O/0922/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. 4032489

BY CARMEN CORINA STOICA

TO REGISTER:

Queen of Beauty Salon

AS A TRADE MARK IN CLASS 44

AND

IN THE MATTER OF THE OPPOSITION THERETO

UNDER NO. 448458 BY

PALINA CHAYEVICH

BACKGROUND AND PLEADINGS

1. On 28 March 2024, Carmen Corina Stoica ("the applicant") applied to register **Queen of Beauty Salon** as a trade mark in the United Kingdom in respect of the following services:

> *Class 44*
> *Beauty salons; Salons (Beauty -); Beauty care; Beauty treatment; Beauty salon services; Salon services (Beauty -); Beauty consultation; Beauty counselling; Beauty spa services; Beauty consultancy; Hygienic and beauty care; Services of a hair and beauty salon; Beauty care of feet; Beauty care services; Beauty therapy services; Beauty treatment services; Hygienic and beauty care for humans; Facial beauty treatment services; Hygienic and beauty care services; Beauty therapy treatments; Beauty care for human beings; Beauty treatment services especially for eyelashes; Beauty consultation services; Hygienic and beauty care for human beings; Beauty information services; Consultancy in the field of body and beauty care; Beauty advisory services; Beauty consultancy services; Beauty care services provided by a health spa; Provision of hygienic and beauty care services; Information relating to beauty care; Information relating to beauty; Advisory services relating to beauty care; Consultation services relating to beauty care; Consultancy services relating to beauty; Providing information relating to beauty salon services; Providing information about beauty; Rental of machines and apparatus for use in beauty salons or barbers' shops; Cosmetic make-up services; Skin care salons; Hair salon services for women; Skin care salon services; Cosmetic treatment services for the body, face and hair.*

2. The application was accepted and published for opposition purposes on 14 June 2024.

3. On 18 June 2024, the application was opposed by Palina Chayevich ("the opponent"). The opposition is based on sections 5(2)(b) and 5(3) of the Trade Marks Act 1994 ("the Act") and concerns all the services in respect of which registration is sought.

4. The opponent relies on UK Trade Mark ("UKTM") No. 3981288, **Queen of Beauty**, which has an application date of 18 November 2023 and a registration date of

16 February 2024. The mark is registered for the following services, all of which are relied upon:

> *Class 44*
> *Beauty salons; Salons (Beauty -); Beauty care; Beauty treatment; Salon services (Beauty -); Beauty salon services; Beauty consultation; Beauty counselling; Beauty spa services; Beauty care services; Beauty therapy services; Beauty treatment services; Facial beauty treatment services; Hygienic and beauty care services; Beauty salons for wig cutting; Beauty therapy treatments; Beauty care for human beings; Beauty consultation services; Beauty care services provided by a health spa; Information relating to beauty care; Cosmetic make-up services; Skin care salons; Hair salon services for women; Skin care salon services; Cosmetic treatment services for the body, face and hair.*

5. This mark qualifies as an earlier mark under section 6(1)(a) of the Act by virtue of its earlier filing date. As it completed its registration process less than five years before the filing date of the contested mark, the mark is not subject to the use provisions in section 6A of the Act and the opponent may rely on all the services listed above.

6. Under section 5(2)(b), the opponent claims that the services are identical and that, given that both parties operate as beauty salons, the marks are the same. She claims that there had already been significant confusion between the parties' businesses and that this had prompted her to make the application for the earlier mark.

7. Under section 5(3), the opponent claims that the earlier mark has a reputation for all the services for which it is registered and that the similarity between the marks has led to confusion among her customers. She also claims that there is a risk of damage to the reputation of the earlier mark if the applicant's services are inferior and also of damage to the distinctive character of the earlier mark.

8. The applicant filed a defence and counterstatement denying the claims made. She also claims that the parties' businesses operate in different sectors in the industry, with her business offering non-medical cosmetic services, such as make-up, waxing and haircare, while the opponent's services are medical *"or quasi-medical"*, including injectable services such as Botox, lip and hair fillers, and microneedling. She argues that alleged confusion is anecdotal and unsubstantiated and that the average

consumer would not be confused. She also denies that the earlier mark has acquired the necessary reputation under section 5(3) and claims that, as she had been operating under the "Queen of Beauty" name since well before the opponent applied for the earlier mark, then that constitutes due cause. Furthermore, she argues that the opponent's business branding includes the term "Advanced Aesthetic Clinic" and so the two parties' businesses would be distinguishable in visual and conceptual terms.

