O/0956/26

CONSOLIDATED PROCEEDINGS

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. UK00003954995
BY ASPIRING CLINICAL PSYCH LTD
TO REGISTER:**

ACP Aspiring Clinical Psych

AS A TRADE MARK IN CLASS 41

AND

**IN THE MATTER OF THE OPPOSITION THERETO UNDER NO. 447108
BY ASSOCIATION OF CLINICAL PSYCHOLOGISTS UK C.I.C.**

AND

**IN THE MATTER OF TRADE MARK REGISTRATION NO.
UK00003954988 IN THE NAME ASPIRING CLINICAL PSYCH LTD
FOR THE TRADE MARK:**

ACPsych

IN CLASS 41

AND

**AN APPLICATION FOR INVALIDITY UNDER NO.
507281 BY ASSOCIATION OF CLINICAL PSYCHOLOGISTS UK C.I.C.**

BACKGROUND AND PLEADINGS

1. This decision involves an opposition and an invalidation action brought by Association of Clinical Psychologists UK C.I.C. ("Association") against a trade mark application and registration in the name of Aspiring Clinical Psych Ltd ('Aspiring'), respectively. I will summarise each of these proceedings separately below.

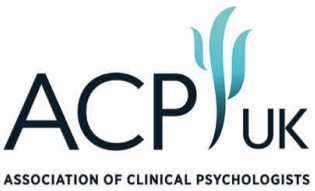
The opposition

2. On 9 September 2023, Aspiring applied to register the first trade mark shown on the cover page of this decision in the UK (being that under no. 3954995) ("the opposed mark"). The opposed mark was published on 8 March 2024 and registration is sought for the services set out in **Annex 1** of this decision.

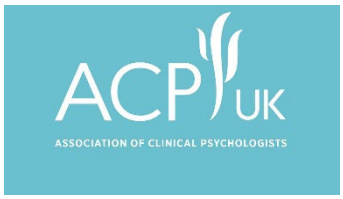
3. On 24 April 2024, the opposed mark was opposed by Association. The opposition is based on sections 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994 ("the Act") . The section 5(2)(b) and 5(3) grounds are reliant upon the following earlier registrations:

   ACP-UK
   ACP UK
   (series of two)

   UK registration no. 3942324
   Filing date 5 August 2023; registration date 24 November 2023
   Relying on all goods and services, being those set out in **Annex 2** of this decision.
   ("Association's first registration"); and







(series of three)

UK registration no. 3942332
Filing date 5 August 2023; registration date 24 November 2023
Relying on all goods and services, being those identical to that of Association's first registration.
("Association's second registration").

4. Under the section 5(2)(b) ground, Association claims that the marks at issue are similar and that the services of the opposed mark are identical or similar with the education, training and teaching services of Association's registrations. As such, it is claimed that there exists a likelihood of confusion.

5. Under the section 5(3) ground, Association claims to enjoy a substantial reputation in the UK in respect of all of the goods and services for which its registrations are protected. Association argues that Aspiring's use of its mark is likely to lead to (and has already led to) confusion on the basis that consumers would erroneously believe it to be a reference to Association or an indication of a collaboration between the parties. Association's position is that, as a result, use of the opposed mark would, without due cause, take unfair advantage of Association's reputation and that it would be detrimental to the reputation and/or distinctive character of the earlier registrations.

6. Under the section 5(4)(a) ground, Association relies on signs that are identical to the marks of the registrations relied upon under the above ground. In addition, Association claims to have used its signs throughout the UK since at least 2017 in respect of goods and services that are identical to those relied upon under the section 5(2)(b) and 5(3) grounds. It is claimed that as a result of this use, Association enjoys a goodwill in the market and that the signs relied upon are associated with or distinctive of that goodwill. Further, it is claimed that the similarity between the opposed mark and Association's signs means that use of the contested mark gives rise to a misrepresentation on the part of the relevant public which, in turn, will result in damage being caused to Association.

7. Aspiring filed a counterstatement wherein it denied the claims against it.

The invalidation application

8. Aspiring is the proprietor of the second trade mark shown on the cover page of this decision (being that under no. 3954988) ("the contested mark"). The contested mark was applied for on 9 September 2023 and was granted registration on 8 December 2023. It stands registered for services in class 41 that are very highly similar to those under the opposed mark. The only differences come in the absence of the following terms from the contested mark:

> "Vocational education in the field of mechanics; Residential education courses relating to canoeing; Residential education courses relating to archery; Engineering training college services; Sports education services; Computerised training in career counselling; Dietary education services; Education services relating to the veterinary profession; Education services relating to the horticultural industry; Provision of education courses relating to telecommunications; Education services relating to the agricultural industry; Physical education facilities (Provision of -); Provision of education courses

relating to electronics; Primary education services relating to literacy; Religious training."

9. In addition, the specification under the invalidation includes the term "religious educational services", which is absent in the opposed specification.

10. Association filed an application for invalidation against the contested mark on 24 April 2024. The invalidation action is brought under section 47 of the Act and is reliant upon the same grounds and same earlier registrations/signs as the opposition. The pleadings are essentially identical and, as such, I see no reason to reproduce them here.

11. Aspiring filed a counterstatement wherein it denied the claims against it.

12. Upon the filing of the counterstatements, these proceedings were consolidated under the power given to the Registrar under Rule 62(1)(g) of The Trade Marks Rules 2008. This was communicated to the parties via written correspondence on 29 October 2024.

13. Association is represented by Rheia IP Limited whereas Aspiring is unrepresented. Both parties filed evidence. No hearing was requested and only Association filed written submissions in lieu of the same. This decision is taken after careful consideration of the papers.

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

EVIDENCE

15. Association's evidence came via five different witness statements. The witness statements are as follows:

    a. That of Fiona Summers dated 16 December 2024. Ms Summers is Director of Scotland for Association, a position she has held since 2021. This evidence was adduced to provide evidence of actual confusion between the marks at issue;
    b. That of Professor Mike Wang dated 19 December 2024. Professor Wang is the Chair of the Board of Directors of Association, a position he has held since the company's incorporation on 10 September 2018. His evidence is accompanied by 20 exhibits, being those labelled MW1 to MW20, and was adduced to support Association's claims under the relevant grounds;
    c. That of Adrian Whittington dated 23 December 2024. Mr Whittington is National Clinical Lead for Psychological Professions of NHS England and his evidence was adduced in order to demonstrate the reputation of Association in the relevant industry; and
    d. That of Baroness Hilary Cass dated 10 January 2025. Baroness Cass was the Chair of the Independent Review of Gender Identity Services for Children and Young People (commissioned by NHS England) between 2019 and 2024 and presently provides ongoing consultancy to NHS England. This evidence speaks to Baroness Cass's knowledge of Association.

16. The applicant's evidence came in the form of the witness statement of Dr Melody Smith dated 21 April 2025. Dr Smith is the Director of the applicant and her evidence is accompanied by a range of exhibits, being those labelled MS1 to MS32, MW2 and MW5 and MW11 to MW20. If I am required to refer to Dr Smith's 'MW' labelled exhibits in this decision, I will, to avoid confusion with those of Professor Wang, refer to them as 2MW2, 2MW5 and 2MW11 to 2MW20. Dr Smith's

evidence was adduced in order to demonstrate a range of various points that I will discuss where necessary below.

17. I do not intend to summarise the parties' evidence (or submissions, for that matter) in full here. However, I confirm that I have taken all filed documents into account and will summarise them to the extent that I deem necessary below.

