O/0927/26

TRADE MARKS ACT 1994

CONSOLIDATED PROCEEDINGS

IN THE MATTER OF APPLICATION NOS.
UK00004132908 AND UK00004132928
IN THE NAME OF FUTURE AGENCY CONSULTING LTD
TO REGISTER THE FOLLOWING TRADE MARKS:

FUTURE GROUP

AND

FUTURE PRESENT

IN CLASSES 9, 35, 41 & 42

AND

IN THE MATTER OF CONSOLIDATED OPPOSITION THERETO
UNDER NOS. OP000454110 AND OP000454109
BY FUTURE PUBLISHING LIMITED

Background and pleadings

1. These consolidated proceedings[1] involve oppositions against two trade marks that FUTURE AGENCY CONSULTING LTD ("the Applicant") seeks to register in the UK. The details for those trade marks are set out below:

i) FUTURE GROUP

UK Application No.: UK00004132908
Filing date: 04 December 2024
Publication date: 28 February 2025
("the First Application")

ii) FUTURE PRESENT

UK Application No.: UK00004132928
Filing date: 04 December 2024
Publication date: 28 February 2025
("the Second Application")

2. The above applications are in respect of goods and services in classes 9, 35, 41 and 42, as set out at paragraph 19 of this decision.

3. On 08 May 2025, the applications were opposed by Future Publishing Limited ("the Opponent") on the basis of Section 5(2)(b) of the Trade Marks Act 1994 ("the Act"). The oppositions are directed against all goods and services in the applications. The Opponent relies upon the following trade mark:

FUTURE

UK Registration no. UK00003780976
Filing date: 25 April 2022
Date of registration: 07 October 2022
Relying upon all goods and services in classes 9, 16, 35, 38 and 41.[2]

[1] On 17 September 2025, the proceedings were consolidated, pursuant to rule 62(1)(g) of the Trade Marks Rules 2008.
[2] As set out at paragraph 19 of this decision.

4. By virtue of its earlier filing date, the above registration constitutes an earlier mark within the meaning of section 6 of the Act. As the Opponent's mark had not completed its registration process more than five years before the filing date of the applications in issue, it is not subject to the use provisions contained in section 6A of the Act. In view of this, the Opponent can rely upon all of the goods and services for which the earlier mark is registered without having to demonstrate use.

5. The Opponent submits that the marks are highly similar and that the goods and services at issue are identical or similar.

6. The Applicant filed a counterstatement within which it denies the grounds of opposition.

7. Only the Opponent filed evidence in these proceedings. Neither party requested a hearing, however, both parties filed submissions in lieu of the same. This decision is taken following careful consideration of the papers.

8. The Applicant is represented by Sanderana Limited; the Opponent is represented by HGF Limited.

9. 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 caselaw. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

Preliminary issue

10. The Applicant raised a point in its counterstatements that I intend to address as a preliminary issue. Before going any further into the merits of the oppositions, it is necessary to explain why, as a matter of law, the point raised will have no bearing on the outcome of these oppositions.

State of the register

11. The Applicant submits that there are over 1,000 trade marks containing the word "future" already on the register in classes 9, 16, 35 and 41.[3] Although I acknowledge these comments, the existence of other trade marks on the register is not relevant to the decision I must make. The outcome of this opposition will be determined based on the merits of the case and the assessment of similarity between the marks and their respective specifications at issue, amongst other considerations. Thus, this argument is of little assistance to the Applicant.

Evidence and submissions

12. The Opponent filed evidence in the form of the witness statement of Clare Dove, dated 17 November 2025, accompanied by six exhibits (CD1 – CD6). Ms Dove is the Group Commercial Director of the Opponent, a position held since 2022.

13. The Opponent filed written submissions in lieu of a hearing on 16 April 2026.

14. The Applicant filed written submissions in lieu of a hearing on 17 April 2026.

15. I have given due consideration to all of the documents filed but will refer to them only to the extent that I consider it necessary in this decision.

Decision

Section 5(2)(b)

16. The opposition is based upon Section 5(2)(b) of the Act, which reads as follows:

> "5(2) A trade mark shall not be registered if because -
>
> (a) …

[3] Applicant's TM8 forms and counterstatements, paragraph 6.

(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. Section 5A of the Act reads as follows:

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

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 he has kept in his mind, and whose attention varies according to the category of goods or services in question;

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

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other

components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

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

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

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

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

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

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

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

Comparison of goods and services

19. The goods and services for comparison are as follows:

Opponent's goods and services	**Applicant's goods and services**
Class 9:	*The First Application* Class 9:

Electronic publications; downloadable electronic publications; electronic magazines; downloadable digital media and multimedia; downloadable video and audio recordings; downloadable audio and video files; downloadable sound, music, image, video and game data files; webcasts; podcasts; vodcasts; podscrolls; downloadable digital media and recordings containing teaching apparatus and instruments; downloadable computer applications (apps); publications in electronic format supplied on-line from databases or from facilities provided on the Internet (including websites); downloadable electronic newsletters; videos, tapes, DVDs, CDs, CD-Roms; pre-recorded machine readable data carriers; computer software; computer programmes; computer software in electronic format supplied on-line from databases or from facilities provided on the Internet (including websites); software for digital publishing; software for accessing, viewing, downloading and interacting with electronic magazines, music, games, audio, video, multimedia, and digital media; data processing equipment.	Downloadable creative content, templates and visual assets for branding purposes. Class 35: Business-to-business consultancy in brand development and positioning; strategic guidance on brand identity and growth. Class 41: Educational workshops and in-person training sessions for business professionals on branding strategy and identity development. Class 42: Brand design services, including logo creation and development of brand guidelines; packaging design for consumer goods; website design and development for businesses.
	The Second Application Class 9: Downloadable templates and digital tools for creating business presentations; pre-recorded multimedia content for professional use, including animations and videos. Class 35: Development of branded business presentations for sales and corporate