EVIDENCE

9. The opponent filed evidence in the form of a witness statement dated 27 January 2025 from Ms Palina Chayevich, the opponent herself. She is the owner of the business trading under the name "Queen of Beauty" and she states that this business dates back to May 2021. Her witness statement is accompanied by 14 exhibits which go to the use and claimed reputation of the earlier mark.

10. The opponent also filed written submissions dated 27 January 2025.

11. The applicant filed no evidence.

12. A hearing was not requested and only the opponent filed written submissions in lieu. These are dated 12 May 2026.

REPRESENTATION

13. In these proceedings, the opponent has been represented by Godwin Austen Solicitors and the applicant has represented herself.

RELEVANCE OF EU LAW

14. 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 that predate the UK's withdrawal from the EU.

PRELIMINARY ISSUE

15. In her written submissions in lieu of a hearing, the opponent says that the primary ground of opposition is section 5(2)(b). She adds that she maintains *"the grounds pleaded in the amended TM7 under sections 5(3) and 5(4)(a) TMA 1994"*.[1] An amended TM7 was indeed filed on 11 March 2025, following a request to add a claim under section 5(3). There is no claim under section 5(4)(a), and permission was not sought to add one. Therefore, I shall only address sections 5(2)(b) and 5(3) in this decision.

DECISION

Section 5(2)(b)

16. Section 5(2)(b) 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."

17. 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

[1] Page 2.

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 services

18. It is settled case law that I must make my comparison of the services on the basis of all relevant factors. These include the nature of the services, their purpose, their users and method of use, the trade channels through which they reach the market, and whether they are in competition with each other or are complementary: see *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, paragraph 23, and *British Sugar Plc v James Robertson & Sons Limited (TREAT Trade Mark)* [1996] RPC 281 at [296]. As the General Court ("GC") said in *Boston Scientific Ltd v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06, goods (and services) are complementary when

> "82. … 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."

19. As I have already noted, the applicant submits that the two parties operate in different parts of the beauty industry. For the purposes of the claim under section 5(2)(b), differences between the parties' current services are not relevant to the assessment I am required to make, except to the extent that those differences are apparent from the lists of services in the specifications. As the opponent is not required to prove use of the mark, what matters for the present purposes is the words that are used in those specifications.

20. The services to be compared are shown in the table below:

Contested services	**Earlier services**
Class 44 *Beauty salons; Salons (Beauty -); Beauty care; Beauty treatment; Beauty salon services; Salon services*	*Class 44* *Beauty salons; Salons (Beauty -); Beauty care; Beauty treatment; Salon services (Beauty -); Beauty salon*

Contested services	Earlier services
(Beauty -); Beauty consultation; Beauty counselling; Beauty spa services; Beauty consultancy; Hygienic and beauty care; Services of a hair and beauty salon; Beauty care of feet; Beauty care services; Beauty therapy services; Beauty treatment services; Hygienic and beauty care for humans; Facial beauty treatment services; Hygienic and beauty care services; Beauty therapy treatments; Beauty care for human beings; Beauty treatment services especially for eyelashes; Beauty consultation services; Hygienic and beauty care for human beings; Beauty information services; Consultancy in the field of body and beauty care; Beauty advisory services; Beauty consultancy services; Beauty care services provided by a health spa; Provision of hygienic and beauty care services; Information relating to beauty care; Information relating to beauty; Advisory services relating to beauty care; Consultation services relating to beauty care; Consultancy services relating to beauty; Providing information relating to beauty salon services; Providing information about beauty; Rental of machines and apparatus for use in beauty salons or	*services; Beauty consultation; Beauty counselling; Beauty spa services; Beauty care services; Beauty therapy services; Beauty treatment services; Facial beauty treatment services; Hygienic and beauty care services; Beauty salons for wig cutting; Beauty therapy treatments; Beauty care for human beings; Beauty consultation services; Beauty care services provided by a health spa; Information relating to beauty care; Cosmetic make-up services; Skin care salons; Hair salon services for women; Skin care salon services; Cosmetic treatment services for the body, face and hair.*

Contested services	Earlier services
barbers' shops; Cosmetic make-up services; Skin care salons; Hair salon services for women; Skin care salon services; Cosmetic treatment services for the body, face and hair.	

