

O/0949/24

TRADE MARKS ACT 1994

**IN THE MATTER OF REGISTRATION NUMBER 3705085
IN THE NAME OF COACHMAN CARAVAN COMPANY LIMITED
FOR THE TRADE MARK**

COACHMAN

IN CLASS 12

AND

**THE APPLICATION FOR A DECLARATION OF INVALIDITY THEREOF
UNDER NUMBER 505630
BY MAN BRAND GMBH & CO. KG**

Background and pleadings

1. Trade mark registration number 3705085 for the mark COACHMAN stands registered in the name of Coachman Caravan Company Limited (“the proprietor”) for the following goods in class 12:

Vehicles; conveyances; land vehicles; motor land vehicles; recreational vehicles; vehicles equipped for living in; towable vehicles; caravans; motor caravans; caravanettes; touring caravans; holiday caravans; mobile homes; motor homes; trailers; trailer homes; towable trailers; campers; truck campers; camper vans; caravan storage assemblies; caravan spoilers; levelling apparatus for caravans; apparatus for locomotion by land, air or water; parts and fittings for all of the aforementioned goods.

2. The mark was filed on 30 September 2021, pursuant to Article 59 of the Withdrawal Agreement between the UK and the EU. Under the terms of that agreement, the proprietor is entitled to rely upon the earlier EU filing date which is 28 November 2017.¹ The mark achieved registration on 6 May 2022.

3. MAN Brand GmbH & Co. KG (“the applicant”) applied on 13 December 2022 for a declaration that the contested mark was registered invalidly under sections 47(2)(a)/5(2)(b) and 5(3) of the Trade Marks Act 1994 (“the Act”). The applicant relies upon the following four earlier trade mark registrations for both grounds:

(i) 1393018

MAN

Filing date: 26 July 1989; registration date: 22 January 1993.

Class 7: Diesel engines (not for land vehicles); diesel and steam engines for water vehicles; parts and fittings for all the aforesaid goods; all included in Class 7.

¹ European Trade Mark 017526377.

Class 12: Freight-carrying motor land vehicles; trucks and lorries; buses; parts and fittings for all the aforesaid goods; all included in Class 12.

Class 37: Maintenance and repair of motorland vehicles and of engines therefor, all for commercial use; all included in Class 37.

(ii) 800914360

MAN

Filing date: 28 March 2006; German priority date: 29 September 2005; registration date: 1 December 2008.

Class 7: Engines (except those for land-based vehicles) and their parts and spare parts.

Class 12: Heavy goods vehicles and their parts; omnibuses with diesel, gas, hydrogen or electric drive and their parts; engines for land-based vehicles, in particular gas/diesel engines.

Class 37: Installation, maintenance and repair of machines, in particular commercial vehicles, diesel engines, turbo machines.

(iii) 800873563



Filing date: 2 December 2004; German priority date: 3 June 2004; registration date: 17 May 2010.

Class 7: Motors (except for land vehicles) and parts thereof and replacement parts therefor.

Class 12: Vans and parts thereof; busses with diesel, gas, hydrogen or electric drives and parts thereof; engines for land vehicles, particularly gas or diesel engines; vehicle bodies and frame parts for motor vehicles.

Class 37: Repair, maintenance, servicing of all vehicles, their driving engines, motors, chassis and frames, vehicle bodies and frame parts, and replacement parts and tools therefor; installation, maintenance and repair of machines, particularly utility vehicles.

(iv) 1090607

MAN

Filing date: 7 February 1978; registration date 30 November 1983.

Class 7: Diesel engines (not for land vehicles propulsion) and parts and fittings therefore included in Class 7.

Class 12: Motor omnibuses; trucks, all being commercial land vehicles.

4. Under section 5(2)(b) of the Act, the applicant claims that the parties' goods are identical, highly similar and complementary and that the marks are highly similar (and that there is "near identity") leading to a likelihood of confusion. The applicant claims that the earlier marks are contained in the contested mark, and that COACH is descriptive and non-distinctive, or at least of low distinctive character.

5. Under section 5(3), the applicant claims that its earlier marks have a reputation and that the relevant public will believe that the contested mark is commercially connected to the applicant's marks. There will also be unfair advantage because the contested mark will benefit from the applicant's investment in promoting its marks by free-riding on their repute. The applicant claims that the proprietor "is effectively using the reputed marks as a vehicle for promoting its own goods." The detriment to repute claim is predicated upon confusion:

“If such goods are of poor quality, this will tarnish the earlier reputed marks and the goodwill in the Applicant’s business, should consumers believe there is a link or an association between the parties on account of the similarity of the challenged mark to the earlier reputed marks.”

6. The third type of damage claimed is that use of the contested mark will cause the distinctiveness of the earlier marks to be weakened, meaning that the earlier marks will lose their ability to attract new customers and to ensure repeat business.

7. The proprietor filed a defence and counterstatement, denying the grounds of invalidation and putting the applicant to proof that it has used its marks. In particular, the proprietor states that the applicant’s mark has co-existed on the register in class 12 alongside the proprietor’s mark COACHMAN since at least 1991, when the proprietor’s earlier registration number 1455711 was registered.² The proprietor states that the mark is COACHMAN, not COACH, but in any event denies that COACH is descriptive and non-distinctive or of low distinctive character for the goods of the contested registration.