Class 16: Printed matter; printed publications; books, manuals, magazines, periodicals, journals; articles of stationery; instructional and teaching material; calendars and posters; plastic, paper and cardboard packaging. Class 35: Advertising; marketing, business and promotional services; placing adverts in printed and electronic media; placing of adverts in magazines; placing of adverts on websites; advice and consultancy in relation to advertising, marketing, digital marketing, Search Engine Optimization, social media marketing, content marketing and email marketing; marketing analytics; public relations; media relations; provision of data for advertising and marketing purposes; promotional communications; organisation of events and exhibitions for commercial and advertising purposes; digital advertising, digital promotional and digital marketing services; advertising and marketing on the internet, mobile phone networks and other electronic communication networks; collection of data; database management; provision of business data; market research;	communications purposes; content creation and development services for advertising and promotional materials. Class 41: Professional training in business presentation skills, including design, delivery, and storytelling for corporate contexts. Class 42: Custom design of templates and materials for business presentations; graphic design services, including the creation of animations and multimedia elements for integration into corporate presentations; consultancy on the design and development of business presentations.

data processing; data analysis; advertising analysis; creating advertising material; information, advice and consultancy relating to all the aforesaid; retail services connected with magazines, publications, electronic magazines, digital media. <u>Class 38:</u> Telecommunications services; broadcasting; Internet broadcasting services; transmission of sound, data or images over computer networks; Audio and video broadcasting services; transmission of news and information via the Internet; transmission of streamed audio and video content on the Internet; providing Internet access to on-line blogs, discussion groups, chat rooms, electronic bulletin boards and social media networks; providing access to databases of downloadable videos, data files, image files, screen savers, and music; podcasting services; providing online forums for communication on topics of general interest; providing online communications links which transfer web site users to other local and global web pages; providing online chat rooms and electronic bulletin boards; providing access to computer, electronic and online databases;	

information and advisory services connected with all the aforementioned services. <u>Class 41:</u> Publication services, electronic publishing services; digital publishing services; television and radio production services; digital video, audio and multimedia entertainment production services; video, audio and multimedia entertainment publishing services; sound recording and video entertainment services; providing online videos (not downloadable); publication of audio books; production of audio recordings; providing online audio recordings (not downloadable); entertainment services; online entertainment; organisation and planning of shows, concerts, parties and entertainment or educational events; arranging, organising and promoting live events; booking agency services; organisation of competitions and award ceremonies; arranging and conducting conferences, conventions, exhibitions, trade fairs, seminars; provision of information by electronic means including the internet; information and advisory services relating to all the aforesaid services.	

20. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T-133/05, the General Court ("GC") stated that:

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

21. When making the comparison, all relevant factors relating to the goods and services in the specifications should be taken into account. In the judgment of the Court of Justice of the European Union ("CJEU") in *Canon,* Case C-39/97, the court stated at paragraph 23 that:

> "In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary."

22. Guidance on this issue has come from Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, where he identified the factors for assessing similarity as:

    i. The respective uses of the respective goods or services;

    ii. The respective users of the respective goods or services;

    iii. The physical nature of the goods or acts of service;

    iv. The respective trade channels through which the goods or services reach the market;

v. In the case of self-serve consumer items, where in practice they are respectively found or likely to be found in supermarkets and, in particular, whether they are or are likely to be found on the same or different shelves;

vi. The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance, whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

23. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods and services. In *Boston Scientific Ltd v OHIM*, Case T 325/06, the GC stated that "complementary" means:

> "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".

24. For the purposes of considering the issue of similarity of goods and services, it is permissible to consider groups of terms collectively where they are sufficiently comparable to be assessed in essentially the same way and for the same reasons.[4]

25. I also note that section 60A(1)(a) of the Act provides that goods and services are not to be regarded as being similar to each other on the ground that they appear in the same class under the Nice Classification, nor dissimilar to each other on the ground that they appear in different classes under the Nice Classification.

[4] *Separode Trade Mark* (BL O/399/10), per Mr Geoffrey Hobbs QC, sitting as the Appointed Person; and *BVBA Management, Training en Consultancy v. Benelux-Merkenbureau* [2007] ETMR 35, at paragraphs 30 to 38).

26. The Applicant submits that the Opponent's services are overly broad and lacking in commercial clarity.[5] On this point, I bear in mind the direction of *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1)* [2024] UKSC 36, where Lord Kitchin set out the proper approach to considering terms in specifications:

> "365. […] The correct approach, as a matter of principle, in considering a specification of services which is defined by terms which are not clear or precise, is to confine the terms used to the substance or core of their possible meanings: see, for example, Reed Executive plc v Reed Business Information Ltd [2004] EWCA Civ 159; [2004] RPC 40, at para 43. So too, if a specification of goods is defined by terms which are ambiguous, then it should be confined to those goods which are clearly covered. These principles are consistent with first, the requirement that the specifications of goods and services must be clear and precise so that others know what they can and cannot do; and secondly, general fairness because any ambiguity is the responsibility of the owner of the mark. If despite this, the words used are still unclear so that they cannot be interpreted, then it is permissible to disregard them. But, in my opinion, that will rarely be the case."