PRELIMINARY ISSUES

18. As above, the applicant's evidence was adduced to demonstrate a number of different points. Before proceeding to the substance of my decision, I consider it necessary to discuss a number of points raised in Dr Smith's evidence. I do so because there are a number of arguments that have no bearing on these proceedings. These include, but are not limited to, the following:

    a. Dr Smith made comments regarding the distinctiveness of 'ACP' and how marks must be assessed as wholes (and not dissected into misleading parts). These comments constitute submissions and not evidence of fact. Insofar as these cover relevant submissions, I will discuss them at the appropriate point in this decision.
    b. Dr Smith makes reference to the fact that the IPO's approval of the opposed and contested marks mean that they met the criteria for distinctiveness and that there are no grounds for absolute refusal. For the avoidance of doubt, the considerations of the Examiner relate to absolute grounds for refusal under section 3 of the Act and are in no way relevant to the relative grounds at issue in this decision. Additionally, the fact that a mark was approved by the Examination team of this Office is of no relevance to any subsequent opposition or application for invalidity against said mark, even if absolute grounds under section 3 are raised.
    c. It is claimed that the parties serve different target audiences. Whilst this is noted, the assessment as to the existence of confusion that I must undertake

here is based on the concept of 'notional and fair use' which involves carrying out the comparison of the goods and services based on the specifications before me, not the goods and services effectively provided by the parties.[1] Therefore, unless the points raised by the applicant are evident in the terms before me, how the services are used (or intended to be used) is not relevant to this decision.

d. Dr Smith mentions the lack of substantial evidence of customer confusion and alleges that Association has overinflated the extent of any complaints against Aspiring. Firstly, as per *The European Limited v The Economist Newspaper Ltd* [1998] FSR 283, the lack of evidence of actual confusion is rarely significant in proceedings such as these. Therefore, this point has no relevance here. Secondly, while I appreciate that the evidence as to complaints within Professor Wang's evidence is lacking,[2] this is not fatal to Association's claim. This is because, as above, the assessment of confusion is a notional one and, again, the lack of evidence of confusion is not significant.

e. Reference is made to the common use of the initialism 'ACP' in health care and mental health. I appreciate that evidence of use of a mark on the marketplace may point to a weakening of its distinctive character.[3] However, sufficient evidence has not been provided here. I say this because there are just five examples provided of this 'common use'.[4] Regardless of the impact of these examples in the market (of which there is no evidence), they are not sufficient to support a claim that the use of 'ACP' is widespread enough to diminish its distinctiveness. In short, the existence of just five examples does not point to a crowded market in the way described by the above referenced case law.

f. Dr Smith discusses a court case of the High Court of Justice, Family Division wherein Association are criticised over their conduct in those proceedings.[5]

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[1] *O2 Holdings Limited, O2 (UK) Limited v Hutchison 3G UK Limited*, Case C-533/06 at [66] and *Compass Publishing BV v Compass Logistics Ltd* [2004] RPC 41 at [22]
[2] There are two emails from individuals in 2023. See MW18 and MW19.
[3] *Lifestyle Equities CV & Ors v Royal County of Berkshire Polo Club Ltd & Ors* [2024] EWCA Civ 814
[4] See MS05, MS06, MS07, MS08 and MS17
[5] [2023] EWHC 2078 (Fam)

While I appreciate that the judgment is critical of Association, the conduct of parties in other proceedings is of no relevance here. Put simply, the conduct discussed does not automatically mean that opposition and invalidation proceedings before the Tribunal demonstrate a pattern of aggressive tactics. On the contrary, Association is duly protected for valid earlier marks (in accordance with section 6 of the Act) so regardless of whether the present proceedings are successful or not, Association was entitled to bring them.

g. There are allegations of trade mark bullying by Association in that Association is using these proceedings as a tool to intimidate Aspiring, being a smaller business. On this point, it is claimed that Association applied for its registrations solely to use them as tools in the opposition/invalidation. Such an argument may be relevant to an allegation of bad faith under section 3(6) of the Act but such a point is not at issue here. Such an argument is, therefore, irrelevant. Dr Smith also bemoans the lack of negotiations by Association. It is noted that evidence of pre-action correspondence from Association is provided in evidence[6] but I fail to see its relevance here. In short, there is no formal obligation on Association to enter into negotiations with Aspiring. Therefore, simply issuing the present proceedings is a decision that Association is open to take. Lastly on this point, Dr Smith makes reference to anonymous individuals unaffiliated with Association but 'seemingly influenced by similar ideological views' engaging in slander and defamation against Aspiring.[7] In short, the claim that this is perpetuated by Association is supported by a claim that the party engaging in these activities has ideological views to Association. This is plainly insufficient and I see no merit in discussing it any further.

19. While additional points are mentioned, they are mostly in line with the comments discussed above. As such, I do not consider that they warrant any further discussion.[8] I say this because to discuss them at length would unnecessarily

[6] MS13
[7] MS11
[8] On this point, I confirm that I have given all comments raised due consideration.

complicate and prolong the present decision. That being said, there are some comments that I will come to address at the relevant points within my decision.

20. While on the topic of Aspiring's evidence, it is noted that Association claims that it was drafted with the assistance of Artificial Intelligence. This is noted but, having considered the document itself, I do not consider that there are any obvious indicators that this is the case. I will, therefore, say no more about this point.

DECISION

My approach

21. While the present proceedings cover an opposition and an invalidation, I consider that I can deal with the relevant grounds together. I do so because both proceedings are reliant upon the same marks/signs and the same set of goods and services. Further, the pleaded arguments under each ground are the same.

Section 5(2)(b): legislation and case law

22. Firstly, it is necessary to point out that section 5 grounds are automatically applicable to oppositions. However, insofar as invalidation actions are concerned, section 5 grounds have application by virtue of section 47(2) of the Act, which states as follows:

> "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.

[…]

(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)

[…]

(5) Where the grounds of invalidity exist in respect of only some of the goods or services for which the trade mark is registered, the trade mark shall be declared invalid as regards those goods or services only.

(5A) An application for a declaration of invalidity may be filed on the basis of one or more earlier trade marks or other earlier rights provided they all belong to the same proprietor.

(6) Where the registration of a trade mark is declared invalid to any extent, the registration shall to that extent be deemed never to have been made: Provided that this shall not affect transactions past and closed."

23. Section 5(2)(b) states that:

"(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."

24. Section 5A of the Act states as follows:

"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."

25. An earlier trade mark is defined in section 6 of the Act, the relevant parts of which state:

"(6)(1) In this Act an "earlier trade mark" means –

(a) a registered trade mark or international trade mark (UK) which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks,

[…]

(2) References in this Act to an earlier trade mark include a trade mark in respect of which an application for registration has been made and which, if registered, would be an earlier trade mark by virtue of subsection (1)(a) or (b), subject to its being so registered."

26. Given their filing dates, the marks in Association's registrations all qualify as earlier trade marks in accordance with the above provisions. Neither completed its registration process more than five years before the filing date of either the opposed or contested mark (and, in the case of the contested mark, more than five years prior to the application for invalidity). Therefore, the use provisions do not apply meaning that Association may rely on all of the goods and services highlighted in its notice of opposition and application for invalidity.

27. 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, in certain circumstances, be dominated by one or more of its components;

(f) and beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite possible that in a particular case an element corresponding to an earlier trade mark may

retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

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

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

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

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

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

Comparison of goods and services

28. Aspiring's services are set out in Annex 1 of this decision whereas Association's goods and services are set out in Annex 2. While Association, in its notice of opposition and application for invalidity, ticked the box to rely on all goods and services of its specification its pleaded case is that the services of Aspiring's marks are identical or similar with the education, training and teaching services of Association. To me, this limits the claims to rely solely on Association's class 41 services. I do not consider that this causes any issues for Association because, as I will set out below, its class 41 services clearly represent its best case.