8. The applicant is represented by Wilson Gunn and the proprietor by Murgitroyd & Company. Both parties filed evidence, with the applicant filing submissions alongside its evidence. Neither party chose to be heard and both filed written submissions in lieu of a hearing. I make this decision after a careful consideration of all the papers on file, referring to them as relevant and necessary.

Evidence

9. Ina Schwerter-Strumpf, who has been the applicant’s legal counsel since 1 July 2016, gives evidence for the applicant about its use of the earlier marks.³ Elliot Hibbs, the proprietor’s director, gives evidence about the proprietor’s use of its mark and its plans to expand its leisure vehicle offering to motorhomes.⁴

² The registered specification of 1455711 is *Touring caravans, holiday caravans, caravans; all being manufactured in the United Kingdom and all included in Class 12; but not including any such goods being motorised.*

³ Witness statement dated 18 July 2023 and exhibits.

⁴ Witness statement dated 2 November 2023 and exhibits.

Proof of use

10. The first task is to assess whether the evidence supports the applicant's statements that it has made genuine use of its marks in relation to the goods and services upon which it relies in its pleadings. There are two potentially relevant periods for this purpose. The first is the five years ending on the filing date of the invalidity application: 14 December 2017 to 13 December 2022. The second is the five year period ending on the EU 'priority' date of the contested mark: 29 November 2012 to 28 November 2017. The relevant parts of Section 47 state:

"47. (1) [...]

(2) Subject to subsections (2A) and (2G), the registration of a trade mark may be declared invalid on the ground-

(a) that there is an earlier trade mark in relation to which the conditions set out in section 5(1), (2) or (3) obtain, or

(b) that there is an earlier right in relation to which the condition set out in section 5(4) is satisfied,

unless the proprietor of that earlier trade mark or other earlier right has consented to the registration.

(2ZA) The registration of a trade mark may be declared invalid on the ground that the trade mark was registered in breach of section 5(6).

(2A) The registration of a trade mark may not be declared invalid on the ground that there is an earlier trade mark unless –

(a) the registration procedure for the earlier trade mark was completed within the period of five years ending with the date of the application for the declaration,

(b) the registration procedure for the earlier trade mark was not completed before that date, or

(c) the use conditions are met.

(2B) The use conditions are met if –

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

(i) within the period of 5 years ending with the date of application for the declaration, and

(ii) within the period of 5 years ending with the date of filing of the application for registration of the later trade mark or (where applicable) the date of the priority claimed in respect of that application where, at that date, the five year period within which the earlier trade mark should have been put to genuine use as provided in section 46(1)(a) has expired, or

(b) it has not been so used, but there are proper reasons for non-use.

(2C) For these purposes –

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

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

(2D)-(2DA) [Repealed]

(2E) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the

purposes of this section as if it were registered only in respect of those goods or services.

(2F) Subsection (2A) does not apply where the earlier trade mark is a trade mark within section 6(1)(c).”

11. Earlier marks (ii) and (iii) are comparable marks which means that paragraph 9 of part 1, Schedule 2A of the Act is relevant. It reads:⁵

“9.— (1) Section 47 applies where an earlier trade mark is a comparable trade mark (EU), subject to the modifications set out below.

(2) Where the period of five years referred to in sections 47(2A)(a) and 47(2B) (the "five-year period") has expired before IP completion day —

(a) the references in section 47(2B) and (2E) to the earlier trade mark are to be treated as references to the corresponding EUTM; and

(b) the references in section 47 to the United Kingdom include the European Union.

(3) Where IP completion day falls within the five-year period, in respect of that part of the five-year period which falls before IP completion day —

(a) the references in section 47(2B) and (2E) to the earlier trade mark are to be treated as references to the corresponding EUTM; and

(b) the references in section 47 to the United Kingdom include the European Union”.

⁵ On 1 January 2021, the UK left the EU after the expiry of the transition period. Under Article 54 of the Withdrawal Agreement, the Registry created comparable UK trade marks for all right holders with an existing EUTM or International Registration designating the EU (“IR(EU)”). Earlier marks (ii) and (iii) were originally protected in the UK as IR(EU)s. They are now comparable marks which are recorded on the UK trade mark register, have the same legal status as if they had been applied for and registered under UK law, and retain their original registration, protection, filing and priority dates.

12. Both of the five-year periods are applicable to all four of the applicant's earlier marks because they had all been registered for five years both at the filing date of the invalidity application and at the priority date of the contested registration. Under section 47(2B) of the Act, there must be genuine use in both of these five-year periods for the applicant to rely upon its marks for the purposes of sections 5(2)(b) and 5(3) of the Act. The applicant can rely upon use of its comparable marks (ii) and (iii) in the EU for any and all parts of the relevant periods which fall prior to IP Completion Day (i.e. 31 December 2020). After that date, only UK use is relevant (and only use in the UK is relevant to the earlier marks (i) and (iv)).