21. The following contested services appear in the opponent's specification: *Beauty salons; Salons (Beauty -); Beauty care; Beauty treatment; Beauty salon services; Salon services (Beauty -); Beauty consultation; Beauty counselling; Beauty spa services; Beauty care services; Beauty therapy services; Beauty treatment services; Hygienic and beauty care for humans; Facial beauty treatment services; Hygienic and beauty care services; Beauty therapy treatments; Beauty consultation services; Beauty care for human beings; Beauty care services provided by a health spa; Information relating to beauty care; Cosmetic make-up services; Skin care salons; Hair salon services for women; Skin care salon services; Cosmetic treatment services for the body, face and hair*. I find that they are identical.

22. The following contested services are clearly synonymous with services covered by the opponent's specification, and I also find them to be identical:

Contested services	Earlier services
Beauty consultancy; Consultancy in the field of body and beauty care; Beauty advisory services; Beauty consultancy services; Advisory services relating to beauty care; Consultation services relating to beauty care; Consultancy services relating to beauty;	*Beauty consultation; Beauty consultation services*
Hygienic and beauty care; Provision of hygienic and beauty care services	*Hygienic and beauty care services*
Beauty information services; Information relating to beauty;	*Information relating to beauty care*

Contested services	Earlier services
Providing information relating to beauty salon services; Providing information about beauty;	

23. Services may be considered to be identical where services in the specification of one party are included in a broader term from the other party's specification: see *Gérard Meric v OHIM*, Case T-133/05, paragraph 29. In my view, the contested *Services of a hair and beauty salon* includes the opponent's *Cosmetic treatment services for the body, face and hair* and so they are identical.

24. On the same principle, the contested *Beauty care of feet* and *Beauty treatment services especially for eyelashes* are included in the opponent's *Beauty care* and *Beauty treatment* and so are identical. The contested *Hygienic and beauty care for human beings* is included in the opponent's *Hygienic and beauty care services* and this term is also considered to be identical.

25. This leaves one remaining contested term: *Rental of machines and apparatus for use in beauty salons or barbers' shops*. I shall compare this term to the opponent's *Information relating to beauty care*. The applicant's rental services would be purchased by proprietors of beauty salons or barbers' shops, while the opponent's information services could be targeted towards the general public or professional users in beauty salons. Therefore, I find that there is an overlap in user. The natures of the services are different, with the applicant's involving the supply of equipment through a rental contract and the opponent's involving the provision of information. The method of use of the services differ, as does their purpose. I consider that there is likely to be some overlap in trade channels and a degree of complementarity, as the provider of the rental services may also provide information on how to use the equipment to deliver beauty care to the end consumer. There is no competition between the parties' services. Taking all these factors into account, I find that there is a medium degree of similarity between the services.

Average consumer and the purchasing process

26. 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 and services in question: see *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel BV*, Case C-342/97, paragraph 26.

27. 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."

28. The average consumer of all the services (apart from the rental services discussed in paragraph 25 above) is a member of the general public. These services are likely to be selected on a fairly frequent basis and the cost is likely to vary, with some services being relatively inexpensive, while other, perhaps more invasive, treatments are more costly. The average consumer is likely to consider the credentials of the provider, the location of the services, the range of services offered and perhaps the ambience of the salon. In my view, the average consumer will pay a higher degree of attention for the more invasive treatments, and so I find that the attention paid will range from a medium to a relatively high degree. The choice of provider is likely to be made after viewing promotional material, whether in printed form or online, or signage on the high street. The purchasing process will, in my view, be largely visual, although there is likely to be a role for word-of-mouth recommendations and so the aural aspects of the marks must also be considered.