29. In addition, I remind myself that the specifications of Aspiring's marks differ in the way set out at paragraphs 8 and 9 above. In the following assessment, the term listed in bold is the term that is present in the contested mark's specification but not the opposed mark. The underlined terms are those that appear in the opposed mark's specification but not the contested mark's.

30. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, the General Court 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 fur Lernsysteme v OHIM- Educational Services (ELS)* [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark."

Vocational education; Vocational training; Vocational retraining; Vocational education and training services; Career and vocational training; Vocational training services; Career and vocational counselling; Vocational skills training; Vocational training courses (Provision of -); Vocational skills training (Provision of -); Education services relating to vocational training; Vocational education for young people; Vocational guidance; Guidance (Vocational -) [education or training advice]; Vocational guidance [education or training advice]; Vocational testing; Education and training; Residential education courses; Training and education services; Education and training services; Education; Provision of training and education; Provision of education and training; Education and training consultancy; Academy education services; Academy services (Education -); Education academy services; Education, teaching and training; Educational and training services; Academies [education]; Educational services for providing courses of education; Education and training consultancy; Academy education services; Academy services (Education -); Education academy services; Education, teaching and training; Educational and training services; Academies

[education]; Educational services for providing courses of education; Provision of education courses; Secondary school educational services; Education and instruction services; Educational certification services, namely, providing training and educational examination; Career advisory services (education or training advice); Educational institute services; Services of schools [education]; Education services; Educational courses (Provision of -); Employment training; Education and instruction; Higher education services; University education services; Residential training courses;; Provision of facilities for employment skills training; Educational services provided by institutes of higher education; Educational and teaching services; Educational services provided by institutes of further education; Computerised training in career counselling; Postgraduate training courses; Education examination; Provision of day-care [educational] units; Provision of training courses for young people in preparation for employment; Educational services for providing courses of instruction; Teacher training services; Provision of training courses for young people in preparation for vocations; Educational establishments providing courses of instruction (Services of -); Training relating to employment skills; Provision of training courses in personal development; Provision of training courses; Training courses (Provision of -); Educational services; Adult education services; Practical training services; education and instruction services.

31. All of the above terms of Aspiring are broad educational, training or teaching services that are not limited in any way. They will, therefore, duly encompass Association's "education, training and teaching services in the field of clinical psychology, psychology and mental health". Failing that, they are also encompassed by the Association's term of "educational institute services". This is on the basis that Association's term is very broad and covers any type of service that is offered by educational institutions. As such, the above services are identical under the principle outlined in *Meric* with either of the aforementioned terms of Association.

Education and training in the field of occupational health and safety; Medical education services; Vocational education relating to avoidance of health related problems; Training or education services in the field of life coaching; Providing continuing nursing education courses; Education and training services in the field of occupational health and safety; Providing continuing medical education courses; Vocational education relating to avoidance of drug related problems; Training services relating to occupational health; Provision of medical instruction courses; Educational and training services relating to healthcare.

32. The above services are all specific to health or the field of medicine, both of which are broad enough to cover education and training in respect of mental health. Even where educational services relating to drug problems may also cover the mental aspect of drug addiction, they also relate to mental health or psychology. As such, the above services are identical with Association's term of "education, training and teaching services in the field of clinical psychology, psychology and mental health", be that because they either encompass the term or fall within it. Such services are, therefore, identical under the principle outlined in *Meric*.

Education services relating to the development of childrens' mental faculties; pre-school education; Primary education services; Kindergarten services [education or entertainment]; Nursery school services [educational].

33. While the first term listed above can be said to relate to education surrounding mental health, the others do not. That being said, Association's specification includes the term "educational institute services" that are not limited in any way and can, therefore, cover educational services provided to children of primary school, nursery or kindergarten ages. Therefore, I find that the above services fall within those of Association and, as such, they are identical under the principle outlined in *Meric*.

34. Before moving on, I consider it necessary to discuss the fact that one of the above terms of Aspiring includes reference to ‘entertainment’. I consider that the primary function of a kindergarten service is to, ultimately, educate a child. On this point, I accept that educating a young child of kindergarten age will, inevitably, include some form of entertainment for the purpose of keeping the child’s attention. However, I do not envisage any scenario where the entertainment and educational aspect of this term would mean that they were provided separately. Therefore, I see no reason why the inclusion of the term ‘entertainment’ alters the above finding of identity.

Linguistic education and training services; Vocational education in the field of mechanics; Vocational education relating to self-defence; Vocational education relating to home safety; Vocational education relating to personal safety; Vocational education relating to first aid; Vocational education relating to protection of personal property; Computer education training services; Technological education services; Religious education; Education (Religious -); ***Religious educational services****; Education academy services for teaching construction drafting; Computer education training; Education and training in the field of automotive engineering; Education academy services for teaching languages; Residential education courses relating to canoeing; Residential education courses relating to archery; Physical fitness education services; Residential education courses relating to abseiling; Engineering training college services; Education academy services for teaching acting; Physical education services; Musical education services; Physical education instruction; Provision of physical education; Education services for imparting language teaching methods; Education academy services for teaching art history; Sporting education services; Dietary education services; Education services relating to the veterinary profession; Education services relating to the horticultural industry; Provision of education courses relating to telecommunications; Education services relating to the agricultural industry; Industrial training; Physical education facilities (Provision of -); Education courses relating to automation; Education services related to the arts; Provision of education courses relating to electronics; Primary education services*

relating to literacy; Religious training; Education services relating to business training; Physical education; Legal education services; Sports education services; Educational and training services relating to sport.

35. Clearly, none of the above services can be said to cover the provision of education or training services relating to clinical psychology, psychology and mental health. That being said, as above, Association's specification includes the incredibly broad term of "educational institute services", which covers any type of educational service that relates to any topic, which can include religion, electronics, physical education, music and engineering (to name just a few example of the topics covered by the above services of Aspiring). As a result, I find that the above services all fall within the broader service of Association meaning that they are identical under the principle outlined in *Meric*.

Consultancy relating to vocational skills training; Professional consultancy relating to education; Educational consultancy; Career counseling [education]; Career counselling [training and education advice]; Career counselling relating to education and training.

36. The above services may relate to education but they do not actually cover the provision of education, training or teaching. That being said, they are services that are routinely provided by schools, universities and any other type of educational institute. As such, I consider that Association's broad term of "educational institute services" encompasses them. I say this because Association's term is not simply limited to the provision of training but duly covers any service provided by an educational institute which, in my view, includes consultancy and career counselling. These services are, therefore, identical under the principle outlined in *Meric*.

Organisation of conferences relating to vocational training.

37. Association's specification includes the term "organisation of in-person and online educational conferences, seminars and webinars in the field of clinical psychology, psychology and mental health". The above term is not limited in any way meaning that it can cover the organisation of conferences that are aimed at providing vocational training in respect of the field of clinical psychology. As such, these services are identical under the principle outlined in *Meric*.

Development of educational courses and examinations; Accreditation of educational services; Examination services (Educational -); Educational examination services; Educational assessment services.

38. The provision of exams and accreditation may not necessarily be provided by schools but, instead, external examination bodies. That being said, it is my understanding that a university would develop its own courses and exams and provide its own accreditation service in respect of its own course and exams. Given that Association's term of "educational institute services" can cover any service provided by a university, I consider that it duly covers the above services of Aspiring. As a result, I find that these services are identical under the principle outlined in *Meric*.