13. The onus is on the applicant, as the proprietor of the earlier marks, to show genuine use because Section 100 of the Act states:

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

14. In *easyGroup Ltd v Nuclei Ltd & Ors* [2023] EWCA Civ 1247, Arnold LJ summarised the law relating to genuine use as follows:⁶

“105. The principles applicable to determining whether there has been genuine use of a trade mark have been considered by the CJEU in a considerable number of cases, the principal decisions being Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, Case C-259/02 *La Mer Technology Inc v Laboratories Goemar SA* [2004] ECR I-1159, Case C-416/04 P *Sunrider Corp v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237, Case C-442/07 *Verein Radetsky-Order v Bunderversammlung Kamaradschaft 'Feldmarschall Radetsky'* [2008] ECR I-9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Merken BV v Hagelkruis Beheer*

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

BV [EU:C:2012:816], Case C-609/11 *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], Case C-141/13 *P Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089], Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434] and Joined Cases C-720/18 and C-721/18 *Ferrari SpA v DU* [EU:C:2020:854].

106. Ignoring issues which do not arise in the present case, such as use in relation to spare parts or second-hand goods and use in relation to a sub-category of goods or services, the principles may be summarised as follows:

(1) Genuine use means actual use of the trade mark by the proprietor or by a third party with authority to use the mark: *Ansul* at [35] and [37].

(2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Centrotherm* at [71]; *Leno* at [29]; *Ferrari* at [32].

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

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: *Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37]; *Verein* at [14]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle* at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23].

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial *raison d'être* of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71].

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

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no *de minimis* rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72]; *Leno* at [55].

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

15. In its written submissions in lieu of a hearing, the proprietor appears to accept that there has been use of the earlier marks, at least in relation to heavy goods vehicles.

In particular, I note the following at paragraphs 19 and 28 of those submissions (my emphasis):⁷

“The goods for which the Applicant’s marks have been used, namely heavy goods vehicles...”; and

“With the above legal precedents in mind, and significant and persuasive evidence of peaceful coexistence...”.

16. In any event, I agree that the earlier marks have been used in relation to heavy goods vehicles, in both relevant periods. Exhibit ISS4 to Ms Schwerter-Strumpf’s statement comprises extracts from the 2016 edition of a Texaco publication entitled “Overview of the UK Commercial Vehicle Industry”. This shows that the UK heavy goods vehicle industry is dominated by eight brands, of which MAN is one. For the years 2013 to 2015, it had a roughly 9 to 10% share of that market. In 2021, Ms Schwerter-Strumpf states that its market share was 9.4%, and in 2022 it was 8.2%.⁸

17. Turning to the other goods and services relied upon in the earlier marks, MAN won Coach of the Year in October 2019 and Bus of the Year in September 2022. These are European awards. The 2019 award is relevant because EU use can be relied upon until the end of 2020. However, although the UK is on the judging panel for these awards, it does not mean that sales of MAN buses were made in the UK post-EU exit. I note that in 2014, the applicant achieved €1.497 billion in sales for MAN buses (and €7.772 billion for trucks).⁹ The sales figure for buses in the previous year was €1.332 billion.

18. MAN branched out into the large van market in September 2017 (towards the end of the first relevant period) with the MAN TGE, which won Large Van of the Year in the UK in the 2019 HonestJohn.co.uk awards.¹⁰ Excerpts from the 2017 MAN TGE

⁷ See also paragraphs 6, 8, 9 and 13.

⁸ Exhibit ISS3, a report dated 21 February 2023 from the website commercialmotor.com.

⁹ Exhibit ISS20, the applicant’s annual report for 2014.

¹⁰ 3 to 3.5 tons. Exhibits ISS11, ISS12 and ISS13.

brochure at Exhibit ISS15 show earlier mark (iii), which covers vans, and the various configurations that can be ordered, including a camper van configuration:



The new MAN TGE

19. Exhibit ISS10 shows that in 2019 there were 15,243 vans sold and 19,238 in 2020. I have not gone beyond these years because the sales figures appear to be European, not just for the UK.

20. In terms of the goods in class 7, the only pieces of evidence which I consider might relate to such goods are the annual reports for the years 2012, 2014, 2015 and 2017. These refer to an area of business called "Power Engineering". This is described in the 2012 annual report as turbomachinery and power plants, referring to "MAN Diesel and Turbo". However, this all falls within the earlier relevant period but not also within the latter. There is also no direct evidence of use in relation to the parts covered in class 12. Consequently, I find there has been no genuine use in relation

to the class 7 goods and the various parts covered in the class 12 specifications, although nothing in this decision turns upon this finding.

21. Earlier marks (i), (ii) and (iii) cover vehicle maintenance and repair services in class 37. Ms Schwerter-Strumpf states that such services are provided under the MAN trade marks in multiple locations in the UK and Europe, referring to Exhibit ISS26. This is the applicant's brochure (in English) detailing what is included in service contracts. It has a copyright date of 2016. Also bearing a copyright date of 2016 is a similar brochure detailing the MAN Mobile24 breakdown callout service. The brochures in this exhibit all have a copyright date of 2016 or 2017. There is nothing dated within the later relevant period and no figures showing how many of the services were purchased. The evidence is too flimsy to support a finding of genuine use in relation to the class 37 services. Again, nothing in this decision turns upon this finding.

