark's device is at the top with the words presented on two lines beneath it; the earlier mark's device is in between the words, and all elements are presented on a single line. The verbal element of both marks contains two words, and they share the letters "KING". These are at the beginning of the first word in the contested mark and the whole of the second word in the earlier mark. The average English-speaking consumer reads from left to right, and so the beginnings of words and marks tend to make a greater impression than the ends. Taking these factors into account, and bearing in mind the overall impressions of the marks, I find that they are similar to a low degree.

Aural comparison

30. The earlier mark has two syllables and the words "RICH" and "KING" will be given their usual pronunciation. Turning to the contested mark, I take the view that the average consumer would be unlikely to articulate the word "LONDON". This is because there is a tendency for the public to contract long marks, particularly where the additional words are secondary or descriptive elements: see *Enrich International Ltd v Udokporo*, BL O/1141/25, paragraphs 13-18. I find that the contested mark would be articulated as having two syllables, the first of which is either identical or almost identical to the second syllable of the contested mark.[1] I find that the marks are aurally similar to a low to medium degree.

Conceptual comparison

31. I have already found that the words "RICH KING" in the earlier mark would be perceived as a unit. They would bring to the mind of the average consumer a particularly prosperous monarch. The crown imagery reinforces this message. "KINGSPER" would be perceived as an invented word. I remind myself that in *Usinor SA v OHIM*, Case T-189/05, the GC held that the average consumer, when perceiving a verbal sign, would break it down into verbal elements that suggest a concrete meaning or which resemble words known to them: see paragraph 62 of that judgment.

[1] This depends on whether the mark is articulated as "KING-SPER" or "KINGS-PER". In speech, there is little, if anything, between them.

While the average consumer may identify the word “KING” or “KINGS”, I do not consider that “PER” would have such a concrete meaning. The applicant’s website states that it is intended to stand for “PERSONALITY”,[2] but I do not think that this would easily come to the mind of the average consumer. The presence of the crown in the mark would make the average consumer think of royalty. The contested mark also conveys the message that the goods come from or are associated with London. I find that the marks are conceptually similar to a medium degree.

Distinctive character of the earlier mark

32. Distinctive character is a measure of how strongly a mark distinguishes the goods or services of one undertaking from those of others. The factors that I must take into account in assessing the level of distinctive character were set out by the CJEU in *Lloyd Schuhfabrik*:

> “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).”

33. Registered trade marks possess varying degrees of inherent distinctive character from the very low, because they are suggestive of, or allude to, a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of the mark can be enhanced by the use that has been made of it.

34. The verbal element of the earlier mark consists of two words that are commonly used in standard English, that combine to create an easily recognisable concept. There

[2] Appendix 1 to Mr Mehandzhiev’s witness statement.

is nothing unusual about the idea of a rich king. There may be a slightly allusive quality in that the goods may be perceived as suitable for such a person. On their own, the words might therefore have had a slightly lower than medium degree of distinctive character, but I also need to consider the role played by the crown device. The applicant submits that a crown is a symbol frequently used in the luxury watch industry and has provided the following examples:[3]

Rolex





[3] Appendix A14 to Dr El Shboul's witness statement.

Louis XVI



Royal London



35. The Rolex images are not dated, while the years are not given for the Louis XVI and Royal London posts. I am therefore reluctant to take this as evidence that crown imagery was frequently used in the industry at the relevant date. Nevertheless, I found that the device played a smaller role in the overall impression of the earlier mark than the words and in my view it only slightly increases the inherent distinctive character of the earlier mark. Taking the mark as a whole, I consider that it has a medium degree of inherent distinctive character.

36. I will now assess whether the evidence that the opponent has filed shows that the inherent distinctive character of this mark has been enhanced through the use made of it.

37. The Rich King watch brand was founded in 2023, with the RICH KING Gold Chronograph being designed on 7 May 2023.[4] Mr Mehandzhiev states that it has been sold by Debenhams since 18 May 2024 and that sales *"to date"* have been over £5,000.[5] I infer from this that these sales figures had been achieved by the date of the witness statement, which is 31 May 2025. I also note that, if the retail price of the watches is £250, as Mr Mehandzhiev states, this would amount to 20 watches. It is unclear how many of these were sold before the relevant date to customers in the UK, The supporting evidence in Appendix 7 shows references to transactions, with the earliest dated 11 February 2025, around two months after the relevant date. I note that the opponent has submitted that some of the entries relate to commission, shipping charges and tax and do not represent sales of actual goods. There is no information to show that there are any other distributors or retail outlets through which the opponent's goods can be obtained. The sales figures I have been given are relatively low for the watch market, which is likely to be of a significant size.

38. Mr Mehandzhiev states that RICH KING has been recognised by national media. Appendix 5 shows that it is listed as a brand on the website of *Oracle Time*, which describes itself on its Instagram profile as *"The UK's Leading Luxury Watch Magazine"*. According to Mr Mehandzhiev, the magazine has over 200,000 online subscribers and 33,000 social media followers. However, this evidence is not dated and so I cannot infer that this listing was made on or before the relevant date of 18 December 2024.