29. The average consumer of the opponent's *Information relating to beauty care* may also be a professional working in the beauty industry. They will consider the expertise of the information provider, the range of information covered and the means of accessing it. I consider that they would pay at least a medium degree of attention when choosing a provider and the choice is likely to be made after perusing websites or printed material. Again, I consider that the purchasing process will be largely visual, with a role for the aural aspect of the mark through word-of-mouth recommendations.

30. The average consumer for the *Rental of machines and apparatus for use in beauty salons or barbers' shops* is a beautician, barber or proprietor of such a salon. The services are likely to be selected on a relatively infrequent basis, as one would expect a rental contract to be for a fixed and reasonably lengthy period of time. It seems to me unlikely that the consumer is going to want to negotiate contracts on a frequent

basis. The average consumer will pay attention to the machines and apparatus offered and the terms and conditions under which they are offered, as well as the cost. In my view, the average consumer will pay a relatively high degree of attention, given the importance of the equipment for their business. The purchasing process is likely to be largely visual, with the average consumer consulting printed and online promotional material, although there may also be a role for word-of-mouth recommendations.

Comparison of marks

31. 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 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."

32. 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.

33. The respective marks are shown below:

Contested mark	**Earlier mark**
Queen of Beauty Salon	**Queen of Beauty**

34. The earlier mark consists of three words which are likely to be perceived by the average consumer as a unit. The overall impression of this mark lies in the unit. The contested mark begins with the same three words, adding “Salon” at the end. In my view, “Salon” is a descriptive word that denotes the place in which the services are provided. Therefore, I find that the dominant and distinctive element of the contested mark is “Queen of Beauty”.

35. Visually, the marks differ in that the earlier mark has three words, while the contested mark has four. However, the first three of those four words are the dominant and distinctive element of the contested mark and are identical to the earlier mark. The marks are visually highly similar.

36. The opponent submits that the marks are also aurally highly similar. Even if the contested mark is pronounced in full, I remind myself that it is the beginning of the mark that is the dominant and distinctive element. I agree with the opponent that the marks are aurally highly similar.

37. I now come to the conceptual comparison. In my view, the earlier mark will be perceived as referring to an exceptionally beautiful person, the foremost expert in beauty treatment or a particularly high standard of services that would be fit for royalty. The contested mark will be perceived as referring to a salon that will make the customer exceptionally beautiful, that is operated by such an expert or that is of such high quality that it would be fit for a queen. Whatever meaning is ascribed to the earlier mark will, in my view, be ascribed to the dominant and distinctive element of the contested mark. There is a slight difference in concept, brought about by the word “Salon” in the contested mark, and I find the marks to be conceptually highly similar.

Distinctive character of the earlier mark

38. 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 Meyer*:

> “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)."

39. 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.

40. I shall deal with the inherent distinctive character of the mark first. I consider that "QUEEN OF BEAUTY" may be allusive of the services delivered under the mark. However, I find that any allusiveness is mild because the word "Queen" contributes different concepts. As some thought is required on the part of the consumer, I find that the mark is inherently distinctive to a medium degree.

41. Ms Chayevich states that she has been providing beauty services from premises in Baker Street, London, since May 2021 under the trading name "Queen of Beauty". She claims to have invested significant sums in marketing material, such as gift cards, brochures, banners, signage, business cards, branded bags and promotions on digital platforms. Exhibit QB14 contains invoices for advertising on Instagram and possible other Meta services, but they all refer to activity after the relevant date in these proceedings. Exhibit QB5 contains examples of posts on Instagram. The earliest dates from 4 May 2021. I cannot see that it uses the mark, but there are posts from 26 and 28 March 2022 that do: see, for example, the post below dated 28 March 2022.



42. Ms Chayevich states that *"By establishing a robust social media presence, I was able to attract followers, gather reviews, and develop a loyal clientele who identified my business with the 'Queen of Beauty' mark"*. Exhibit QB5 contains some information on the reach of advertisements and Exhibit QB8 provides details of follower numbers for some social media accounts. For example, there are 1,707 followers on TikTok and 11k followers on one Instagram account and 10.2k followers on another. However, these figures are not targeted towards the relevant date and it is not clear how many of them are located in the UK. Exhibit QB8 also contains some Google reviews, some of which precede the relevant date. The earliest is dated 9 March 2023.