22. Applying the guidance in *Property Renaissance Ltd (t/a Titanic Spa) v Stanley Dock Hotel Ltd (t/a Titanic Hotel Liverpool) & Ors* [2016] EWHC 3103 (Ch) in relation to fair specifications, I find that the applicant may rely upon the following goods of its earlier marks:

- (i) Class 12: Freight-carrying motor land vehicles; trucks and lorries; buses;
- (ii) Class 12: Heavy goods vehicles; omnibuses with diesel, gas, hydrogen or electric drive;
- (iii) Class 12: Vans; buses with diesel, gas, hydrogen or electric drives;
- (iv) Class 12: Motor omnibuses; trucks, all being commercial land vehicles.

Section 47(2)

23. Section 47(2)(a) of the Act states:

“47. (2) Subject to subsections (2A) and (2G), the registration of a trade mark may be declared invalid on the ground-

(a) that there is an earlier trade mark in relation to which the conditions set out in section 5(1), (2) or (3) obtain, or

(b) that there is an earlier right in relation to which the condition set out in section 5(4) is satisfied,

unless the proprietor of that earlier trade mark or other earlier right has consented to the registration.”

Section 5(2)(b) of the Act

24. Section 5(2)(b) states:

“5. (2) A trade mark shall not be registered if because –

(a) ...

(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.”

25. Section 5A states:

“Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the

trade mark is applied for, the application is to be refused in relation to those goods and services only.”¹¹

26. The following principles for determining whether there is a likelihood of confusion under section 5(2)(b) of the Act are taken from the decisions of the Court of Justice of the European Union (“CJEU”) in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P.

The principles

(a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

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

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

¹¹ This section also applies to the ground raised under section 5(3) of the Act.

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

27. The parties' respective goods to be compared are:

Earlier marks: all class 12	Contested mark: class 12
<p>(i) Freight-carrying motor land vehicles; trucks and lorries; buses.</p> <p>(ii) Heavy goods vehicles; omnibuses with diesel, gas, hydrogen or electric drive.</p> <p>(iii) Vans; buses with diesel, gas, hydrogen or electric drives.</p> <p>(iv) Motor omnibuses; trucks, all being commercial land vehicles.</p>	<p>Class 12: Vehicles; conveyances; land vehicles; motor land vehicles; recreational vehicles; vehicles equipped for living in; towable vehicles; caravans; motor caravans; caravanettes; touring caravans; holiday caravans; mobile homes; motor homes; trailers; trailer homes; towable trailers; campers; truck campers; camper vans; caravan storage assemblies; caravan spoilers; levelling apparatus for caravans; apparatus for locomotion by land, air or water; parts and fittings for all of the aforementioned goods.</p>

28. The proprietor submits that the goods for which the applicant's mark have been used, "namely heavy goods vehicles" are not similar to the vehicles of interest to the proprietor, which are leisure vehicles. However, the proprietor's specification is not limited to leisure vehicles. The assessment must be based on the notional coverage of the parties' specifications, not their current trading interests.

29. The law requires that goods and services be considered identical where one party's description of its goods and services encompasses the specific goods and services covered by the other party's description (and vice versa): *Gérard Meric v OHIM, General Court of the European Union* ("GC").¹² On this basis, the following of the proprietor's goods are identical to the applicant's goods:

Vehicles; conveyances; land vehicles; motor land vehicles; apparatus for locomotion by land.

¹² Case T-33/05.

30. In comparing the respective specifications, all relevant factors should be considered, as per *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc.* where the CJEU stated at paragraph 23 of its judgment:

“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.”

31. Additionally, the criteria identified in *British Sugar Plc v James Robertson & Sons Limited (“Treat”)* [1996] R.P.C. 281 for assessing similarity between goods and services also include an assessment of the channels of trade of the respective goods or services.

32. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, the GC stated that complementary means:¹³

“82 ... there is a close connection between [the goods], 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...”.¹⁴

33. The applicant’s ‘vans’ is wide enough to include camper vans. Accordingly, I find that the following of the proprietor’s goods are identical to the applicant’s vans:

recreational vehicles; vehicles equipped for living in; motor caravans; motor homes; campers; truck campers; camper vans.

¹³ Case T-325/06, GC.

¹⁴ In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is capable of being the sole basis for the existence of similarity between goods and services.

34. If that is not right, the goods are similar to a high degree. The proprietor's goods may look like vans, and at the least are vehicular in nature. Their purpose is conveyance, although of people rather than items. They may be sold through the same trade channels as van manufacturers for fitting out vans as camper vans or motor homes. They may be in competition as consumers may choose to buy a van and retro-fit it themselves or to buy a van which is already fitted as a camper van or motor home.

Trailers

35. The applicant's goods include vehicles for carrying freight, and heavy goods vehicles. These goods include trailers, as shown from the applicant's evidence (as an example):



British petroleum logistics firm HOYER Petrolog receives 89 MAN TGS 24.420 semitrailer tractors.



36. I find that the proprietor's *trailers* are identical to the applicant's *freight-carrying motor land vehicles* and *heavy goods vehicles*. The proprietor's *towable vehicles*; *towable trailers* would also seem to be encompassed by the applicant's goods because they are hitched to the cab and towed, partly on top of a chassis. If they are not identical, then they must be highly similar.