27. The Opponent provides detailed submissions regarding the similarity of the goods and services at issue. While I do not intend to replicate the submissions in full, I shall refer to them to the extent I consider it necessary in my comparisons below.

The First Application

Class 9:

Downloadable creative content, templates and visual assets for branding purposes.

28. The Opponent submits that its *"downloadable digital media and multimedia"* and *"downloadable sound, music, image, video and game data files"* are identical to the

[5] TM8 and counterstatements, paragraph 10.

Applicant's above goods.[6] I understand 'digital media' to be a broad term which includes anything which is created, stored, or shared in a digital format on an electronic device. In view of this, I consider that the Applicant's above goods are encompassed within the Opponent's broader category of *"downloadable digital media and multimedia"*. They are therefore identical on the principle outlined in *Meric.*

Class 35

Business-to-business consultancy in brand development and positioning; strategic guidance on brand identity and growth.

29. I consider the Applicant's above services to be consultancy services related to specific marketing functions, namely brand development, positioning and growth. I include strategic guidance in this grouping as I understand it to be a type of consultancy focused on developing a strategy for a business to solve a specific problem or reach a specific goal. I consider these services are encompassed by the Opponent's broader category of "*consultancy in relation to advertising, marketing, digital marketing, Search Engine Optimization, social media marketing, content marketing and email marketing".* They are therefore identical under the principle set out in *Meric*.

30. In the alternative, I consider the services to overlap in user, nature, purpose and method of use, as they are all consultancy services provided to businesses and professionals seeking guidance on promoting their business and enhancing its reputation among consumers. I consider the services will overlap in trade channels as they are likely to be offered by the same marketing agencies. I consider there will also be a degree of competition, as a business seeking consultancy on how to promote their business may choose brand focused consultancy/strategic guidance over more general marketing consultancy. While the average consumer may expect the same undertaking to offer consultancy in branding and wider marketing consultancy, I do not consider the services to be complementary in the way set out

[6] Opponent's written submissions in lieu, paragraph 25.

in caselaw. Overall, I consider the services to be similar to between a medium and high degree.

Class 41:

Educational workshops and in-person training sessions for business professionals on branding strategy and identity development.

31. I consider the Applicant's above services overlap in purpose, nature and method of use with the *Opponent's class 41 "organisation and planning of […] educational events"* and *"arranging and conducting […] seminars"* to the extent that the services at issue all provide education and training, although I acknowledge that in the Applicant's specification the subject matter of that training is limited to branding strategy and identity development. There is an overlap in user to the extent that the services will be used by business professionals. I consider there to be an overlap in trade channels as the services are likely to be provided through the same educational/training providers. There will be a degree of competition, as a consumer may choose a branding focused workshop, for example, in place of more general events or seminars covering similar subject matter. Although educational workshops and in-person training sessions for business professionals on branding strategy and identity development may form part of wider educational events and/or seminars, I do not consider them to be complementary in the way set out in caselaw. Overall, I consider the services to be similar to a medium degree.

Class 42:

Brand design services, including logo creation and development of brand guidelines.

32. I consider the Applicant's above services overlap in trade channels with the Opponent's class *35 "advertising; marketing, business and promotional services*" to the extent that marketing agencies may also provide brand design and development services alongside more general advertising, marketing, business and promotional services. While there is an overlap in user, and purpose at a general level to the

extent that the services will be used by professionals seeking to improve the way their business is presented to customers, they differ in nature. I say this because the Applicant's services are primarily focused on design and development of a brand, while the Opponent's services are primarily concerned with promoting a business and enhancing its reputation among consumers. Although the Applicant's services may form part of a broader marketing strategy, I do not consider the services to be in competition, nor do I consider them to be complementary in the way set out in caselaw. Overall, I consider the services to be similar to a medium degree.

Packaging design for consumer goods.

33. I consider the Applicant's services overlap in trade channels with the Opponent's *class 35 "advertising; marketing, business and promotional services*" to the extent that marketing agencies may provide packaging design services as part of more general strategic branding or marketing services. However, I consider the services differ in nature and method of use as the Applicant's services involve the design and creation of packaging for goods, while the Opponent's services involve the planning and delivery of marketing, business or promotional services. The core purpose differs as the Applicant's service is primarily a design service, whereas the Opponent's services are primarily marketing, promotional and business services. I consider there is an overlap in user at a general level, being businesses and professionals concerned with the marketing of their products. Although the Applicant's services may form part of a broader marketing strategy, I do not consider the services to be in competition, as packaging design services are not likely to be sought in place of more general advertising, marketing, business and promotional services. I do not consider the services to be complementary in the way set out in caselaw. Overall, I consider the services to be similar to a low degree.

Website design and development for businesses.