Entertainment.

39. The above term of Aspiring is included within a broader term, being "entertainment, education and instruction services" in its specification. While one term, I consider that the entertainment aspect of it can be isolated from the 'educational and instructional' aspect (which was dealt with at paragraph 31 above). Here, I consider that the term is to be read as covering entertainment at large. On this point, I appreciate that, at paragraph 34 above, I found identity in respect of "kindergarten services [education or entertainment]". However, that was a separate finding based on the specific nature of that term (in that it expressly covered kindergarten services). Such a finding does not automatically apply here and it is my view that,

upon the plain reading of “entertainment”, it does not cover kindergarten services. Further, I do not consider that the average consumer would ordinarily interpret the term in this way.

40. The above being said, and despite the majority of Association’s terms relating specifically to education, I note the presence of the term “museum exhibitions, facilities and services”. While a museum can be visited for the purpose of education, it can also cover entertainment. For example, some museums include entertainment exhibits or focus on topics that are purely for the entertainment of the user. This can include interactive or immersive exhibits that offer no educational benefit but are there simply for the user’s amusement. In this context, I see no reason why the broad term of Association cannot be said to be a type of entertainment service. These services are, therefore, identical under the principle outlined in *Meric*.

The average consumer and the nature of the purchasing act

41. 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 or services in question: *Lloyd Schuhfabrik Meyer,* Case C-342/97.

42. 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.

43. I am of the view that the average consumer base for the services at issue consists of members of the general public at large. However, where the services relate to training or education in respect of professions, the average consumer will include professional users looking to obtain education or training in their respective fields. The services are likely to be available from the provider itself and will be selected after the consumer views them in catalogues, placards or online. The services will be selected predominantly visually but I do not discount an aural component

playing a role via discussions with the service provider or from word of mouth recommendations.

44. The selection process for the services at issue will vary as some users will select them with a greater degree of frequency than others (professional users, for example). As for cost, this too will vary from relatively cheap training courses to more expensive professional courses for specific and technical qualifications. For the educational services, I am of the view that, for the most part, the average consumer will pay a medium degree of attention when selecting the services at issue. This is on the basis that, when selecting services for education or training, the consumer will consider relatively ordinary factors like topic, method of training/education, length of the course and the type of qualification offered. For the entertainment related services, consumers will consider factors such as the nature of the entertainment, how it is provided and any relevant reviews from previous users. The above being said, I consider that the professional user will pay a higher than medium (though not outright high) degree of attention. This is due to the fact that they will likely give specific consideration to the suitability of the education/training and whether said qualification will assist in advancing their careers or helping them develop the requisite skills to do their job.

Comparison of the marks

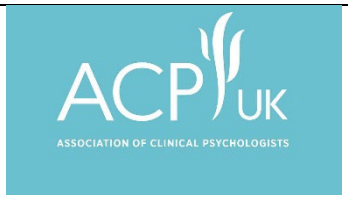
45. It is clear from *Sabel v Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the trade marks must be assessed by reference to the overall impressions created by the trade marks, bearing in mind their distinctive and dominant components.

46. The Court of Justice of the European Union ("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."

47. It would be wrong, therefore, to artificially dissect the trade marks, 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.

Association's registrations	Aspiring's marks
ACP-UK ACP UK (series of two) ("Association's first registration") ACP UK ASSOCIATION OF CLINICAL PSYCHOLOGISTS ACP UK ASSOCIATION OF CLINICAL PSYCHOLOGISTS	ACP Aspiring Clinical Psych ("the opposed mark") ACPsych ("the contested mark")

 (series of three) ("Association's second registration")	

48. In considering Association's registrations, I am of the view that it is appropriate to isolate single marks within each and proceed on the basis of just those marks for the remainder of this decision. I say this because the differences between the marks in each registration are of no consequence. For example, the presence (or lack of) of a hyphen between 'ACP' and 'UK' in the marks of the first registration is so banal that it offers no substantive difference between them. Further, the only difference across the marks in the second registration is their use of colour and I fail to see what the second or third marks in said registration offer over the first. As a result, I will proceed with the remainder of my decision by basing both the opposition and invalidation on single marks from each registration, appropriately referring to them as 'Association's first mark' (for the second mark of the first registration) and 'Association's second mark' (for the first mark of the second registration).

Overall impression

49. Association's first mark is a word only mark that consists of the letters 'ACP UK'. In its evidence, Aspiring argues that isolating 'ACP' is contradicted by the case law. While I accept that artificially dissecting the marks is not appropriate, it is necessary to give the different elements within marks their appropriate weight. Therefore, whilst I am not removing 'UK' from Association's first mark, I am entitled to attribute it less weight and I do so because 'UK' will be plainly understood as a reference to

the ‘United Kingdom’ and, from a trade mark perspective, this is entirely unremarkable. As such, ‘ACP’ dominates the overall impression of this mark.

50. As for Association’s second mark, this is a figurative mark that consists of a number of textual elements as well as a device element. The textual elements are the letters ‘ACP’ presented in a large, standard black typeface, the smaller letters ‘UK’ in the same black typeface. Both of these elements sit above the words ‘Association of Clinical Psychologists’. As for the device element, this is a collection of three wavy shapes (seemingly joining to form a trident), with the central element being presented in a black and blue gradient and the outer elements being in blue. I will refer to this as the trident device. The trident device sits between the letters ‘ACP’ and ‘UK’. In terms of overall impression, I find that the average consumer will be drawn to the elements of the marks that can be read, meaning that it is the textual elements that will dominate the overall impression of the mark. Given that the words ‘Association of Clinical Psychologists’ will inform the meaning of ‘ACP’, I consider that, despite the difference in size, these elements play an equal role in the mark. The reference to ‘UK’ will, as above, be given less weight. For the avoidance of doubt, the trident device will contribute but only to a lesser degree.

51. As for Aspiring’s marks, these are both word only marks that consist of ‘ACP Aspiring Clinical Psych’ and ‘ACPsych’, respectively. In respect of the opposed mark, the letters and word elements will play an equal role due to the fact that the words ‘Aspiring Clinical Psych’ will inform the meaning of ‘ACP’. As for the contested mark, the overall impression lies in the ‘ACPsych’ element as a whole.

Visual comparison

Association’s first mark and the opposed mark

52. Visually, these marks share the letters ‘ACP’. They differ in the presence of the letters ‘UK’ in Association’s mark and the words ‘Aspiring Clinical Psych’ in the

opposed mark. While the points of difference will not be overlooked, the fact that the beginnings of the marks are identical is a significant point of similarity. On this point, I remind myself that beginnings of marks tend to have more visual (and aural) impacts than their ends.[9] As such, I find that these marks are visually similar to a medium degree.

Association's first mark and the contested mark

53. Much like the marks discussed above, these marks share identical beginnings in that they both start with the same three letter strings. They differ in the letters 'UK' and 'sych' after the 'ACP' elements in both marks. The contested mark is considerably shorter in length than the opposed mark so I am of the view that these marks enjoy a slightly higher degree of similarity when compared to those discussed above. It is my view that these marks are visually similar to between a medium and high degree.

Association's second mark and the opposed mark

54. Whilst Association's second mark includes a number of additional elements when compared to its first, the letters 'ACP' remain visually prominent. This is especially the case given its position as the first textual element in Association's mark. As such, it still acts as a considerable point of visual similarity as it did in the comparisons I have made above. That being said, the additional points of visual difference (that were not at issue above), namely the trident device and the words 'Association of Clinical Psychologists' will reduce the visual similarity from the medium degree of similarity I have found at paragraph 52 above. In my view, these marks are visually similar to between a low and medium degree.