Mobile homes

37. I consider that, in the UK, the average consumer would construe a mobile home as a type of caravan, of the static sort. They are mobile because they can be transported by a lorry to another location. If I am wrong about that and they are motor homes, then the analysis above regarding vans applies. As static (transportable) homes, mobile homes are not vehicles and are not similar in nature or channels of trade with the applicant's goods. At a stretch, they may share purpose with the applicant's vans as a recreational home; however, the point of a van is that it is easily moved. For the same reason, there is unlikely to be any meaningful competition. I find mobile homes to be dissimilar to the applicant's goods. If I am wrong about that, any similarity will be based entirely upon the live-in aspect and will be a very low degree of similarity.

Caravans; caravanettes; touring caravans; holiday caravans; trailer homes

38. These goods are all vehicles which require towing. Importantly, they are all recreational vehicles. They do not share the same purpose as the majority of the applicant's goods, which are commercial or passenger vehicles. They will not share channels of trade and will not be in competition or be complementary to the majority of the applicant's goods. Given my earlier comments that the applicant's 'vans' covers camper vans, there is a high degree of shared purpose as they are for staying in. There may be competition as the choice will be whether to buy a caravan which requires another vehicle to tow it, or a van which can be adapted or is already adapted as a live-in recreational vehicle. There is some degree of shared nature as caravans have wheels and a chassis. There may be shared trade channels if vans cover camper vans and motor homes, because the latter may be manufactured by the same undertakings as caravans and trailer homes. There is a medium to high degree of similarity between the proprietor's *caravans; caravanettes; touring caravans; holiday caravans; trailer homes* and the applicant's *vans*.

Caravan storage assemblies; caravan spoilers; levelling apparatus for caravans

39. I do not know what caravan storage assemblies are and, on the face of what those words mean, I cannot see that there is any similarity with any of the proprietor's goods. Not is there any similarity between the applicant's goods and caravan spoilers and levelling apparatus for caravans. There is no shared nature, purpose, method of use, competitive or complementary relationship. Even comparing the proprietor's goods to the applicant's *vans*, covering camper vans, the goods would not seem to share trade channels. They are not similar goods.

Apparatus for locomotion by air or water

40. These goods are also vehicles, albeit not land vehicles. Their nature is likely to be largely different (although aircraft have wheels, that is not the primary mode of locomotion). However, purpose is shared because vehicles for locomotion by land, air and water will all be for carrying freight or passengers (or both). Methods of use will be different as entirely different skills (and qualifications) are required to drive, fly

or sail. The goods are not in competition and are not complementary. There is a very low degree of similarity based upon shared purpose.

Parts and fittings for all of the aforementioned goods

41. These goods are similar to a medium degree to the applicant's goods, where they are parts for the goods which I have found to be identical or similar to a medium to high degree. They will share trade channels and be complementary.



The average consumer and the purchasing process

42. As the caselaw cited above indicates, it is necessary to decide who the average consumer is for the parties' goods and how they purchase them. "Average consumer" in the context of trade mark law means the "typical consumer."¹⁵ The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods in question: *Lloyd Schuhfabrik Meyer*. The goods are expensive, infrequent purchases and will command a high level of attention. They will be bought from physical and online stores and after visits from sales representatives. This means that the purchasing process will be primarily visual, but there will be an aural aspect to the process if the purchase follows a sales visit or advice is sought from a retailer or dealer, perhaps in conjunction with test-drives.

¹⁵ *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch).

Comparison of marks

43. The marks to be compared are:

Earlier marks	Contested mark
(i)  (ii) MAN (iii)  (iv) MAN	COACHMAN

44. *Sabel BV v. Puma AG* explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

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

45. 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.

46. Earlier marks (i), (ii) and (iv) and the contested mark consist of a single element in which the overall impression of the marks resides. Earlier mark (iii) comprises a word element and a device. The eye is drawn to the word element which dominates

the overall impression of the mark. The applicant submits that COACH is descriptive for vehicles and that, on this basis, MAN is the dominant and distinctive component of COACHMAN. I do not agree with this submission and I say more about it below.

47. Earlier marks (i), (ii) and (iv) comprise three letters and the contested mark eight letters. The only similarity between them visually and aurally is that the final three letters of the contested mark are the same as the earlier marks. As this is the part of the mark which will be read and heard last, it is a similarity which has far less visual impact than a similarity at the beginning of the contested mark. The contested mark is a single word, rather than COACH MAN. The marks are visually similar to a very low degree. The additional semi-circular device in earlier mark (iii) puts an even greater distance between the marks visually.

48. There is a doubling in syllables in the contested mark. MAN will be pronounced with a short middle 'a' sound. The 'MAN' element in COACHMAN is likely to sound more like 'MUN', or 'MN' when the whole word is articulated: COACH-MUN or COACH-MN. This makes them similar to the lowest degree. Even if it were said as COACH-MAN, the marks are aurally similar to only a low degree. The additional semi-circle in earlier mark (iii) has no aural impact.

49. The proprietor submits:

“Conceptually the marks are totally distinct. The Proprietor’s mark conjures a picture of a stagecoach and horses, the Applicant’s marks a picture of an adult male.”

50. The applicant submits:

“The inclusion of MAN in the Applicant and Proprietor’s marks gives rise to the general concept of an adult male being, and therefore a person. As such, the marks are conceptually similar”; and

“The inclusion of the word MAN in the respective marks conveys the meaning of an adult male human being, with COACH being a descriptive prefix. As such, the marks are conceptually similar.”