39. The Instagram post shown below comes from The Watch Trend, which describes itself as *"A welcoming home for every watchmaking enthusiast. Join our community and follow our journey in the horological wonderland"*.[6] Mr Mehandzhiev states that this was posted on 17 October 2024 and that the account has over 61,000 followers. The printout showing the number of followers is undated and it is also unclear where the followers are located. For the purposes of this opposition, it is the UK consumer that is relevant.

[4] Appendix 1 to Mr Mehandzhiev's witness statement; Witness statement, paragraph 6.3.
[5] Witness statement, paragraph 5.1.
[6] Appendix 5.



40. Mr Mehandzhiev states that more than £3,000 has been invested in social media advertising to promote the RICH KING brand. Again, this figure is undated and he does not give details of how the money was spent. He says the RICH KING Instagram account has more than 15,000 followers but does not say how many followers it had in the UK at the relevant date. Appendix 5 also contains a screenshot of the Facebook account. I can see two posts dated 21 August 2024 and 7 November 2024 respectively. The account has 4,100 followers but, as with the Instagram data, it is not clear how many UK followers it had at the relevant date.

41. The RICH KING brand ambassador was the winner of the Mr England competition in 2024, who is also a serving King's Guard. Appendix 6 contains extracts from a *Daily Mail* article dated 5 November 2024 entitled "Soldier who served at the King's Coronation is set to represent England on the global stage – as he bids to be crowned Mr World". Mr Mehandzhiev states that a photograph in the article shows him wearing a RICH KING watch, although as no text from the article is reproduced I cannot verify that this is mentioned. There is no dated evidence showing how the brand was actually promoted.

42. The evidence contains significant flaws which mean that I am unable to find that the distinctive character of the earlier mark had been enhanced at the relevant date in the UK through the use made of it.

Conclusions on likelihood of confusion

43. Making an assessment of the likelihood of confusion is a matter of considering the relevant factors from the viewpoint of the average consumer of the goods at issue and determining whether they are likely to be confused. When doing this, I am required to bear in mind that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely on the imperfect picture of them that they have in their mind. This means that the global assessment emulates what happens in the mind of the average consumer on encountering the later mark with an imperfect recollection of the earlier mark. The courts have not said what weight should be attached to each of the factors or provided a formula that can be applied to any set of circumstances. Because this is a global assessment, there is some interdependence between the factors and so a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods or vice versa.

44. There are two types of confusion: direct and indirect. In *L.A. Sugar Limited v Back Beat Inc*, BL O/375/10, Mr Iain Purvis QC, sitting 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 recognised that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but analysed in formal terms, is something along the following lines: 'The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later

mark as a whole, I conclude that it is another brand of the owner of the earlier mark.

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

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

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

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

45. In *Liverpool Gin Distillery Limited & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ commented that:

"12. This is a helpful explanation of the concept of indirect confusion, which has frequently been cited subsequently, but as Mr Purvis made clear it was not intended to be an exhaustive definition.

13. As James Mellor QC sitting as the Appointed Person pointed out in *Cheeky Italian Ltd v Sutaria* (O/291/16) at [16] 'a finding of 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."

46. Earlier in my decision, I found that:

(a) the goods are identical;

(b) the average consumer is a member of the general public who will pay a medium degree of attention during a predominantly visual purchasing process;

(c) the marks are visually similar to a low degree, aurally similar to a low to medium degree, and conceptually similar to a medium degree;

(d) the earlier mark has a medium degree of inherent distinctive character which has not been enhanced through use.

47. I remind myself that there is an interdependency between these factors and that in some instances a lower degree of similarity between the marks may be offset by a greater degree of similarity, or even identity, between the goods, so that overall there is a likelihood of confusion between the marks. However, in this instance, I consider that, even though the goods are identical, the marks are sufficiently different for them not to be mistaken one for the other. In my view, the average consumer, who is reasonably well informed and reasonably circumspect would not muddle the marks. This is particularly the case as the purchasing process is largely visual and the marks are visually similar to only a low degree. I find that there is no likelihood of direct confusion.

48. I shall now turn to indirect confusion. I do not see why the average consumer would assume that an invented word "KINGSPER" was a brand extension of "RICH KING". The word "KING" is not, in my view, so distinctive that the average consumer would think that only the opponent is using it in a trade mark. In addition, Mr Purvis' other scenarios do not apply either. I recognise that these are only examples and that there may be other ways in which indirect confusion could arise. The opponent makes reference to the applicant's promotional material and claims that it lacks originality when compared with his own. However, under section 5(2)(b), we are concerned with

the marks themselves, rather than how they are presented in the context of a party's marketing efforts. I find that there is no likelihood of indirect confusion.

49. The opposition under section 5(2)(b) fails.

Section 5(3)

50. Section 5(3) of the Act is as follows:

> "A trade mark which–
>
> (a) is identical with or similar to an earlier trade mark,
>
> […]
>
> shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark."

51. The conditions of section 5(3) are cumulative. First, the marks at issue must be identical or similar. Secondly, the opponent must satisfy me that the earlier mark has achieved a level of knowledge/reputation amongst a significant part of the relevant public. Thirdly, it must be established that the level of reputation and the similarities between the marks will cause the public to make a link between them, in the sense of the earlier mark being brought to mind by the application. Fourthly, assuming that the first three conditions have been met, section 5(3) requires that one or more of the three types of damage claimed will occur. It is unnecessary for the purposes of section 5(3) that the goods be similar, although the relative distance between them is one of the factors which must be assessed in deciding whether the public will make a link between the marks.