[9] *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

Association's second mark and the contested mark

55. Despite Association's second mark including the additional words and the trident device, the comparison here is not too far removed from that I have discussed at paragraph 53 above. I say this because 'ACP' clearly still remains a significant point of similarity. That being said, I consider that the additional points of difference here are sufficient to reduce the level of visual similarity from medium to high, to medium.

Aural comparison

Association's first mark and the opposed mark

56. Association's first mark will be pronounced as its five individual letters, being 'A-C-P-U-K'. The opposed mark will be pronounced in full and, as such, will be the three letters 'A-C-P' followed by the ordinary words 'Aspiring Clinical Psych'.[10] The marks are of considerable difference in length, with Association's being five syllables and the opposed mark being 10 syllables. Despite the difference in length and the presence of the differing five syllables, the beginnings of the marks are identical. Bearing this in mind and also taking into account the overall impressions of the marks, I find that they are aurally similar to a medium degree.

Association's first mark and the contested mark

57. In comparing these marks, Association's mark will be pronounced as above. The contested mark is three syllables in length and will be pronounced as the two letters 'A-C' followed by the word 'Psych'. The marks differ in their third syllables and the fourth and fifth syllables in Association's marks have no counterpart in the contested mark. That being said, they are of similar lengths (when compared to the

[10] For the avoidance of doubt, the last syllable will be pronounced as 'SYK'

marks discussed immediately above) and their first two syllables are identical. Bearing in mind what I have said above regarding beginnings of mark, this is sufficient to give rise to a finding that they are aurally similar to between a medium and high degree.

Association's second mark and the opposed and contested mark

58. While the words 'Association of Clinical Psychologists' are present at the bottom of Association's second mark, I am of the view that given their size and placement within the mark, a significant proportion of consumers will not seek to articulate them.[11] It is upon these consumers that I will focus this comparison and I do so because (1) it represents Association's best case and (2) the case of *Comic Enterprises Ltd v Twentieth Century Fox Film Corporation* [2016] EWCA Civ 41 sets out that so long as I am satisfied that a significant proportion of consumers are confused, then that is sufficient to warrant a finding of confusion overall.[12] As a result, and for the purpose of this comparison, this renders the aural element of Association's second mark identical to its first mark. This means that the comparisons I have made at paragraphs 56 and 57 above are equally applicable to the comparison of the opposed and contested marks and Association's second mark, respectively.

Conceptual comparison

Association's first mark and the opposed mark

59. The concept of Association's first mark resides in 'ACP UK'. As above, 'UK' will be immediately understood as a reference to the United Kingdom. 'ACP' carries no obvious meaning and will simply be understood as the initials of the undertaking.

[11] I note that I have found the words 'Aspiring Clinical Psych' in the opposed mark would be pronounced, the construction of Association's mark is different than that of the opposed mark and, as stated here, the size of these words is such that leads me to take this approach.
[12] Although this was an infringement case, the principles apply equally under 5(2).

As a whole, there is no overall concept outside of the fact that consumers will understand that the undertaking operates or is located in the UK.

60. When considering the opposed mark, I find that, in isolation, 'ACP' carries no obvious meaning. However, when viewed alongside the words, 'Aspiring Clinical Psych', 'ACP' will clearly be understood as representing those words. Aspiring will be understood as a reference to someone working towards becoming successful in a particular job or activity,[13] and 'Clinical Psych' being understood as a reference to clinical psychology. 'Clinical Psychology' is a branch of psychology that is aimed at the treatment of people who are mentally unwell.[14] As such, I find that when viewed as a whole, these three words will be understood as a reference to either an undertaking or an individual that aspires to engage in clinical psychology or to become a clinical psychologist. In comparing this to the concept associated with Association's first mark (which is simply an unknown letter string followed by the idea of an undertaking operating in or being located in the UK), I find that they are conceptually dissimilar.

Association's first mark and the contested mark

61. As for the contested mark, 'AC' carries no meaning as it will simply be understood as an initialism whereas 'Psych' will be understood as a reference to 'psychology'. As a whole, I do not consider that consumers will necessarily derive any known meaning from 'ACPsych' outside of a vague reference to psychology. Regardless of any meaning of the mark as a whole, it does carry some concept and, as such, is conceptually dissimilar when compared to Association's first mark which, again, simply carries the concept of an undertaking operating or located in the UK.

[13] https://dictionary.cambridge.org/dictionary/english/aspiring

[14] The phrase clinical, as per https://dictionary.cambridge.org/dictionary/english/clinical relates to the treatment of ill people and psychology, as per https://dictionary.cambridge.org/dictionary/english/psychology, relates to the study of the mind. Therefore, when combined, 'Clinical Psychology' will be read in the way described here.

Association's second mark and the opposed mark

62. Association's second mark includes the same 'ACP UK' element as its first mark. However, the words 'Association of Clinical Psychologists' will inform the meaning of 'ACP'. The 'UK' element will, again, be immediately understood as a reference to the undertaking operating or being located in the UK. 'Association of Clinical Psychologists' will clearly be understood as a reference to a group of clinical psychologists.[15] In comparing this to the opposed mark, I find that the reference to clinical psychology or psychologists will be a point of conceptual similarity. The reference to 'Aspiring' and 'Association' will be noticed but only acts as a slight point of difference. As whole, I consider that these marks are conceptually similar to a medium degree.

Association's second mark and the contested mark

63. In comparing Association's second mark to the contested mark, I am of the view that the shared reference to 'Psych' will be noticed but it is only a slight point of overlap when considering the marks as wholes. The other elements of the marks differ and I consider that the shared reference to 'Psych' (be that a reference to psychology or psychologists) is only sufficient to give rise to a low degree of conceptual similarity.

Distinctive character of Association's marks

64. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 the CJEU stated that:

> "22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an

[15] While I do not consider that it will be articulated, it will still be noticed and contribute to the concept of this mark.

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).

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51)."

65. Registered trade marks possess varying degrees of inherent distinctive character, ranging from very low, because they are suggestive or allusive of a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of marks can be enhanced through use and it is noted that Association has filed evidence of its use. However, before considering this, I will consider the inherent position.

66. Association's first mark is 'ACP UK'. As above, 'ACP' does not carry any meaning and 'UK' will be understood as a reference to the United Kingdom. As a reference to the location of the undertaking, I do not consider that 'UK' contributes to the distinctive character of the mark beyond that created by 'ACP'. Therefore, the distinctiveness of the mark, therefore, lies in the 'ACP' element. Given how commonplace trade marks featuring initials are, I am of the view that 'ACP' is

unremarkable from a trade mark perspective. That being said, it carries no meaning and is not, therefore, descriptive or allusive to the services relied upon. Taking all of this into account, I find that its distinctiveness sits at just below a medium degree.

67. Association's second mark is a figurative mark that consists of a number of textual elements and a trident device. Breaking down the textual elements, I note that the largest element is 'ACP'. In solus, this is unremarkable but when viewing this mark as a whole, consumers will recognise that it stands for 'Association of Clinical Psychologists' (being the words that sit at the bottom of the mark). As for 'UK', this will simply be understood as a reference to the United Kingdom and its role in the mark is the same as above (in that it does not contribute to its distinctiveness). In considering the trident device, I am of the view that this is fairly unremarkable and while I accept that this carries a degree of distinctiveness, I do not consider that it is to a material degree so as to enhance the distinctiveness beyond that created by the textual elements.[16] Overall, I find that it is the words 'Association of Clinical Psychologists' that carry the distinctiveness of the mark with 'ACP' simply being an initialism of the same. 'Association of Clinical Psychologists', will be understood as a reference to an organisation that consists of clinical psychologists. I consider that in the context of the services relied upon (being those that directly relate to psychology or those that are broad enough to relate to the provision of education/training covering the same), this is strongly allusive. As such, I find that the distinctiveness of the mark sits on the lower end of the scale. While not outright low, it is somewhere between a low and medium degree.