43. On 4 December 2022, Ms Chayevich attended the "Safety in Beauty" industry exhibition. There is an Instagram post of the same date that she claims shows her displaying business cards at the event. She is clearly holding two cards in the photograph but I am not able to discern what is on those cards.[2]

44. Exhibit QB12 contains articles and other coverage of services offered under the earlier mark, but all of these are dated after the relevant date.

[2] Exhibit QB11, page 192.

45. In my view, the evidence falls short of what would be required to show that the distinctive character of the earlier mark had been enhanced. There are no sales figures and I am unable to see what share of the market the mark might have acquired. Nor have I been given figures for the amounts that have been spent in promoting the earlier mark. There is insufficient evidence to enable me to assess the proportion of the public that because of the mark identifies the opponent's services as coming from a particular undertaking.

Conclusions on likelihood of confusion

46. 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 services 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 services or vice versa.

47. 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)."

48. 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."

49. Earlier in my decision, I found that:

(a) All the applicant's services are identical to those of the opponent with the exception of *Rental of machines and apparatus for use in beauty salons or barbers' shops*, which I found to be similar to a medium degree;

(b) The average consumer of all the services apart from the rental services is a member of the general public paying a degree of attention that ranges between medium and relatively high, depending on the invasiveness of the treatments;

(c) The average consumer of the opponent's information services may be a member of the general public or a professional. The former is likely to pay a medium degree of attention, while this may be slightly higher for the professional;

(d) The average consumer of the rental services is a beautician, barber or salon proprietor paying a relatively high degree of attention;

(e) The purchasing process for both sets of services is largely visual;

(f) The marks are visually, aurally and conceptually highly similar, and the dominant and distinctive element of the contested mark is identical to the earlier mark;

(g) The earlier mark has a medium degree of inherent distinctive character that has not been enhanced through use.

50. Given the identity of the dominant and distinctive element of the contested mark with the earlier mark, it is my view that it is likely that the average consumer will mistake one mark for the other and be directly confused. I consider this to be the case even where a relatively high degree of attention is being paid. With regard to the rental

services, even though I found that there is only a medium degree of similarity between the services and the average consumer is paying a relatively high degree of attention, the interdependency principle comes into play and the high degree of similarity of the marks (and the identity of the dominant and distinctive elements) lead me to find that there is also a likelihood of direct confusion here.

51. Even if the average consumer recognises that the marks are different, they are likely to assume that the marks belong to the same undertaking, given the descriptive nature of the word “SALON”. The contested mark will be perceived as referring to the place in which the services are delivered or where the machines and apparatus that are rented will be used. Consequently, I find there is a likelihood of indirect confusion.

52. The opposition is successful under section 5(2)(b).

Section 5(3)

53. 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.”

54. 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 services 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.

55. I have already found that the marks are visually, aurally and conceptually highly similar.

Reputation

56. 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."

57. I have already summarised what the opponent's evidence says in paragraphs 41-45 and found it insufficient to support a claim that the distinctiveness of the earlier mark had been enhanced through use. I note that the same factors are relevant in an assessment of reputation. For the reasons I have already outlined, the evidence falls short of what would be required to support a claim to reputation.

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

OUTCOME

59. The opposition succeeds under section 5(2)(b) of the Act. Subject to a successful appeal, Application No. 4032489 is refused registration.

COSTS

60. The opponent has been successful and is entitled to a contribution towards her costs in line with the scale set out in Tribunal Practice Notice ("TPN") 1/2023. In the circumstances, I have calculated the cost award as follows:

> *£300 for preparing a statement and considering the other side's statement;*
> *£700 for preparing evidence;*
> *£350 for preparing written submissions in lieu of a hearing;*
> *£200 for the official fees for filing a notice of opposition.*
> ***£1550 in total***

61. I therefore order Carmen Corina Stoica to pay Palina Chayevich the sum of £1550. 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