52. I have already found that the parties' marks are similar.

Reputation

53. In *General Motors Corp v Yplon SA*, Case C-375/97, the CJEU held that:

> “24. The public amongst which the earlier trade mark must have acquired a reputation is that concerned by that trade mark, that is to say, depending on the product or services marketed, either the public at large or a more specialised public, for example traders in a specific sector.
>
> 25. It cannot be inferred from either the letter or the spirit of Article 5(2) of the Directive that the trade mark must be known by a given percentage of the public so defined.
>
> 26. The degree of knowledge required must be considered to be reached when the earlier mark is known by a significant part of the public concerned by the products or services covered by that trade mark.
>
> 27. In examining whether this condition is fulfilled, the national court must take into consideration all the relevant facts of the case, in particular the market share held by the trade mark, the intensity, geographical extent and duration of its use and the size of the investment made by the undertaking in promoting it.
>
> 28. Territorially, the condition is fulfilled when, in the terms of Article 5(2) of the Directive, the trade mark has a reputation ‘in the Member State’. In the absence of any definition of the Community provision in this respect, a trade mark cannot be required to have a reputation ‘throughout’ the territory of the Member State. It is sufficient for it to exist in a substantial part of it.”

54. Although reputation and enhanced distinctiveness are different, the same factors are relevant to their assessment. I have already set out the flaws in the evidence in paragraphs 37 to 42 above and shall not repeat them in detail here. In summary, though, I am unable to determine the scale, frequently or territorial extent of the use of the mark. The evidence therefore does not show that the earlier mark would have been known on the relevant date by a significant part of the public concerned by wrist watches. The opponent has therefore not shown that the earlier mark has the required reputation.

55. The opposition under section 5(3) fails.

Section 5(4)(a)

56. Section 5(4)(a) of the Act states that:

> "A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented –
>
> > (a) by virtue of any rule or law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, where the condition in subsection 4(A) is met
> >
> > …"

57. Subsection 4(A) is as follows:

> "The condition mentioned in subsection (4)(a) is that the rights to the unregistered trade mark or other sign were acquired prior to the date of application for registration of the trade mark or date of the priority claimed for that application."

58. In *Reckitt & Colman Products Limited v Borden Inc. & Ors* [1990] RPC 341, HL, Lord Oliver of Aylmerton described the "classical trinity" that must be proved in order to reach a finding of passing off at [406]:

> "First, he must establish a goodwill or reputation attached to the goods or services which he supplies in the mind of the purchasing public by association with the identifying 'get-up' (whether it consists simply of a brand name or a trade description, or the individual features of labelling or packaging) under which his particular goods or services are offered to the public, such that the get-up is recognised by the public as distinctive specifically of the plaintiff's goods or services. Secondly, he must demonstrate a misrepresentation by the defendant to the public (whether or not intentional) leading or likely to lead the public to believe that the goods or services offered by him are the goods or services of the plaintiff. Thirdly, he must demonstrate that he suffers or, in a quia timet action, that he is likely to suffer damage by reason of the erroneous belief engendered by the

defendant's misrepresentation that the source of the defendant's goods or services is the same as the source of those offered by the plaintiff."

Relevant date

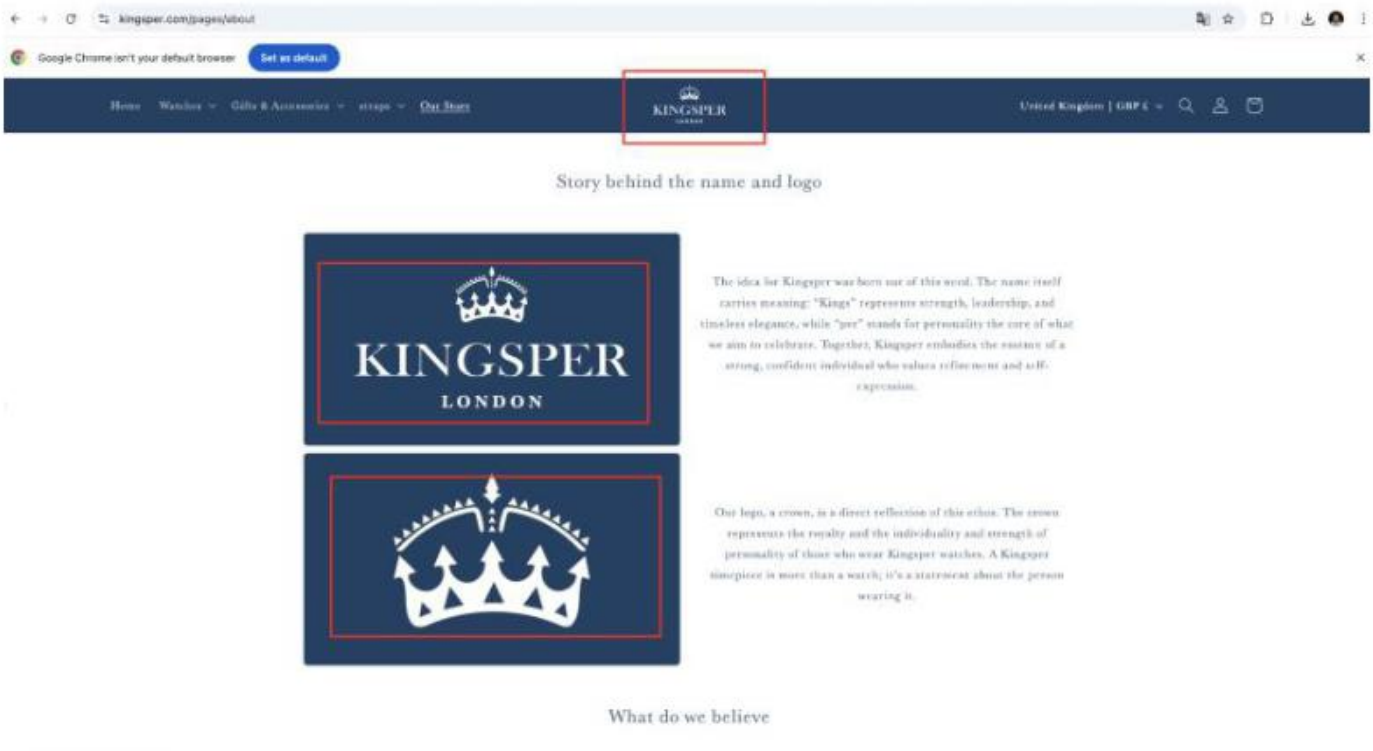
59. In *Maier & Anor v ASOS plc & Anor* [2015] EWCA Civ 220, Kitchin LJ (as he then was) said:

> "165. … Under the English law of passing off, the relevant date for determining whether a claimant has established the necessary reputation or goodwill is the date of the commencement of the conduct complained of (see, for example, *Cadbury-Schweppes Pty Ltd v The Pub Squash Co Ltd* [1981] RPC 429). The jurisprudence of the General Court and that of OHIM is not entirely clear as to how this should be taken into consideration under Article 8(4) (compare, for example, T-114/07 and T-115/07 *Last Minute Network Ltd* and Case R 784/2010-2 *Sun Capital Partners Inc*). In my judgment the matter should be addressed in the following way. The party opposing the application or the registration must show that, as at the date of application (or the priority date, if earlier), a normal and fair use of the [contested] trade mark would have amounted to passing off. But if the [contested] trade mark has in fact been used from an earlier date then that is a matter which must be taken into account, for the opponent must show that he had the necessary goodwill and reputation to render that use actionable on the date that it began."

60. The opponent claims that the applicant has been selling its products on its website before the mark has been registered. At this point, I consider it helpful to note that, contrary to the claim of the opponent, it is not illegal to sell goods without owning a trade mark. The law allows for a degree of protection for unregistered signs through passing off.

61. Dr El Shboul states that work on the contested mark was completed in June 2024 and the website was launched in September 2024. He confirms that the following

screenshot reflects the website's initial appearance (the red boxes have been added to the applicant's evidence to highlight parts of the website):[7]



62. He adds that the decision to change the logo colour from white to gold was taken after advice from a professional designer. He does not say when the change was made.

63. I cannot find evidence showing the contested mark exactly as it has been applied for. Nevertheless, I shall consider both the position at September 2024 and at the date of application for the contested mark (18 December 2024).

Goodwill

64. The opponent must show that he had goodwill in a business at the dates set out in the previous paragraph and that the sign relied upon, **RICH KING**, is associated with, or distinctive of, that business. The goods that the opponent claims that the sign has been used for are *Wrist watches*.

[7] Appendix A18.

65. The concept of goodwill was considered by the House of Lords in *Inland Revenue Commissioners v Muller & Co's Margarine Ltd* [1901] AC 217 at [224]:

> "What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantages of the good name, reputation and connection of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a new business at its first start. The goodwill of a business must emanate from a particular centre or source. However widely extended or diffused its influence may be, goodwill is worth nothing unless it has the power of attraction sufficient to bring customers home to the source from which it emanates."

66. It is apparent from this oft-cited passage that goodwill belongs in a business. Social media posts, including the one reproduced in paragraph 39 above, refer to "Rich King" and it is my view that the relevant public would assume from these that the business is called "Rich King". Mr Mehandzhiev has not provided any evidence to show that he is the owner of goodwill in the business trading in the Rich King watches.

67. Article 2 of the Trade Marks (Relative Grounds) Order 2007 states that:

> "The registrar shall not refuse to register a trade mark on a ground mentioned in section 5 of the Trade Marks Act 1994 (relative grounds for refusal) unless objection on that ground is raised in opposition proceedings by the proprietor of the earlier trade mark or other earlier right."

68. It is my view that Mr Mehandzhiev has not shown that he has the right to bring this claim. I have considered whether it would have been appropriate to seek clarification from him on this point, but for the reasons that I shall explain, this would put the opponent to extra cost for no benefit.

69. In *Starbucks (HK) Limited & Anor v British Sky Broadcasting Group Plc & Ors* [2015] UKSC 31, Lord Neuberger (with whom the rest of the Supreme Court agreed) stated that:

> "47. I consider that we should reaffirm that the law is that a claimant in a passing off claim must establish that it has actual goodwill in this jurisdiction,

and that such goodwill involves the presence of clients or customers in the jurisdiction for the products or services in question. And, where the claimant's business is abroad, people who are in the jurisdiction, but who are not customers of the claimant in the jurisdiction, will not do, even if they are customers of the claimant when they go abroad." (The emphasis is mine.)