34. The Opponent submits that these services are identical to its 'electronic publishing services' and 'digital publishing services' as the publishing of digital assets will

involve the design of those materials.[7] There is an overlap in nature at a very general level as the services are all concerned with electronic or digital content. However, the purpose and method of use differ as the Applicant's services are primarily design and development services, while the Opponent's services are, at their core, concerned with digital/electronic publishing. There is an overlap in user as the Opponent's broad categories of publishing services may also be sought by businesses seeking digital media, however, this in itself is insufficient to engage a finding of similarity. I do not consider the services overlap in trade channels, as I have no evidence before me to suggest it is customary in trade for website design companies to also offer digital publishing services. I do not consider the services to be in competition, as a business is unlikely to engage website design or development services in place of general digital or electronic publishing services. I do not consider that the services are complementary in the way set out in caselaw. Overall, I consider the services to be dissimilar.

The Second Application

Class 9:

Downloadable templates and digital tools for creating business presentations.

35. I understand the Applicant's above goods to be digital files and software-based resources used to create business presentations. I consider these goods to be encompassed within the Opponent's broader categories of *"computer software"* and *"downloadable digital media and multimedia"*. They are therefore identical on the principle outlined in *Meric.*

Pre-recorded multimedia content for professional use, including animations and videos.

36. I consider the Applicant's above goods are encompassed within the Opponent's broader categories of *"downloadable digital media and multimedia"* and "*pre-*

[7] Opponent's written submissions in lieu, paragraph 30.

recorded machine readable data carriers". They are therefore identical on the principle outlined in *Meric.*

Class 35:

Content creation and development services for advertising and promotional materials.

37. I consider that the Applicant's above service is a broad category which encompasses the Opponent's *class 35 "creating advertising material"*. They are therefore identical on the principle outlined in *Meric.*

Development of branded business presentations for sales and corporate communications purposes.

38. I understand 'corporate communications' to be the way in which a business shares information, to either internal or external audiences. I consider that the Applicant's above services overlap in purpose with the Opponent's *"*promotional communications*"*, to the extent that both services may be directed at communicating with customers, clients or corporate audiences for the promotion of a business and the enhancement of sales. However, the nature and method of use differ as the Applicant's services are concerned specifically with the development of branded presentations, while the Opponent's services are more general promotional communications. There is an overlap in user, being businesses seeking to communicate with audiences and to promote their business. There may be an overlap in trade channels, in that marketing or communications agencies may offer the development of branded business presentations alongside more general promotional communication services. I do not consider the services to be in competition, as a consumer is unlikely to engage specific business presentation development services in place of general promotional communication services. I do not consider the services to be complementary in the way set out in caselaw. Overall, I consider the services to be similar to a medium degree.

Class 41:

Professional training in business presentation skills, including design, delivery, and storytelling for corporate contexts.

39. I consider the Applicant's above services overlap in purpose, nature and method of use with the Opponent's class 41 *"arranging and conducting […] seminars"* in that the services at issue all provide training, although I acknowledge that the Applicant's specification is limited to professional training in business presentation skills. There is an overlap in user to the extent that the Applicant's services may also be used by business professionals. I consider there to be an overlap in trade channels as the services are likely to be provided through the same educational/training providers. There will be a degree of competition, as a business seeking training may choose the Applicant's professional training services over more general seminars covering similar subject matter. I do not consider the services to be complementary in the way set out in caselaw. Overall, I consider the services to be similar to a medium degree.

Class 42:

Custom design of templates and materials for business presentations; graphic design services, including the creation of animations and multimedia elements for integration into corporate presentations.

40. The Applicant's above services are concerned with the design of templates, materials and multimedia elements for business and corporate presentations. These services overlap in nature and user, at a general level, with the Opponent's *class 35 "creating advertising material"* to the extent that they are creative services aimed at businesses. However, the specific purpose and method of use differ as the Opponent's services are primarily focused on advertising material, while the Applicant's services are focused on business and corporate presentations. I consider there to be an overlap in trade channels as the services may be offered by the same graphic design agencies. I do not consider the services to be in competition, nor do I consider them to be complementary in the way set out in

caselaw. Overall, I consider the services to be similar to between a low and medium degree.

Consultancy on the design and development of business presentations.

41. The Applicant's above services overlap in nature with the Opponent's *class 35 "consultancy in relation to advertising, marketing, digital marketing, Search Engine Optimization, social media marketing, content marketing and email marketing"* to the extent that they are all consultancy services aimed at businesses. Although business presentations may be used for marketing purposes, I consider that the core purpose and method of use of the respective services differs as the Applicant's services are primarily consultancy in design and development, while the Opponent's services are primarily consultancy aimed at promoting a business and enhancing its reputation among consumers. I consider the respective services are unlikely to be provided via the same trade channels. I say this because the Applicant's services are likely to be provided by design agencies, while the Opponent's services are more likely to be provided by a marketing agency. I do not consider that the services are in competition, nor are they complementary in the way set out in caselaw. Overall, I consider the services to be similar to a low degree.

42. It is a prerequisite of section 5(2)(b) that the goods and services be identical or at least similar. As per *eSure*,[8] in relation to the services which I have found to be dissimilar, as there can be no likelihood of confusion under section 5(2), I will take no further account of such services, with the opposition failing to that extent. The opposition under section 5(2)(b) therefore fails at this juncture for the following services:

Class 42: Website design and development for businesses.

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

Average consumer and the purchasing act

43. As the caselaw above indicates, it is necessary to determine who the average consumer is for the goods and services at issue. I must then determine the manner in which the goods and services are likely to be selected by the average consumer.

44. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods and services in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97.