51. The applicant’s approach in the second submission is based on dissection of the contested mark, which is an established word in its own right meaning, as the proprietor says, the driver of a coach and horses, or carriage. It is more than the sum of its parts, just as ‘greenhouse’ is an established composite word which has its own meaning. At a very high level of generality, the applicant is correct in its first submission that both marks relate to an adult male. However, this over-simplifies the assessment and the natural reaction of the average consumer. What they will perceive is a basic word, MAN, which denotes an adult male; and the driver of a coach and horses or a carriage. The marks are not conceptually similar. If I am wrong about that, they are similar to such a low degree as to be almost imperceptibly similar.

Distinctive character of the earlier marks

52. The assessment as to whether there is a likelihood of confusion includes considering whether the distinctive character of the earlier mark has been enhanced (i.e. more distinctiveness has been acquired) through the use made of it. If a mark has an inherently high, or an enhanced, level of distinctiveness, the likelihood of confusion is increased.¹⁶ I will begin by considering the inherent distinctive character of the earlier marks in relation to the applicant’s goods before reminding myself of the use that the applicant has made of its marks. The word marks consist of MAN, which is also the dominant element of the composite mark, and the only element which the composite mark has in common with the contested mark.¹⁷ MAN is a common dictionary word which doesn’t describe or allude to the goods upon which the applicant may rely. The earlier marks have an average degree of inherent distinctive character.

53. Distinctive character is a measure of how strongly an earlier mark identifies the goods or services for which it is registered, determined, according to *Lloyd Schuhfabrik*

¹⁶ *Sabel BV v Puma AG*, Case C-251/95.

¹⁷ *Kurt Geiger v A-List Corporate Limited*, BL O/075/13, Mr Iain Purvis QC, sitting as the Appointed Person.

Meyer & Co., partly by assessing the proportion of the relevant public which, because of the mark, identifies the goods or services as originating from a particular undertaking. At paragraph 23, of its judgment, the CJEU stated:

“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).

54. The evidence shows that the earlier marks enjoy a substantial share of the UK heavy goods vehicle market, so for these goods they are highly distinctive, and for freight-carrying motor land vehicles; trucks and lorries. The extent of use specifically in relation in the UK is insufficient to find an enhanced level of inherent distinctive character for buses; and the level of use is insufficient for such a finding to be made in relation to vans.

Likelihood of confusion

55. Deciding whether there is a likelihood of confusion is not scientific; it is a matter of considering all the factors, weighing them and looking at their combined effect, in accordance with the authorities set out earlier in this decision. One of those principles states that a lesser degree of similarity between goods and services may be offset by a greater degree of similarity between the trade marks, and vice versa. In this case, the goods range from identical to dissimilar. For those which are dissimilar, there can be no likelihood of confusion.¹⁸ The fact that some of the goods are identical, and are those for which the earlier marks are highly distinctive, are factors in the applicant’s

¹⁸ *Waterford Wedgwood plc v OHIM* Case C-398/07 P, CJEU.

favour. However, the section 5(2)(b) ground fails. This is because, despite these factors, the balance of the other factors in the global assessment which I have considered throughout this decision means that there is no likelihood of confusion. There are two types of confusion, direct and indirect. Neither will occur.

56. The applicant submits that:

“In this case the average consumer will see the COACHMAN and MAN marks and will either imperfectly recall the COACHMAN mark as being the Cancellation Applicant’s mark, or the average consumer may notice that there are differences between the marks but see the COACH element as non-distinctive and a descriptor to define the MAN element. This would lead to the conclusion that the COACHMAN mark derives from the same or an economically linked undertaking to that of the Cancellation Applicant.”

57. Direct confusion occurs where marks are mistaken for one another, flowing from the principle that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them which has been retained in the mind. I cannot see how any consumer, even one paying practically no attention to the purchasing process, could mistake or imperfectly recall MAN for COACHMAN. The marks are visually and aurally similar to only a very low (or low) degree and are not conceptually similar which means that conceptual counteraction will be at its strongest.¹⁹ Only the final three letters of COACHMAN are the same as MAN. There are five letters at the front of the mark, which will be seen and read first, which are absent from the earlier marks.²⁰ That these five letters will be ignored or forgotten, leading to imperfect recollection, is wholly unlikely. I have not forgotten that MAN enjoys a high degree of distinctive character for some of the goods (goods which are bought with a high level of attention), but this cannot compensate for the differences between the marks and that the applicant’s

¹⁹ See *Ruiz-Picasso v OHIM* Case C-361/04, CJEU.

²⁰ Differences at the beginning can also have more impact than if they appear elsewhere in the mark: *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02, GC.

argument is premised upon an artificial dissection of the contested mark. There is no likelihood of direct confusion.

58. The other potential type of confusion referred to by the applicant is indirect confusion, which was explained by Mr Iain Purvis QC, sitting as the Appointed Person, in *Back Beat Inc v L.A. Sugar (UK) Limited*, BL O/375/10:

“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:

(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).”

59. The applicant cites in support of its case a decision of the registrar, which involved the earlier marks in an opposition against the mark SHACMAN, in class 12.²¹ The hearing officer found that there was indirect confusion for some of the goods “since [the average consumer] may perceive the invented word SHACMAN as indicating some sort of joint venture”.