68. I turn now to consider the issue of enhanced distinctiveness. I do not intend to labour this point in any great detail because, having considered the entirety of the evidence filed, I do not consider that it demonstrates a sufficient level of use. In short, I accept that, across clinical psychologists and associated organisations,

[16] For the avoidance of doubt, I consider that this is the case even when considering the allusive nature of the word elements.

Association is likely to be a well-known undertaking.[17] However, the question before me is how well-known Association's marks were at the relevant date as a result of the use of the relevant services which relate broadly to education, training and teaching.

69. In considering the evidence in line with the above question, I note that there is very limited focus on the relevant services. I say this because the only evidence that speaks to the offering of such services is the provision of webinars. As far as I understand it, webinars can be provided for many purposes and do not necessarily relate to education or training. Therefore, it does not automatically follow that the provision of the same equates to the provision of the services relied upon. On this point, there is very little information provided about the actual topics of the webinars that Association has run.[18] For example, I note that Association has provided the names, dates and attendees of some webinars it ran from May 2017 to February 2025.[19] Of those from prior to the relevant date for these proceedings, there are webinars titled 'The Arts in Healing: a special year end event', 'We Are All Leaders' and 'The Impact of the Pandemic on Children, Young People and Families'. In short, these could simply be informational webinars that have no educational, training or teaching impact. As a result, I do not consider that Association's evidence is sufficiently solid in demonstrating the provision of services in line with those relied upon.

70. Even ignoring the above issue and proceeding as if all webinars shown could be said to be the provision of the relevant services, the total attendance figures provided are not significant. Of the webinars listed, only 18 are accompanied with attendee figures. In total, these show 3,153 attendees to webinars between

[17] This is supported by identical assertions of such in the statements of Mr Whittington and Baroness Cass.
[18] At MW5, for example, a list of webinars provided prior to the relevant date are shown on Association's website. Outside of a title and a date, there is nothing sufficiently solid to suggest the nature of said webinar.
[19] MW4

November 2021 and the relevant date. In the context of the relevant markets, this is a very low level of use.[20]

71. Even where the evidence attempts to demonstrate the size of its own membership base, it is not without issue. On this point, it is noted that, as at the date of Professor Wang's statement, Association had approximately 1,500 members from across the UK as a whole (including members in England, Wales, Northern Ireland and Scotland). Firstly, the membership figure reflects the position as at 19 December 2024, being over a year after the relevant date and there is nothing to suggest what the position was as at the relevant date, or in the years prior, that would assist me in determining an accurate membership figure. In addition, Professor Wang mentions that members tend to remain members once they join and, in support of this, a printout showing one member's quarterly payments from 2017 to 2024.[21] Put simply, the claim that members tend to retain their membership is not particularly compelling and is supported by an example of just one member renewing their membership. Regardless of both of these issues, the evidence simply covers membership and not the provision of the relevant services so I fail to see how it is of any assistance.

72. Another point worthy of brief discussion is the turnover figures provided for the years 2019 to 2023. During these years, the evidence sets out that Association generated an approximate turnover of £1,100,000. Firstly, it is not clear as to what the turnover relates to. For example, it is not confirmed whether this is from membership fees or revenue stemming from the provision of the services relied upon. In any event, even if it were to relate solely to the relevant services, relative to the size of the markets at issue, the figures reflect a low level of use.

[20] I appreciate that I have no evidence as to the size of the relevant markets but am of the view that the market for services such as 'educational institute services' is likely to be enormous. Further, even the more specific education or training services relating to psychology are likely to operate in a relatively sizeable market on the basis that such services are broad enough to cover courses provided in most schools and universities for A Levels and graduate or post graduate degrees.
[21] MW3

73. It is noted that additional evidence is provided of press coverage and printouts from websites and social media.[22] However, none of this assists the relevant position with regard to the services at issue. To use just one example, a press article taken from The Guardian in 2022 is provided that refers to a warning from clinical psychologists about the impact of a new police and crime bill on young people.[23] Association is mentioned in the article but it makes no reference to Association's services or any level of use associated with the same. For the avoidance of doubt, the same criticism applies to a report relating to a 'high profile' 2023 court case.[24] Such evidence is, therefore, of no real assistance here.

74. In light of the above, I consider that the evidence filed falls far short of proving that the use undertaken by Association points to an enhancing of the distinctive character of its marks. As such, the inherent position applies.

Actual confusion

75. Association has sought to file evidence showing examples of actual confusion. I can deal with this briefly because, having considered this evidence, I note that it covers just three examples[25] and, even taken on face value, this would not assist the assessment I must make in respect of a likelihood of confusion. In addition, the complaint covered by Dr Summers and one of the instances discussed by Professor Wang (at MW19) come from members of Association so are not indicative of there being confusion amongst the wider consumer base. Further, the other instance discussed by Professor Wang (at MW18) is not an instance of confusion but simply a referral by a student of the University of Leicester flagging Aspiring's website to Professor Wang. Such evidence is of no assistance here so I will say no more about it.

[22] See MW7 to MW13
[23] MW15
[24] MW16
[25] See paragraph 3 to 7 of the witness statement of Dr Summers, MW18 and MW19

Likelihood of confusion

76. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the services down to the responsible undertakings being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective services and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the earlier mark, the average consumer for the services and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that they have retained in their mind.

77. I found the services at issue to be identical. The average consumer base for the services at issue will be members of the general public and business users who will select the services via primarily visual means (though I do not discount an aural component) whilst paying a medium or higher than medium (but not high) degree of attention. In respect of the similarity of marks, I have found:

a. The opposed mark is visually and aurally similar to a medium degree and conceptually dissimilar with Association's first mark;
b. The contested mark is visually and aurally similar to between a medium and high degree and conceptually dissimilar with Association's first mark
c. The opposed mark is visually similar to between a low and medium degree and aurally and conceptually similar to a medium degree with Association's second mark; and

d. The contested mark is visually similar to a medium degree, aurally similar to between a medium and high degree and conceptually similar to a low degree with Association's second mark.

78. I concluded that Association's first mark possesses a slightly below medium degree of inherent distinctive character and its second mark possesses between a low and medium degree of distinctive character.

79. Taking all of the above into account and bearing in mind the principle of imperfect recollection, I am of the view that the differences between the marks are such that consumers will be able to accurately recall which mark was which. In short, while the common element of 'ACP' will be noticed across them all, I do not consider that the consumer will pin their recollection of the marks solely on those letters. Therefore, I do not consider that there exists a likelihood of direct confusion between the marks at issue, even when viewed on identical services.

80. I will now proceed to consider indirect confusion. In doing so, I remind myself of the case of *L.A. Sugar Limited v By 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:

(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)".

81. While the above examples in *L.A. Sugar* are noted, they are not intended to be treated as an exhaustive list of the only instances whereby indirect confusion occurs.

82. Further, I note the case of *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, wherein Arnold LJ referred to the comments of James Mellor Q.C. (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at paragraph 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.