45. In *Iconix* (cited above), 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:

> (a) Consumers who are ill-informed or careless, or consumers with specialised knowledge or who are excessively careful are excluded from consideration;
>
> (b) The average consumer provides a standard which enables the courts to strike a balance between the competing interests involved, such as trade mark owners, their competitors and consumers;
>
> (c) The average consumer is neither a single hypothetical person nor a mathematical average; assessment from the perspective of the average consumer does not involve a statistical test. There is no single meaning rule and 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, a finding of infringement may properly be made;
>
> (d) Assessment from the perspective of the average consumer is intended 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;

(e) The average consumer's level of attention varies according to the category of goods or services in question; and

(f) 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.

46. The average consumer for the goods and services will be businesses and professional users. For the goods at issue, various factors will be taken into consideration during the purchasing process, such as price, content and suitability for the consumer's needs. As the goods are for professional use, I consider that a medium degree of attention will be paid during the purchasing process.

47. For the services, the average consumer will consider the price, suitability for the consumer's needs, reputation and reliability of the provider. Due to the impact that the services may have on the reputation of a business, I consider that a medium to high degree of attention will be paid during the purchasing process.

48. The goods and services are likely to be obtained via websites or after reviewing advertising material. Visual considerations are, therefore, likely to dominate the purchasing process. However, given that word-of-mouth recommendations may also play a part, I do not discount that there will also be an aural component to the purchase of the goods and services.

Comparison of the marks

49. It is clear from *Sabel BV v. Puma AG* that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The Court of Justice of the European Union stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

"34. […] it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion."

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

51. The respective trade marks are shown below:

<table>
<tr><th>Opponent's mark</th><th>Applicant's marks</th></tr>
<tr><td rowspan="2">FUTURE</td><td>FUTURE GROUP

(the First Application)</td></tr>
<tr><td>FUTURE PRESENT

(the Second Application)</td></tr>
</table>

52. The Opponent's mark consists of the word 'FUTURE'. There are no other elements to contribute to the overall impression, which lies in the word itself.

The First Application

53. The Applicant's mark consists of the words 'FUTURE GROUP'. The Opponent submits that the word 'GROUP' is 'descriptive and generically used by businesses

to indicate they are part of a group of companies or businesses'.[9] The Applicant denies that the word 'GROUP' is descriptive and less dominant than the word 'FUTURE', stating that the mark should be considered as a whole.[10] It is my view that the word 'GROUP' will be seen as merely denoting a corporate structure and is therefore non-distinctive. In view of this, I consider that the word 'FUTURE' is the dominant and distinctive element in the mark, playing the greatest role in the overall impression, with the word 'GROUP' playing a lesser role.

54. Visually, the marks coincide in the presence of the word 'FUTURE', which forms the entirety of the Opponent's mark and appears at the beginning of the Applicant's mark, a position to which the consumer pays the most attention.[11] The marks differ in the presence of the additional word 'GROUP' in the First Application. Overall, I find the marks to be visually similar to a medium degree.

55. Aurally, the marks coincide in the word 'FUTURE', which will be pronounced in the ordinary way. The additional word 'GROUP' at the end of the First Application, which will also be pronounced in the ordinary way, creates a point of aural difference. Overall, I consider the marks are aurally similar to a medium degree.

56. Conceptually, the ordinary dictionary word 'FUTURE' appears in both marks, which I consider the average consumer will recognise as referring to a period of time yet to come.

57. The word 'GROUP' in the Applicant's mark introduces a point of conceptual difference. I consider the average consumer will apply the usual dictionary definition to this word, being a collection of people or things, or as reference to a corporate structure.

58. When considered as a whole, the words 'FUTURE GROUP' together have no obvious unitary conceptual meaning beyond being a group named 'FUTURE' or alluding to a group which is focused on the future. Overall, I consider the marks to be conceptually similar to a medium degree.

[9] Opponent's form TM7 filed in relation to OP000454110, question 8.
[10] Applicant's TM8 and counterstatement filed in relation to OP000454110, paragraph 6
[11] *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02.

The Second Application

59. The Applicant's mark consists of the words 'FUTURE PRESENT'. The Opponent submits that the word 'PRESENT' is descriptive of the applied for goods and services, which relate to the creation of presentations.[12] The Applicant denies that the word 'PRESENT' is descriptive and less dominant than the word FUTURE, stating that the mark should be considered as a whole.[13] I do not consider the word 'PRESENT' to be entirely descriptive, however, I consider it to be at least allusive to the Applicant's applied for goods and services which relate to presentations. In view of this, I consider that the dominant and distinctive element of the mark is 'FUTURE', with the allusive word 'PRESENT' playing a lesser role.

60. Visually, the marks coincide in the presence of the word 'FUTURE', which forms the entirety of the Opponent's mark and appears at the beginning of the Applicant's mark, a position to which the consumer pays the most attention.[14] The marks differ in the presence of the additional word 'PRESENT' in the Second Application. Overall, I find the marks to be visually similar to a medium degree.

61. Aurally, the marks coincide in the word 'FUTURE', which will be pronounced in the ordinary way. The additional word 'PRESENT' at the end of the Applicant's mark, which will also be pronounced in the ordinary way, creates a point of aural difference. Overall, I consider the marks are aurally similar to a medium degree.