60. Firstly, I am not bound by previous decisions of the registrar, nor are they of persuasive value. Secondly, the facts of the present case are far removed from the SHACMAN case, where SHAC might have been seen to stand for the name of the applicant (Shaanxi Heavy-Duty Automobile Co). The applicant’s other argument centres on the descriptiveness of COACH for vehicles. COACHMAN is not a logical brand extension of MAN. In *Vault IP Limited v Mark Kingsley-Williams*, Mr Iain Purvis KC considered the earlier marks VAULT IP and VAULT INTELLECTUAL PROPERTY against an application for the mark BRANDVAULT, for services relating to intellectual property.²² Mr Purvis said, at paragraph 16 (footnote omitted):

“(a) VAULT INTELLECTUAL PROPERTY and VAULT IP have a clear and commonplace structure in which the brand name VAULT comes first and is followed by a separate word or words providing purely descriptive information about the nature of the services being offered. In L.A. Sugar one of the categories of indirect confusion which I identified was where ‘the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension’. A logical and consistent brand extension in the present case would be something like VAULT COPYRIGHT or VAULT REAL PROPERTY. Putting the descriptor first and running the words together is neither logical nor consistent with a brand extension.”

²¹ Case BL O/166/20.

²² Case BL O/0353/24.

61. I consider the position in the present case to be similar: it is not logical or consistent with a brand extension to put a descriptor before the brand (MAN); all the more so when a completely different and recognisable dictionary word is created which has a different concept to that of the earlier marks.

62. That the three categories in that case are non-exhaustive was confirmed by the Court of Appeal in *Liverpool Gin Distillery and others v Sazerac Brands, LLC and others*.²³ I do not find that the other two categories or any other types of indirect confusion fit the present case. Indirect confusion is not a consolation prize for an opponent which has not succeeded in a finding of direct confusion. Differences between marks which are the reason why there is no likelihood of direct confusion might also be the reason why there is no indirect confusion. That is the case here.²⁴

63. Given my findings, there is no need to take into account the proprietor's evidence about its use of its mark (for a narrower range of goods than its specification covers) or the proprietor's submissions about the 'state of the register'.

Section 5(2)(b) outcome

64. The section 5(2)(b) ground fails.

Section 5(3)

65. Section 5(3) states:

“(3) A trade mark which-

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

²³ [2021] EWCA Civ 1207.

²⁴ See the comments of Mr James Mellor QC (as he then was), sitting as the Appointed Person in *Cheeky Italian Limited v Ashish Sutaria*, BL O/219/16.

of, or be detrimental to, the distinctive character or the repute of the earlier trade mark”.

Section 5(3A) states:

“3(A) Subsection (3) applies irrespective of whether the goods and services for which the trade mark is to be registered are identical with, similar to or not similar to those for which the earlier trade mark is protected.”

66. As earlier marks (ii) and (iii) are comparable marks, paragraph 10 of Part 1, Schedule 2A of the Act is relevant. It states:

“10.— (1) Sections 5 and 10 apply in relation to a comparable trade mark (EU), subject to the modifications set out below.

(2) Where the reputation of a comparable trade mark (EU) falls to be considered in respect of any time before IP completion day, references in sections 5(3) and 10(3) to—

(a) the reputation of the mark are to be treated as references to the reputation of the corresponding EUTM; and

(b) the United Kingdom include the European Union.”

67. The relevant case law can be found in the following judgments of the CJEU: Case C-375/97, *General Motors*, Case 252/07, *Intel*, Case C-408/01, *Adidas-Salomon*, Case C-487/07, *L’Oreal v Bellure* and Case C-323/09, *Marks and Spencer v Interflora* and Case C-383/12 P, *Environmental Manufacturing LLP v OHIM*. The law appears to be as follows.

(a) The reputation of a trade mark must be established in relation to the relevant section of the public as regards the goods or services for which the mark is registered; *General Motors*, paragraph 24.

(b) The trade mark for which protection is sought must be known by a significant part of that relevant public; *General Motors*, paragraph 26.

(c) It is necessary for the public when confronted with the later mark to make a link with the earlier reputed mark, which is the case where the public calls the earlier mark to mind; *Adidas Saloman*, paragraph 29 and *Intel*, paragraph 63.

(d) Whether such a link exists must be assessed globally taking account of all relevant factors, including the degree of similarity between the respective marks and between the goods/services, the extent of the overlap between the relevant consumers for those goods/services, and the strength of the earlier mark's reputation and distinctiveness; *Intel*, paragraph 42.

(e) Where a link is established, the owner of the earlier mark must also establish the existence of one or more of the types of injury set out in the section, or there is a serious likelihood that such an injury will occur in the future; *Intel*, paragraph 68; whether this is the case must also be assessed globally, taking account of all relevant factors; *Intel*, paragraph 79.

(f) the more immediately and strongly the earlier mark is brought to mind by the later mark, the greater the likelihood that use of the latter will take unfair advantage of, or will be detrimental to, the distinctive character or the repute of the earlier mark; *L'Oreal v Bellure NV*, paragraph 44.

(g) Detriment to the distinctive character of the earlier mark occurs when the mark's ability to identify the goods/services for which it is registered is weakened as a result of the use of the later mark, and requires evidence of a change in the economic behaviour of the average consumer of the goods/services for which the earlier mark is registered, or a serious risk that this will happen in future; *Intel*, paragraphs 76 and 77 and *Environmental Manufacturing*, paragraph 34.