70. I can therefore deal with the claim to goodwill fairly briefly. The opponent is required to show that the business had customers within the UK at September 2024 or 18 December 2024. I have already referred to Mr Mehandzhiev's statement that the watches have been sold on the Debenham's website since 18 May 2024 and that sales have been over £5,000 up to the date of the witness statement (31 May 2025). It is unknown how many sales were made to UK customers by September 2024 or 18 December 2024. For this reason, I find that, even if the opponent were the owner of any theoretical goodwill, he has not demonstrated that protectable goodwill was in existence at either of those dates.

71. I therefore dismiss the opposition under section 5(4)(a), while noting that it would have failed in any event.

Section 3(1)(b)

72. Section 3(1)(b) of the Act is as follows:

"The following shall not be registered-

…

(b) trade marks which are devoid of any distinctive character,

…

Provided that a trade mark shall not be refused registration by virtue of paragraph (b), (c) or (d) above if, before the date of application for registration, it has in fact acquired a distinctive character as a result of the use made of it."

73. The opponent's claim under section 3(1)(b) is based on a likelihood of confusion between the parties' marks, namely, that the contested mark will be perceived as a

variant on the earlier mark. This is not a claim that the contested mark is devoid of any distinctive character; rather, that the contested mark has some distinctive character but that it is too close to the earlier mark. Consequently, the section 3(1)(b) claim cannot succeed and I dismiss it.

Section 3(1)(c)

74. Section 3(1)(c) of the Act is as follows:

> "The following shall not be registered-
>
> …
>
> (c) trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, intended purpose, value, geographical origin, the time of production of goods or of rendering of services, or other characteristics of goods or services,
>
> …
>
> Provided that a trade mark shall not be refused registration by virtue of paragraph (b), (c) or (d) above if, before the date of application for registration, it has in fact acquired a distinctive character as a result of the use made of it."

75. The opponent's claim under this ground is that *"Kingsper uses identical watch designs to RICH KING, further blurring the distinction"*. He has not argued that the contested mark designates any characteristic of the goods and so this ground cannot succeed. I therefore dismiss it.

Section 3(6)

76. Section 3(6) of the Act is as follows:

> "A trade mark shall not be registered if or to the extent that the application is made in bad faith."

77. In *Skykick UK Ltd & Anor v Sky Ltd & Ors (Rev1)*, [2024] UKSC 36, the Supreme Court considered the case law from *Chocoladefabriken Lindt & Sprüngli AG v Franz Hauswirth GmbH*, Case C-529/07, *Sky plc & Ors v Skykick UK Limited & Anor*, Case

C-371/18, *AS v Deutsches Patent- und Markenamt*, Case C-541/18, *Malaysia Dairy Industries Pte. Ltd v Ankenævnetfor Patenter Varemærker* Case C-320/12, *Koton Mağazacilik Tekstil Sanayi ve Ticaret AŞ,* Case C-104/18 P, *Hasbro, Inc. v EUIPO,* Case T-663/19, *pelicantravel.com s.r.o. v OHIM,* Case T-136/11, and *Psytech International Ltd v OHIM,* Case T-507/08. Lord Kitchin summarised the law as follows:

> "240. The general principles are these:
>
> (i) It is an absolute ground of invalidity of an EU trade mark that the application for that registered mark was made in bad faith, and this ground may be relied upon before OHIM (or, now, the EUIPO) or by means of a counterclaim in infringement proceedings (*Lindt*, para 34).
>
> (ii) The date for assessing whether an application to register an EU trade mark was made in bad faith is the date the application for registration was made (*Lindt*, para 35).
>
> (iii) Bad faith in this context is an autonomous concept of EU law which must be given a uniform interpretation in the European Union, and must be interpreted in the context of Directive 89/104 in the same manner as in the context of Regulation 40/94 (*Malaysia Dairy*, para 29; *Sky CJEU*, para 73).
>
> (iv) While, in accordance with its usual meaning in everyday language, the concept of bad faith presupposes the presence of a dishonest state of mind or intention, the concept must also be understood in the context of trade mark law, which involves the use of marks in the course of trade. Further, it must have regard to the objectives of the EU law of trade marks, namely the establishment and functioning of the internal market, and a system of undistorted competition in which each undertaking must, in order to attract and retain customers by the quality of its goods or services, be able to have registered as trade marks signs which enable consumers, without any possibility of confusion, to distinguish those goods or services from those which have a different origin (*Lindt*, para 45; *Koton*, para 45).

(v) Consequently, the objection will be made out where the proprietor made the application for registration, not with the aim of engaging fairly in competition but either (a) with the intention of undermining, in a manner inconsistent with honest practices, the interests of third parties; or (b) with the intention of obtaining, without even targeting a specific third party, an exclusive right for purposes other than those falling within the functions of a trade mark, and in particular the essential function of indicating origin (*Koton*, para 46; *Sky CJEU*, para 75).

(vi) The intention of the applicant is a subjective matter, but it must be capable of being established objectively by the competent administrative or judicial authorities having regard to the objective circumstances of the case (*Hasbro*, paras 39 and 40; *Koton*, para 47).