62. Conceptually, the ordinary dictionary word 'FUTURE' appears in both marks, which I consider the average consumer will recognise as referring to a period of time yet to come.

63. The word 'PRESENT' in the Applicant's mark introduces a point of conceptual difference. The Opponent submits that this word describes the Applicant's goods and services which relate to presentations. However, the Applicant submits that this is an oversimplification, and that the word has several definitions, including a gift,

[12] Opponent's form TM7 filed in relation to OP000454109, question 8.
[13] Applicant's TM8 and counterstatement filed in relation to OP000454109, paragraph 6
[14] *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02.

moment, or offering of information to others.[15] While I acknowledge that the word 'PRESENT' has several meanings, I consider that, when viewed in the context of goods and services pertaining to presentations, a significant proportion of average consumers will understand the word as a reference to the action of presenting something to an audience.

64. When considered as a whole, the words 'FUTURE PRESENT' together have no obvious unitary conceptual meaning beyond that of the words themselves. Overall, I consider the marks to be conceptually similar to a medium degree.

Distinctive character of the earlier trade mark

65. The distinctive character of a trade mark can be appraised only, first, by reference to the goods and services in respect of which registration is sought and, secondly, by reference to the way it is perceived by the relevant public – *Rewe Zentral AG v OHIM (LITE)* [2002] ETMR 91. In *Lloyd Schuhfabrik*, the CJEU stated that:

> "In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C 108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).
>
> 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

[15] Applicant's written submissions in lieu, paragraph 18.

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)."

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

67. Dealing first with the inherent distinctiveness of the Opponent's mark. The Opponent's mark consists of the ordinary dictionary word 'FUTURE', meaning a period of time yet to come. I do not consider this word to be descriptive or allusive to the goods or services at issue. Overall, I consider the Opponent's mark to be inherently distinctive to a medium degree.

68. Turning now to the question of whether the Opponent's mark has acquired enhanced distinctiveness through its use. The Opponent submits that its mark has enhanced its distinctiveness through the use made of it and filed evidence in this regard. I will now go on to consider whether the mark's distinctive character has been enhanced above a medium degree through use, in relation to the goods and services at issue. The relevant date for assessing enhanced distinctiveness is 04 December 2024, being the filing date of the applications.

69. I note the following from the Opponent's evidence:

- The Opponent's company is a print and digital media company which was founded in 1985. Its revenue is derived from selling publications, advertising and helping businesses develop advertising and marketing campaigns and produce digital content. [16]

[16] Witness statement of Clare Dove, paragraph 3.

- Exhibit CD1 provides extracts from the Opponent's annual reports for the years 2020-2024. The Opponent states that they have a global annual revenue in excess of 780 million, 64% of which is derived from the UK.[17]

- I note that the financial reports explain that figures are split into two geographical segments, US and UK. The documents further explain that 'UK' covers all content outside of the US and Canada, and includes operations in Australia, as shown below:



UK
The UK monetises all our content outside the US and Canada and also includes our operations in Australia.

Our UK operations consist of editorial, video production, advertising sales and events across websites, socials, video, newsletters, the production of the large majority of print magazines and licensing operations which distribute online and print magazines. In addition, the UK hosts our centres of excellence for back office functions such as finance, human resources and technology. The technology team is split between Bath (UK) and France. UK represents 64% of the Group's total revenue and 63% of its revenue is in Media.

In view of this, I am unable to discern with any certainty how much of the revenue relates to use within the United Kingdom.

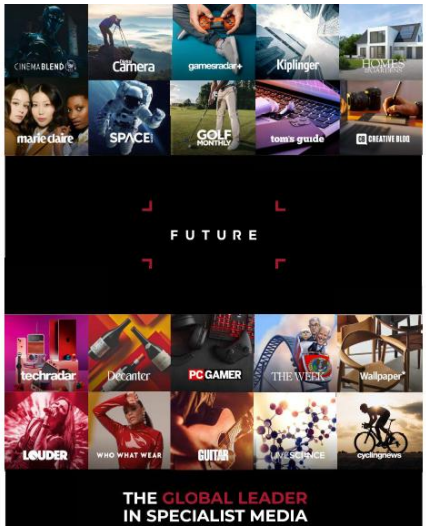
- The Opponent provides the following figures relating to annual advertising revenue:[18]

	Advertising Revenue
2024	£78.8m
2023	£86.9m
2022	£67.8m
2021	£61.5m
2020	£42.8m

[17] Witness statement of Clare Dove, paragraph 5.
[18] Witness statement of Clare Dove, paragraph 5.

- The annual reports explain that this revenue is comprised of ads displayed alongside the Opponent's content on various platforms, including on its own websites, social media platforms, videos, email newsletters and events (physical or digital).[19] It is not clear from the annual reports how much of this revenue is attributable to each specific service provided.

- Exhibit CD2 provides an overview of goods and services offered under the FUTURE mark. The document states that the Opponent has over 250 multi-media brands, offering the creation of websites, magazines, newsletters, events, video and social media content. Page 2 of this exhibit shows some of these sub-brands, as shown below:



- The Opponent's magazines have a combined UK circulation of more than three million. They also create digital content across websites, digital magazines, events and social space. The Opponent states that its media content reaches 1 in 3 adults online in the UK and US.[20] It is unclear from the evidence how much of this reach arises from use of the FUTURE mark, rather than use of the identified sub-brands.