83. Before proceeding to consider indirect confusion, I remind myself that in *Comic Enterprises* (cited above), Kitchin LJ explained that "right way round" or "wrong way round" confusion may be a consequence of nothing more meaningful than the order in which the consumer happened to come across the mark and the sign. He explained further that in both instances the consumer thinks that the goods or services in issue come from the same undertaking or economically linked undertakings, and they may be equally damaging to the distinctiveness and functions of the mark. As such, it is irrelevant whether Association's marks are viewed as sub-brands or brand extensions of Aspiring's marks.

84. In considering the opposed mark against Association's first mark, I consider that regardless of the lack of any shared concept, consumers are likely to believe that they originate from the same or economically connected undertakings. Firstly, when confronted by both marks, I find that consumers will view 'Aspiring Clinical Psych' in the opposed mark as confirming what the 'ACP' in Association's first mark stands for. Secondly, I do not consider it uncommon for an undertaking that uses its initials followed by words indicating what those initials mean to drop the words and rely simply on the initialism to indicate origin. Therefore, despite the presence of those additional words in the opposed mark, I find that consumers will consider the common use of the letters 'ACP' at the beginnings of the marks as a reference to a shared indicator of origin, especially when viewed on identical services. In considering the difference of the letters 'UK' at the end of Association's first mark, this will be viewed as a brand extension, sub-brand or simply an alternative mark used by 'Aspiring Clinical Psych' that indicates that the services at issue are offered in the UK. For the avoidance of doubt, this applies regardless of the level of attention paid. Consequently, I consider that there exists a likelihood of indirect confusion between these marks.

85. I turn now to consider the contested mark against Association's first mark. While the contested mark sets out what the 'P' in 'ACP' means, I am of the view that the consumer will believe that the marks are from the same or economically connected undertakings. The point of difference stemming from 'UK' will be viewed in the same way as above and does nothing to dispel the fact it is a logical addition indicative of a sub-brand. As for the word 'Psych', I consider that consumers will consider 'ACPsych' to be a quirky reference to a sub-brand of 'ACP' that focuses on 'psychology'. Either that, or it simply indicates that the 'P' in 'ACP' stands for 'Psych'. In either circumstance, the consumer will believe that the marks originate from the same or economically linked undertakings. Consequently, there exists a likelihood of indirect confusion between these marks.

86. In light of the above, the opposition succeeds in full. It is, therefore, unnecessary to assess the issue of confusion with Association's second mark. However, for the avoidance of doubt, I do not consider that confusion exists between these marks. I say this because Association's second mark gives a clear indication as to what 'ACP' in that mark means. While this gives rise to a degree of conceptual similarity between the marks, it does give the consumer a reason to believe that the marks are the responsibility of different undertakings. In short, consumers will readily understand that the 'ACP' in each mark means different things, thereby pointing away from a belief that they originate from the same or economically linked undertakings.

Section 5(3)

87. Section 5(3) of the Act states:

> "5(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 of, or be detrimental to, the distinctive character or repute of the earlier trade mark."

88. 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,* Case C-323/09, *Marks and Spencer v Interflora,* Case C383/12P, *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 Salomon*, 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) 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.

(g) 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.

(h) 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.

(i) 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 holder 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*).

89. The conditions of section 5(3) are cumulative. Firstly, Association must show that the marks at issue are similar. Secondly, Association must show that its mark has achieved a level of knowledge/reputation amongst a significant part of the public throughout the relevant territory. Thirdly, it must be established that the level of reputation and the similarities between the parties' marks will cause the public to make a link between them. Finally, assuming the first three conditions have been met, section 5(3) requires that one or more of the pleaded types of damage will occur. It is unnecessary for the purposes of section 5(3) that the services be similar, although the relative distance between them is one of the factors which must be assessed in deciding whether the public will make a link between the marks.

Reputation

90. I recognise that the test for reputation is not the same as that for enhanced distinctive character, but the same factors are to be taken into account in both assessments. On this point, I note that in the present case, the marks relied upon are the same as above, so too are the services relied upon. Further, the relevant date and the relevant territory for the issue of reputation are identical to the above assessment. Therefore, the evidence is, for the reasons set out in relation to enhanced distinctiveness, insufficient to establish a reputation in the UK. Consequently, the section 5(3) ground of both the opposition and invalidation falls at the first hurdle.

Section 5(4)(a)

91. Section 5(4)(a) of the Act reads as follows:

"(4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented-

(a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, where the condition in subsection (4A) is met,

(aa) …..

(b) …..

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of an "earlier right" in relation to the trade mark."

92. Subsection (4A) of Section 5 states:

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

93. I appreciate that the test for goodwill is far less onerous than the tests for enhanced distinctiveness and reputation. This is on the basis that the case law suggests that even a small business which has more than a trivial goodwill can protect signs which are distinctive of that business under the law of passing off even though its goodwill may be small.[26] That being said, I still consider the evidence to be insufficient to warrant a finding that Association enjoys a protectable level of goodwill stemming from its use of the relevant services.[27] As above, Association's evidence lacks specificity as to the nature of its webinar services and without

[26] See *Lumos Skincare Limited v Sweet Squared Limited and others* [2013] EWCA Civ 590
[27] Being those identical to the services relied upon under the section 5(2)(b) and 5(3) grounds.

anything sufficiently solid before me to confirm that they were for the purpose of education or training, I am not willing to make such an inference. Therefore, I find that the present ground fails.

94. Even if goodwill were to exist in Association's signs (which are identical to the marks relied upon above), I remind myself that in *Comic Enterprises* (cited above), Kitchin LJ set out that it was doubtful whether the difference between the legal tests for likelihood of confusion and misrepresentation will (all other factors being equal) produce different outcomes. Therefore, even if I were satisfied that Association enjoyed goodwill in the signs relied upon and said goodwill vested in the broad services of Association,[28] I fail to see what the present ground offers above and beyond the section 5(2)(b) ground above.

CONCLUSION

95. The opposition and invalidity succeed in full. Subject to any successful appeal against my decision, the opposed mark is refused registration for all of the services applied for and the contested mark is hereby declared invalid and deemed as if it was never filed.

COSTS

96. I note that in filing its costs proforma, Dr Smith of Aspiring requested an enhanced costs award in its favour due to the unreasonable behaviour of Association. Firstly, Association has been successful in these proceedings so is, therefore, the party entitled to its costs. Secondly, insofar as there is any suggestion that Association's costs should be reduced due to Dr Smith's comments, I disagree. This is because, in short, the points raised simply appear to be displeasure at a perceived lack of regard to the fact that Aspiring is a small undertaking that acted without legal

[28] My primary view is that the issues discussed when considering the evidence above are equally fatal in that they fail to demonstrate sufficient use of the signs on the services relied upon.

representation in these proceedings. For instance, Dr Smith claims that she was required to engage a significant investment of time and learning on her part to enable her to navigate the present proceedings. While this is noted, it is not an obligation of a represented party to engage in proceedings differently simply because the opposing party is not legally represented. Further, even though I have been critical of Association's evidence, this is not indicative of unreasonable conduct in a way that would warrant a reduction of its costs. Lastly, there is nothing sufficiently solid before me that suggests that Association has acted unreasonably at any point in these proceedings.