(vii) The burden of proving that an application for a registered mark was made in bad faith lies on the party making the allegation. But where the circumstances of the case may lead to a rebuttal of the presumption of good faith, it is for the proprietor of the mark to explain and provide a plausible explanation of the objectives and commercial logic pursued by the application for registration (*Hasbro*, paras 42 and 43).

(viii) Whether the applicant was acting in bad faith must be the subject of an overall assessment, taking into account all of the factors relevant to the particular case (*Lindt*, para 37).

(ix) The applicant for a trade mark is not required to indicate or to know precisely when the application is filed or examined, the use that will be made of it (*Sky CJEU*, para 76; *Deutsches Patent- und Markenamt*, para 22).

(x) Nevertheless, the registration by an applicant of a mark without any intention to use it in relation to the goods and services covered by the registration may constitute bad faith where there is no rationale for the

application in the light of the aims referred to in Regulation 40/94 and Directive 89/04 (*Sky CJEU*, para 77).

(xi) Such bad faith may, however, be established only where there are objective, relevant and consistent indicia tending to show that, when the application was filed, the applicant for registration had the intention either of undermining, in a manner inconsistent with honest practices, the interests of third parties, or of obtaining, without targeting a specific third party, an exclusive right for purposes other than those falling within the functions of a trade mark (*Sky CJEU*, para 77).

(xii) It follows that the bad faith of the applicant cannot be presumed on the basis of a mere finding that, at the time of filing the application, the applicant had no economic activity corresponding to the goods and services referred to in the application (*Sky CJEU*, para 78).

(xiii) When the absence of an intention to use the mark in accordance with the essential functions of a trade mark concerns only certain goods or services referred to in the application for registration, that constitutes making the application in bad faith only in so far as it relates to those goods or services (*Sky CJEU*, para 81).

(xiv) If, at the end of the day, the court concludes that, despite formal observance of the relevant rules and conditions for obtaining registration, the purpose of the rules has not been achieved, and that there was an intention to take advantage of the rules by creating artificially the conditions laid down for obtaining the registration, this may amount to an abuse sufficient to find that the application was made in bad faith (see, for example, *Hasbro*, para 72).

(xv) Directive 89/104 does not preclude a provision of national law under which an applicant for registration must state that the mark is being used in relation to the goods or services in relation to which it is sought to register the mark, or that the applicant has a *bona fide* intention that it should be used, provided that the infringement of such an obligation cannot constitute a ground for invalidity. It may, however,

constitute evidence for the purposes of establishing possible bad faith on the part of the applicant when the application was filed (*Sky CJEU*, paras 86 and 87)."

78. In the same case, Lord Kitchin also considered the question of what amounts to bad faith. He explained that the categories of bad faith and the circumstances which may constitute bad faith are not "closed", and continued:

"152. In seeking to identify the relevant principles, it is necessary to have in mind two fundamental aspects of trade mark law to which I have already referred: first, it is concerned with the use of marks in trade to denote the origin of goods and services. Secondly, the aim of the trade mark regime is to contribute to a system of undistorted competition in which businesses are able to attract and retain customers by the quality of their goods and services, and for that purpose are able to have registered signs which enable consumers to distinguish the goods and services of one undertaking from those of another. Such a system must also provide an incentive and protection for the investment by a brand owner in the quality and other beneficial aspects of its goods and services, and so allow it to develop a goodwill in its business relating to their sale and supply.

153. Against this background, the essence of the objection that an application to register a mark was made in bad faith may be understood: it is that the motive or intention of the applicant was to engage in conduct that departed from accepted principles of ethical behaviour or honest commercial practices having regard to the purposes of the trade mark system which I have described. Whether the conduct was undertaken with that motive or intention and did indeed depart from such ethical behaviour or honest commercial practices must be assessed having regard to all the objective circumstances of the case: see, for example, *Koton Mağazacilik Tekstil Sanayi ve Ticaret AS v European Union Intellectual Property Office (EUIPO)* (C-104/18) EU:C:2019:724 (*"Koton"*), paras 46 and 47 […]."

79. According to Mr Geoffrey Hobbs QC, sitting as the Appointed Person, in *Alexander Trade Mark*, BL O/036/18, the key questions for determination in a claim of bad faith are as follows:

> (a) What, in concrete terms, was the objective that the party alleged to have acted in bad faith has been accused of pursuing?
>
> (b) Was that an objective for the purposes of which the contested application could not properly be filed?
>
> (c) Has it been established that the contested application was filed in pursuit of that objective?[8]

80. The opponent's allegation appears to be that the applicant knew of the opponent's earlier mark and products, copied them, and filed the application for the contested mark in order to mislead consumers into believing that there was a connection between the marks and thus benefit from the opponent's reputation. To apply for a mark with the intention to take advantage of the reputation of an existing business may be grounds for a finding of bad faith. Consequently, if proven, this is an objective for which the contested mark could not properly be filed.