(h) The more unique the earlier mark appears, the greater the likelihood that the use of a later identical or similar mark will be detrimental to its distinctive character; *Intel*, paragraph 74.

(i) Detriment to the reputation of the earlier mark is caused when goods or services for which the later mark is used may be perceived by the public in such a way that the power of attraction of the earlier mark is reduced, and occurs particularly where the goods or services offered under the later mark have a characteristic or quality which is liable to have a negative impact of the earlier mark; *L'Oreal v Bellure NV*, paragraph 40. The stronger the reputation of the earlier mark, the easier it will be to prove that detriment has been caused to it; *L'Oreal v Bellure NV*, paragraph 44.

(j) The advantage arising from the use by a third party of a sign similar to a mark with a reputation is an unfair advantage where it seeks to ride on the coat-tails of the senior mark in order to benefit from the power of attraction, the reputation and the prestige of that mark and to exploit, without paying any financial compensation, the marketing effort expended by the proprietor of the mark in order to create and maintain the mark's image. This covers, in particular, cases where, by reason of a transfer of the image of the mark or of the characteristics which it projects to the goods identified by the identical or similar sign, there is clear exploitation on the coat-tails of the mark with a reputation (*Marks and Spencer v Interflora*, paragraph 74 and the court's answer to question 1 in *L'Oreal v Bellure*).

68. In *General Motors*, Case C-375/97, the CJEU held that:

“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."

69. I have already found that the earlier marks had enhanced levels of distinctive character at the relevant date for heavy goods vehicles market; freight-carrying motor land vehicles; trucks and lorries. In relation to buses, the 2019 award is relevant because EU use can be relied upon until the end of 2020. As already noted, in 2013 the applicant achieved €1.332 billion in sales for MAN buses and, in 2014, €1.497 billion. 2013 and 2014 were some years prior to the relevant date, but 2019 is much closer. A European-wide award for the best coach indicates that the relevant European public would have been aware of MAN buses. Whether that reputation is enough to cause a link to be made in the mind of the UK public is a further issue. Finally, the use shown in relation to vans is insufficient to meet the knowledge threshold.²⁵

70. Deciding whether the relevant public will make the required mental 'link' between the marks must take account of all relevant factors. The factors are identified in *Intel*. I return to the assessments I have already made and adopt the conclusions to which I came.

²⁵ *Burgerista Operations GmbH v Burgista Bros Limited* [2018] EWHC 35 (IPEC).

The degree of similarity between the parties' marks

71. The marks are visually and aurally similar to a very low (or low) degree and conceptually dissimilar.

The nature of the goods or services for which the conflicting marks are registered, or proposed to be registered, including the degree of closeness or dissimilarity between those goods or services, and the relevant section of the public

72. Some of the goods are identical, some are similar and some are dissimilar. The public will range from hauliers to individuals looking for leisure vehicles. All of the goods are expensive, infrequently bought and will entail a high level of attention during the purchasing process.

The strength of the earlier marks' reputation

73. The earlier marks had a strong reputation for all goods except vans at the relevant date.

The degree of the earlier mark's distinctive character, whether inherent or acquired through use

74. The earlier marks, at the relevant date, were highly distinctive for heavy goods vehicles; freight-carrying motor land vehicles; trucks and lorries.

Whether there is a likelihood of confusion

75. There is no likelihood of confusion for any of the goods for essentially the reasons I came to earlier in this decision. The differences between the marks are too great for the consumer to mistake the marks for one another, or to believe that they are used by economically connected undertakings. Earlier I found that there is no likelihood of confusion in relation to identical goods for which the applicant's marks have a strong reputation and are highly distinctive. It follows that there is even less likelihood of

confusion in relation to goods which are similar and still less for those in relation to which there is no similarity.

Conclusion on link

76. I find that a link will not be made between the marks by the UK relevant public because the marks are simply not similar enough, for the reasons given earlier, even bearing in mind the enhanced distinctive character and substantial reputation of the earlier marks for identical goods. I find the marks are not similar enough even though the similarity for a link to be found can be less than that for a likelihood of confusion.²⁶ Without a link to bring the earlier marks to mind there can be no damage.

77. The section 5(3) ground fails.

Overall outcome

78. The application for a declaration of invalidity fails. The contested mark remains registered.

Costs

79. The proprietor has been successful and is entitled to a contribution towards its costs, based on the scale in Tribunal Practice Notice 2/2016, which is applicable to these proceedings. A case management conference was held on 20 July 2023 at the proprietor's request because it wished to challenge the decision of the Tribunal to allow the applicant's extension of time request. The proprietor was unsuccessful. I have reduced the cost award to reflect this. The costs breakdown is as follows:

Considering the invalidation application and filing the counterstatement	£350
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Preparing evidence and considering

²⁶ *Intra-Press SAS v OHIM*, Joined cases C-581/13P & C-582/13 P.

the other side's evidence	£1200
Filing written submissions in lieu of a hearing	£400
Minus £200 for the unsuccessful CMC	-£200
Total	£1750

80. I order MAN Brand GmbH & Co. KG to pay to Coachman Caravan Company Limited the sum of £1750. This sum is to be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 3rd day of October 2024

Judi Pike
For the Registrar