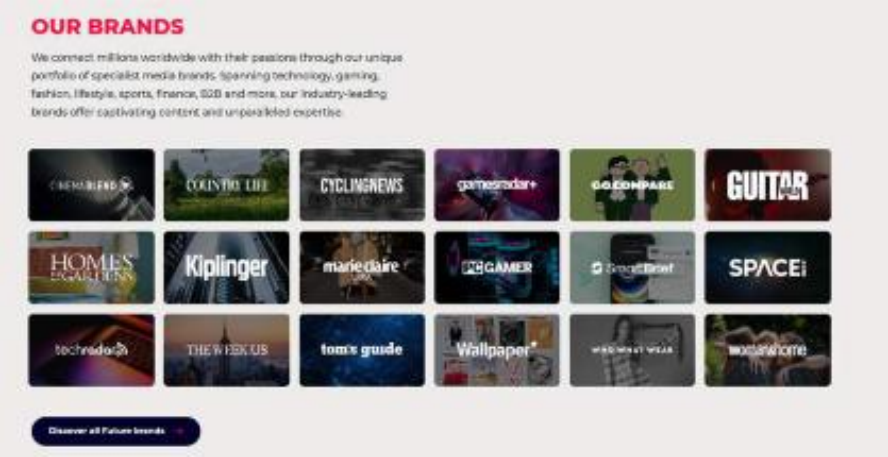
[19] Exhibit CD1, page 13.
[20] Witness statement of Clare Dove, paragraph 6.

- Exhibit CD3 provides example LinkedIn profiles belonging to advertising executives, each showing the FUTURE mark.

- Exhibit CD4a provides a copy of the FUTURE LinkedIn page which has 193,000 followers. No analytics have been provided to demonstrate how many of those 'follows' pertain to the UK, and as the document is undated, it is unclear whether it accurately demonstrates the number of followers at the relevant date. This information therefore is of little assistance to the Opponent.

- Exhibits CD4b and CD4c provide undated extracts from the Opponent's website, outlining goods and services which are offered under the FUTURE mark.

- Exhibit CD4c also shows some of the Opponent's 'portfolio of specialist media brands', as shown below:



- Exhibit CD5 provides extracts from the FUTURE website pertaining to awards achieved between 2020 and 2022. I note that several of these awards were won by sub-brands such as 'Aperture' and 'Country Life', rather than being awarded under the 'FUTURE' mark. In 2020 'Future Fusion' won three awards at the International Content Marketing Association Awards. Also in 2020, 'Future Plc' won Commercial Initiative of the Year at the PPA Awards.

- Exhibit CD6 provides extracts from the FUTURE website relating to the launch of ‘Future Creative’, which is described as a ‘brand storytelling studio’.

70. It is clear from the Opponent’s evidence that they have made use of the FUTURE mark. However, there are several limitations to its evidence.

71. The Applicant submits that the Opponent’s evidence fails to demonstrate that the FUTURE mark has enhanced distinctiveness through use. They raise several challenges to the Opponent’s evidence and submit that any distinctiveness that exists is attributable to sub-brands rather than to the FUTURE mark, which primarily functions as a corporate umbrella brand.[21]

72. The Applicant submits that the Opponent’s financial reports reflect aggregate revenues derived from a portfolio of over 250 sub-brands and do not demonstrate consumer recognition of the FUTURE mark.[22] I agree that insufficient information is provided in this regard. While the overall revenue is significant, the financial reports provided do not break down that revenue sufficiently to enable clear conclusions to be drawn. No information has been provided regarding which specific goods and/or services that revenue is derived from, nor how much is attributable to the Opponent’s wide range of sub-brands. There is also a lack of clarity regarding the geographical reach of the reported revenue and how much of it pertains to the UK.

73. While the Opponent’s publications have a combined UK circulation exceeding three million, I cannot determine with any certainty the extent to which this evidence is specifically attributable to the FUTURE mark. Similarly, although the evidence demonstrates that the Opponent has won a number of awards, many of these were awarded to sub-brands not using the FUTURE mark, such as Country Life and Aperture. In view of this, the awards are of limited use to the Opponent in demonstrating enhanced distinctiveness in the FUTURE mark.

[21] Applicant’s written submissions in lieu, paragraph 5.
[22] Applicant’s written submissions in lieu, paragraph 11.

74. Viewed as a whole, the evidence demonstrates that the Opponent has significant revenue and is a large corporation responsible for multiple sub-brands, with publications reaching 1 in 3 adults online in the UK and US. However, the evidence does not provide sufficiently clear information concerning the market share held under the mark or the extent to which the relevant public in the UK recognises the FUTURE mark as indicating the origin of the goods and services at issue.

75. Taking everything into account, I am of the view that the evidence before me does not sufficiently demonstrate that the earlier mark FUTURE is known to relevant consumers in the UK to such an extent that the mark's distinctive character has been enhanced above a medium degree through use, in relation to the goods and services at issue.

Likelihood of confusion

76. I must now feed all of my earlier findings into the global assessment of the likelihood of confusion, keeping in mind the following factors: i) the interdependency principle, whereby a lesser degree of similarity between the goods and services may be offset by a greater similarity between the marks, and vice versa (*Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*); ii) the principle that the more distinctive the earlier mark is, the greater the likelihood of confusion (*Sabel BV v Puma AG*), and iii) the factor of imperfect recollection i.e. that consumers rarely have the opportunity to compare marks side by side but must rather rely on the imperfect picture that they have kept in their mind (*Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V*).