81. An allegation of bad faith is a serious one which must be distinctly proved, but in deciding whether it has been proved, the usual civil evidence standard applies. Nevertheless, Arnold J (as he then was) said in paragraph 133 of his judgment in *Red Bull GmbH v Sun Mark Limited & Anor* [2012] EWHC 1929 (Ch) that *"cogent evidence is required due to the seriousness of the allegation"*. This means that it is not enough to establish facts which are as consistent with good faith as bad faith. In the same judgment, at paragraph 137, the judge also held that it was necessary to ascertain what the applicant knew at the relevant date. I remind myself that this is the date of application for the mark, i.e. 18 December 2024.

82. I have already found that the opponent has not shown that the earlier mark had a reputation at that date and there is insufficient dated evidence to lead me to conclude that it is likely that the applicant knew or should have known about the earlier mark. In the face of this finding, it is difficult for the opponent to establish a case that copying

[8] Paragraph 8.

did occur and that this was done with the objective of misleading consumers as to the origin of the goods. The opponent invites me to make an inference that the contested mark was filed in bad faith from what he characterises as the applicant's imitations of the earlier mark and the way in which it is promoted, and I shall assess those submissions here.

83. First, the opponent draws attention to the presence of the word "KING" in each of the marks. Mr Mehandzhiev claims that RICH KING has a link to the Royal Borough of Kingston-upon-Thames, which has had royal connections since the Saxon period. He then presents an extract from the website of the applicant which states that *"The name itself carries meaning: 'Kings' represents strength, leadership, and timeless elegance, while 'per' stands for personality the core of which we aim to celebrate"*.[9] According to the opponent, there are strong similarities in the messaging, with both brands *"aiming to evoke the same sense of prestige and aspirational identity"*.[10] However, I consider that these brand messages would not be seen as unusual in the watch industry.

84. Secondly, the opponent notes that the applicant has used the image of a King's Guard in its marketing, while the opponent's brand ambassador is, as I have already mentioned, a King's Guard. The applicant submits that the image it used was *"a publicly available photograph of a King's Guard on ceremonial duty in London"* and *"was selected solely for its cultural relevance to the brand's London identity"*.[11] To my mind, the opponent's evidence does not show that the applicant would or should have known about the opponent's brand ambassador.

85. Thirdly, the opponent submits that the applicant used *"About Us"* as a link on its website, in imitation of the use by the opponent. The applicant then changed this to *"Our Story"* after the opponent had done so. The applicant submits that both these terms are in standard use on websites. I agree. The use of the same terms is more likely, in my view, to be coincidental rather than a result of imitation.

[9] Appendix 1.
[10] Ibid.
[11] Witness statement of Dr El Shboul, paragraph 24.

86. Fourthly, the opponent submits that the applicant has copied its marketing imagery. On 22 January 2024, the opponent published the following post:[12]



87. On 20 November 2024, the applicant published the following post:

[12] Appendix 4.



88. The opponent's post says that the photograph was taken at the top of The Shard Tower in London, while the applicant's post shows The Shard in the background. The opponent argues that *"The positioning, watch model, and photographic concept further evidence direct imitation of our marketing style."*[13] I have no evidence to indicate how many people might have seen the opponent's post. The positioning of the model's wrist does not seem to me to be particularly unusual. Dr El Shboul states that the applicant took several marketing photographs at various locations in London, including the City, Spitalfields and Aldgate Square.[14] Given the presence of the word "London" in the contested mark, this seems to me to be a logical marketing strategy, rather than evidence of imitation.

89. I shall now address the point about the allegations that the watch designs are similar. I accept that there appear to be some similarities between them but I also consider that Dr El Shboul has given a plausible account of how his company's

[13] Witness statement, paragraph 3.2
[14] Witness statement, paragraph 34; Appendix B2.

products were sourced. He explains that he contacted Chinese manufacturers and obtained a selection of models to assess their quality and marketability. During this process, he identified that one of the designs was protected by a UK registered design and contacted the supplier to ascertain whether it was the proprietor of that right and subsequently cancelled that particular order.[15] The opponent argues that this shows that the applicant's designs lack originality. However, that is not at issue in these proceedings, which solely concern the registrability of the contested trade mark.

90. The opponent also claims that there are similarities between the marketing copy used for the applicant's Valiant watch and his own Knight watch. The opponent's watch was released on 16 October 2024 and the description on the website reads as follows:

> "Rich King Knight is inspired by noble knights who protected their kings with loyalty, strength and resilience. These guardians of history upheld values of honor [sic] and guardianship across centuries. The striking Phantom Matt Black dial reflects this enduring legacy with a refined, innovative aesthetic. Equipped with Super-LumiNova® hands that emit a green glow for outstanding readability in low light. This timepiece captures the timeless legacy, combining exceptional craftsmanship with modern precision."[16]

91. Mr Mehandzhiev states that the following description of the opponent's Valiant watch was posted on 10 December 2024:

> "Valiant is inspired by the knights of the realm, whose bravery and chivalry were the foundation of the British monarchy's strength. This watch is dedicated to those who face life's challenges head-on, with resilience and honor [sic]. The Valiant is more than just a timepiece; it's a tribute to the spirit of those who lead by example, never backing down from their principles. Each moment spent with a Valiant watch is a testament to the courage and determina …" (the rest of the text is obscured).[17]

92. There are some similarities, in that both refer to knights and their relationship to the monarchy and the concept of honour. However, the applicant's text also refers to

[15] Appendix A3.
[16] Appendix 8.
[17] Ibid.

resilience and leadership, while the opponent's mentions guardianship over a period of centuries. The opponent faces a significant difficulty in pursuing this line of argument, because the text on his website is undated and he does not state that this text reflects how the website looked at the relevant date. Furthermore, I have no evidence on how many people viewed the website at any point and recall that I considered the evidence was insufficient to show reputation.