97. As a result, I find that, as the successful party in these proceedings, Association is entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 1/2023. In the circumstances, I award Association the sum of £1,600 as a contribution towards its costs. The sum is calculated as follows:

Preparing a notice of opposition and considering the counterstatement:	£200
Preparing a notice of invalidity and considering the counterstatement:	£200
Filing evidence:	£500
Written submissions in lieu of a hearing:	£300
Official fees:	£400
Total:	**£1,600**

98. I hereby order Aspiring Clinical Psych Ltd to pay Association of Clinical Psychologists UK C.I.C. the sum of £1,600. The above sum should be paid within

21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 23rd day of October 2026

A COOPER
For the Registrar

ANNEX 1

Class 41

Vocational education; Vocational training; Vocational retraining; Vocational education and training services; Career and vocational training; Vocational training services; Career and vocational counselling; Vocational guidance; Vocational skills training; Vocational training courses (Provision of -); Vocational skills training (Provision of -); Education services relating to vocational training; Vocational testing; Vocational education in the field of mechanics; Vocational education relating to self-defence; Guidance (Vocational -) [education or training advice]; Vocational guidance [education or training advice]; Consultancy relating to vocational skills training; Vocational education for young people; Vocational education relating to home safety; Vocational education relating to personal safety; Vocational education relating to first aid; Organisation of conferences relating to vocational training; Linguistic education and training services; Education and training; Residential education courses; Career counseling [education]; Training and education services; Education and training services; Education; Provision of training and education; Provision of education and training; Career counselling [training and education advice]; Career counselling relating to education and training; Education and training consultancy; Academy education services; Academy services (Education -); Education academy services; Education, teaching and training; Educational and training services; Academies [education]; Educational services for providing courses of education; Vocational education relating to protection of personal property; Computer education training services; Provision of education courses; Secondary school educational services; Education and instruction services; Pre-school education; Education and training services in the field of occupational health and safety; Technological education services; Religious education; Education (Religious -); Educational certification services, namely, providing training and educational examination; Education academy services for teaching construction drafting; Computer education training; Career advisory services (education or training advice); Education and training in the field of automotive engineering; Educational institute services; Services of schools

[education]; Education services; Education academy services for teaching languages; Educational courses (Provision of -); Residential education courses relating to canoeing; Employment training; Residential education courses relating to archery; Education and instruction; Education and training in the field of occupational health and safety; Residential education courses relating to abseiling; Higher education services; University education services; Engineering training college services; Medical education services; Residential training courses; Training or education services in the field of life coaching; Education academy services for teaching acting; Vocational education relating to avoidance of health related problems; Provision of facilities for employment skills training; Educational services provided by institutes of higher education; Physical education services; Musical education services; Physical education instruction; Vocational education relating to avoidance of drug related problems; Industrial training; Development of educational courses and examinations; Educational and teaching services; Accreditation of educational services; Provision of physical education; Primary education services; Provision of training courses for young people in preparation for vocations; Kindergarten services [education or entertainment]; Adult education services; Practical training services; Education services relating to business training; Education examination; Provision of day-care [educational] units; Providing continuing nursing education courses; Physical education; Legal education services; Nursery school services [educational]; Providing continuing medical education courses; Provision of training courses for young people in preparation for employment; Sports education services; Educational services for providing courses of instruction; Educational and training services relating to sport; Teacher training services; Entertainment, education and instruction services; Sporting education services; Educational services provided by institutes of further education; Computerised training in career counselling; Postgraduate training courses; Professional consultancy relating to education; Educational establishments providing courses of instruction (Services of -); Dietary education services; Education services relating to the veterinary profession; Education services relating to the horticultural industry; Training relating to employment skills; Provision of education courses relating to telecommunications; Education services relating to the agricultural industry;

Physical education facilities (Provision of -); Educational and training services relating to healthcare; Examination services (Educational -); Educational examination services; Educational services; Provision of training courses in personal development; Education courses relating to automation; Education services related to the arts; Educational consultancy; Provision of education courses relating to electronics; Primary education services relating to literacy; Religious training; Educational assessment services; Education services for imparting language teaching methods; Training services relating to occupational health; Education academy services for teaching art history; Provision of medical instruction courses; Provision of training courses; Training courses (Provision of -); Physical fitness education services; Education services relating to the development of childrens' mental faculties.

ANNEX 2

Class 16

Printed matter; printed publications; books; manuals; instructional and teaching material; journals; newsletters.

Class 35

Advertising, marketing and promotional services in the field of clinical psychology, psychology and mental health; market analysis in the field of clinical psychology, psychology and mental health; market surveys in the field of clinical psychology, psychology and mental health; marketing studies in the field of clinical psychology, psychology and mental health; preparation and distribution of publicity material in the field of clinical psychology, psychology and mental health; computerised data verification in the field of clinical psychology, psychology and mental health; writing and preparation of business reports and expert evaluations in the field of clinical psychology, psychology and mental health; business consultancy services in the field of clinical psychology, psychology and mental health; business management services in the field of clinical psychology, psychology and mental health; business management consultancy in the field of clinical psychology, psychology and mental health; business administration services in the field of clinical psychology, psychology and mental health; business advisory services in the field of clinical psychology, psychology and mental health; business organisation consultancy in the field of clinical psychology, psychology and mental health; personnel placement services in the field of clinical psychology, psychology and mental health; recruitment services in the field of clinical psychology, psychology and mental health; recruitment consultancy services in the field of clinical psychology, psychology and mental health; provision of a member directory via the internet.

Class 38

Arranging access to databases on the internet; arranging access to member directories on the internet; electronic transmission of data and information in the field

of clinical psychology; provision of access to computer databases in the field of clinical psychology; broadcast of information in the field of clinical psychology by means of television, radio or online programmes; providing chat rooms, online forums and electronic bulletin boards in the field of clinical psychology, psychology and mental health.

Class 41

Education, training and teaching services in the field of clinical psychology, psychology and mental health; coaching and mentoring services in the field of clinical psychology, psychology and mental health; organisation and provision of continued professional development courses in the field of clinical psychology, psychology and mental health; organisation of in-person and online educational conferences, seminars and webinars in the field of clinical psychology, psychology and mental health; creation of educational content for podcasts and webinars in the field of clinical psychology, psychology and mental health organisation of competitions, festivals and events; publishing of books, journals, publications, magazines and other printed matter in the field of clinical psychology, psychology and mental health; publishing of online publications in the field of clinical psychology, psychology and mental health; information services relating to training, education and practice in the field of clinical psychology; educational institute services; hire or rental of teaching apparatus or materials; publication of trade journals, books and educational material in the field of clinical psychology, psychology and mental health; advisory services relating to publishing in the field of clinical psychology, psychology and mental health, including the provision of such services via the Internet, Intranet or otherwise by computerised means; museum exhibitions, facilities and services; provision of membership certificates in the field of clinical psychology, psychology and mental health.

Class 42

Scientific research in the field of clinical psychology, psychology and mental health; software development in the field of clinical psychology, psychology and mental health.

Class 44

Information and advisory services relating to clinical psychology, psychology and mental health; advice relating to clinical psychology, psychology and mental health; professional consultancy services relating to clinical psychology, psychology and mental health; all the aforesaid provided in person, via telephone or electronic communication or via the Internet, Intranets or otherwise by computerised means; counselling and support services in the field of clinical psychology, psychology and mental health; provision of centres and groups for support and counselling in the field of clinical psychology, psychology and mental health; individual and group psychology services; support services for clinical psychologists, psychologists and mental health professionals; psychological therapy services; support and advisory services for professionals in the field of clinical psychology, psychology and mental health; support and advisory services for clinical psychologists, psychologists and mental health professionals relating to regulatory and practice issues; professional body representation services for clinical psychologists, psychologists and mental health professionals; support and representation of members interests and wellbeing in the field of clinical psychology, psychology and mental health.

Class 45

Preparation of guidance, guidelines and advisory material relating to regulations in the field of clinical psychology, psychology and mental health.