77. There are two types of confusion that may occur. Direct confusion is where the average consumer mistakes one mark for the other, while indirect confusion is where the average consumer recognises that the marks are different, but for some reason assumes that the later mark also identifies the goods and services of the owner of the earlier mark, or that the two undertakings are related: see *L.A. Sugar Limited v Back Beat Inc*, BL O/375/10, paragraph 16.

78. Earlier in this decision, I found that:

- The goods and services remaining under consideration vary from being identical to similar to a low degree.
- The average consumer for the goods and services will be businesses and professional users. For the goods at issue, these users will pay a medium degree of attention to the purchasing process. For the services at issue, these users will pay a medium to high degree of attention during the purchasing process.
- The purchasing process for the goods and services is predominantly visual, although I do not discount an aural component.
- The applications and the earlier mark are visually, aurally and conceptually similar to a medium degree.
- The earlier mark is inherently distinctive to a medium degree, and the evidence provided was insufficient for me to find that the degree of distinctiveness had been enhanced through use of the mark.

79. Taking all of the above into account, I do not consider that the average consumer, paying a medium degree of attention for the goods, and medium to high degree of attention for the services, will mistakenly recall or misremember either of the Applicant's marks for the Opponent's mark. Although the marks share the identical word 'FUTURE', I am of the view that the additional words 'GROUP' and 'PRESENT', while not particularly distinctive, will not be overlooked. These additional words create visual, aural and conceptual differences which will enable the consumer to differentiate between the marks. Consequently, notwithstanding the medium inherent distinctive character of the Opponent's mark, I consider there to be no likelihood of direct confusion between the marks, even for the goods that I have found to be identical.

80. I now proceed to consider whether there exists a likelihood of indirect confusion. In doing so, I remind myself of the case of *L.A. Sugar Limited v Back Beat Inc*, BL O/375/10, wherein Mr Iain Purvis Q.C., as the Appointed Person, explained that:

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

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

- 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).

- 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.).

- 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).”

81. Furthermore, in *Liverpool Gin*,[23] Arnold LJ referred to the comments of James Mellor QC (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria (O/219/16)*, where he said at [16] that "a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion". Arnold LJ agreed, pointing out that there must be a "proper basis" for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

82. Having noticed the differences between the marks, I consider that the presence of the identical word 'FUTURE', which constitutes the entirety of the earlier mark and appears at the beginning of both the Applicant's marks will lead the average consumer to conclude that the marks originate from the same or economically linked undertakings. In my view, the average consumer will likely attribute trade mark significance to the commonly shared word element 'FUTURE', seeing it as the house brand. The words 'GROUP' and 'PRESENT' in the Applicant's marks will be perceived as indicating brand extensions.

83. In the First Application, I consider that the average consumer will see the word 'GROUP' as a non-distinctive element denoting a corporate group. This will lead the consumer to see the mark as denoting a group of companies which are connected under the 'FUTURE' mark.

84. In the Second Application, I consider the additional word 'PRESENT' at the end of the mark will be seen by the average consumer as a logical sub-brand focused on presentation related goods and services. This is especially the case bearing in mind the allusive nature of the word 'PRESENT' in relation to the goods and services for which the mark seeks protection.

85. I recognise that some of the services are similar only to a low degree and that a medium to high degree of attention will be paid during their selection. Nevertheless, taking account of the perception of the marks described above, and applying the interdependency principle, I consider that those factors are insufficient to avoid a likelihood of indirect confusion. Therefore, I find a likelihood of indirect confusion in

[23] *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207

relation to all of the goods and services which I have found to be similar to at least a low degree.

Conclusion

The First Application

86. The opposition against the First Application filed under section 5(2)(b) of the Act is partially successful. Accordingly, the Applicant's mark is hereby, subject to any successful appeal of my decision, refused in respect of the following goods and services:

Class 9:	Downloadable creative content, templates and visual assets for branding purposes.
Class 35:	Business-to-business consultancy in brand development and positioning; strategic guidance on brand identity and growth.
Class 41:	Educational workshops and in-person training sessions for business professionals on branding strategy and identity development.
Class 42:	Brand design services, including logo creation and development of brand guidelines; packaging design for consumer goods.

87. The Applicant's mark may proceed to registration in respect of the following services:

Class 42:	Website design and development for businesses.

The Second Application

88. The opposition against the Second Application based upon 5(2)(b) is successful. Therefore, subject to any successful appeal against my decision, the application shall be refused in its entirety.

Costs

89. The Opponent has had a greater degree of success and is therefore entitled to a contribution towards its costs. I base the costs awarded on the scale contained in TPN 1/2023. In the circumstances, I award the Opponent the sum of £1,450 as a contribution towards the costs of the proceedings. The sum is calculated as follows:

Official fees (Form TM7 - £100 x 2)	£200
Preparing statements and considering the other side's counterstatements	£500
Preparing and filing evidence[24]	£400
Preparing written submissions in lieu of a hearing	£350
Total:	**£1,450**

90. I therefore order FUTURE AGENCY CONSULTING LTD to pay Future Publishing Limited the sum of £1,450. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 13th day of October 2026

E Rees
For the Registrar

[24] This award takes into consideration the fact that the other side did not file any evidence or submissions during the evidence rounds.