93. As I have already noted, bad faith is a serious allegation and must be distinctly proved. I find that the opponent has not shown that the applicant is likely to have come across the opponent's products or marketing, or that it should have done. I therefore consider that the opponent has not established a *prima facie* case of bad faith.

94. The opposition under section 3(6) fails.

OUTCOME

95. The opposition has failed and, subject to a successful appeal, Application No. 4138863 may proceed to registration.

COSTS

96. The applicant has been successful. As it has represented itself throughout these proceedings, it was invited to complete a proforma setting out the amount of time spent on different stages of the opposition. The applicant claims the following:

> Considering the notice of opposition: 1 hour
> Filing of Form TM8 in response: 6 hours
> Submission of amended counterstatement: 1 hour
> Preparation of evidence: 13 hours
> Preparation of final written submissions: 1 hour.
> Total: 22 hours

97. I accept that a litigant in person is likely to need to do some research to inform their completion of the required documents and the preparation of evidence. Dr El Shboul's evidence sets out a relatively detailed account of the origin of the contested mark and responses to the evidence filed by the opponent over 9 pages, accompanied by 27 pages of exhibits that include photographs from what I presume to be the opponent's

own records, excerpts from online chats with suppliers and examples of different watch brands using similar imagery and designs. In my view, the time claimed for the various activities is reasonable.

98. Tribunal Practice Notice 1/2023 confirms that the sum to be awarded per hour is analogous to that set out in Part 46 of the Civil Procedure Rules, which is currently £24. This means that the total cost award is £528.

99. I therefore order Andrey Mehandzhiev to pay Kingsper Ltd the sum of £528. This sum is to be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 8th day of October 2026

Clare Boucher,
For the Registrar

ANNEX

Specification of UKTM(A) No. 4138863

Class 14

Watches; Chronographs as watches; Chronographs [watches]; Chronographs for use as watches; Dials for watches; Clocks and watches; Watches and clocks; Wrist watches; Bracelets for watches; Quartz watches; Straps for watches; Wristlet watches; Sports watches; Movements for clocks and watches; Movements for watches and clocks; Pendant watches; Alarm watches; Pocket watches; Faces for watches; Diving watches; Silver watches; Housings for clocks and watches; Mechanical watches; Chains for watches; Parts for watches; Cases for watches and clocks; Automatic watches; Dress watches; Oscillators for watches; Bands for watches; Electronic watches; Watches for nurses; Women's watches; Solar watches; Watch cases [parts of watches]; Wrist straps for watches; Straps for wrist watches; Electric watches; Cases for watches; Fittings for watches; Clocks and watches, electric; Stop watches; Table watches; Clocks and watches for pigeon-fanciers; Platinum watches; Divers' watches; Watch dials; Bracelets and watches combined; Wristwatches; Watches made of gold; Watches for sporting use; Timepieces; Presentation boxes for watches; Watch bracelets; Chronographs for use as timepieces; Cases [fitted] for watches; Watches bearing insignia; Watch glasses; Watch winders; Watch fobs; Dials for clock and watch making; Dials [clock and watch making]; Watch clasps; Parts and fittings for watches; Digital watches with automatic timers; Cases for watches [presentation]; Watches for outdoor use; Electronically operated movements for watches; Watch movements; Straps for wristwatches; Watches made of precious metals; Watch straps; Electrically operated movements for watches; Cases of precious metals for watches; Watch and clock springs; Watches made of plated gold; Clock and watch hands; Watch and clock hands; Watch boxes; Anchors [clock and watch making]; LED finger ring watches; Watch faces; Watches containing a game function; Pendulums [clock and watch making]; Watch pouches; Cases adapted for holding watches; Mechanical watches with manual winding; Wristwatches with pedometers; Watches made of rolled gold; Mechanical watches with automatic winding; Wrist watch bands; Watch chains; Chains (Watch -); Watch crowns; Dials for clock and watch-making; Watch casings; Barrels [clock and watch making]; Watch parts; Watch hands ;Leather watch straps;

Dials [clock- and watchmaking]; Dials for clock- and watchmaking; Hands (Clock -) [clock and watch making]; Clock hands [clock and watch making]; Watches incorporating a telecommunication function; Pendants for watch chains; Dials for horological articles; Jewellery boxes and watch boxes; Dials for clocks; Watches incorporating a memory function; Watch straps of plastic; Watch springs; Springs (Watch -); Watchbands; Clocks having quartz movements; Watch crystals; Cases adapted to contain watches; Non-leather watch straps; Dials (clockmaking and watchmaking); Watch bands; Watch cases; Wristwatches with pedometer feature; Horological instruments having quartz movements; Electrical timepieces; Oscillators for timepieces; Metal expanding watch bracelets; Electronic timepieces; Quartz clocks; Mechanical watch oscillators; Watches with wireless communication function; Watches with the function of wireless communication; Electric timepieces; Wristwatches with GPS feature; Watch straps of nylon.