BL O/0965/26

TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK APPLICATION NO. 4180288
BY NINGBO ANRUI INFORMATION TECHNOLOGY CO. LTD.
TO REGISTER THE FOLLOWING TRADE MARK:

Dayone Fulfillment

IN CLASSES 25 AND 35

-AND-

THE OPPOSITION THERETO UNDER NO. 455352
BY AMAZON TECHNOLOGIES, INC.

BACKGROUND AND PLEADINGS

1. On 27 March 2025, Ningbo Anrui Information Technology Co. Ltd. (**"the Applicant"**) applied to register the figurative trade mark shown on the cover page of this decision in the UK. It was accepted and published in the Trade Marks Journal on 27 June 2025. Registration is sought for the following goods and services:

> Class 25
>
> Belts [clothing]; Inner soles; Down suits; Gym suits; Swim suits; Pajamas; Sports shoes; Shapewear; Tee-shirts; Slippers; Footwear; Undergarments; Sweaters; Blouses; Costumes; Hats; Socks; Gloves; Scarves; Eye masks.
>
> Class 35
>
> Advertising; Advertising and marketing; Advertising and publicity; Advertising of business web sites; Business networking; Direct marketing; Internet marketing; Provision of an online marketplace for buyers and sellers of goods and services; Telemarketing; Marketing analysis services; Marketing services; Procurement of contracts for the purchase and sale of goods and services for others; Retail services for pharmaceutical, veterinary and sanitary preparations and medical supplies; Wholesale services for pharmaceutical, veterinary and sanitary preparations and medical supplies; Import and export agencies.

2. On 14 July 2025, Amazon Technologies, Inc. (**"the Opponent"**) partially opposed the application under section 5(2)(b) of the Trade Marks Act 1994 (**"the Act"**).[1] The opposition is directed solely against the Class 35 services applied for and is based on the Opponent's registration set out below, relying only on the services registered in Class 35. Those services are set out in full at paragraph 16 of this decision and include order fulfilment services, the provision of product information, retail and online marketplace services for software and electronic devices, and the provision of an online marketplace for software-related services.

[1] 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.

Representation of the mark:	DAY 1 EDITIONS
Type of mark:	word mark
Registration Number:	3468380
Filing date:	20 February 2020
Registration date:	11 August 2020
Registered Classes:	9, 35, 42

3. By virtue of its earlier filing date, the registration upon which the Opponent relies qualifies as an earlier trade mark pursuant to section 6 of the Act. As the earlier mark had not been registered for more than five years at the filing date of the contested application, it is not subject to the use conditions pursuant to section 6A of the Act, and accordingly, the Opponent may rely on all its Class 35 services without having to show any use at all.

4. The Opponent claims that the competing marks are similar and that the respective Class 35 services are identical or similar, giving rise to a likelihood of confusion.

5. The Applicant filed a defence and counterstatement denying the claims made.

6. Both parties filed submissions, however, only the Opponent filed evidence. A hearing was not requested, and only the Opponent elected to file submissions in lieu of a hearing. I therefore make this decision following careful consideration of the papers before me.

7. The Opponent is represented by Morgan, Lewis & Bockius UK LLP and the Applicant is represented by Monyin Lin Chien.

EVIDENCE FILED

8. The Opponent's evidence comprises the Witness Statement of Nicholas Bolter, a Partner at the Opponent's representative firm, dated 12 January 2026, accompanied by three exhibits labelled NB1 to NB3. He summarises that his evidence shows the following:[2]

[2] Paragraph 8 of his witness statement.

"8.1. the term 'DAY ONE' means *"the first day"* or *"the very beginning of something"*;

8.2. the term 'FULFILLMENT' refers to *"the process of preparing and delivering a customer's order"* which includes logistics services such as *"warehousing, picking, packing, and shipping products for companies that sell online and from store to store"*; and

8.3. the Applicant provides fulfillment services as it markets its services as providing *"A to Z fulfillment solutions for global eCommerce businesses"*, *"Complete fulfillment services for your eCommerce business, from DayOne"* and *"We source, pack and ship your branded products directly to your customer's door"* and its logo represents both "1 DAY" and "DAY ONE", with the number being written in both numerals and letters."

9. I have taken the Opponent's evidence into account and do not consider it necessary to summarise it beyond the summary provided by Mr Bolter.

LEGISLATION AND CASE LAW

10. Section 5(2)(b) of the Act states:

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

(a) […]

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.

11. I am guided by the principles applicable to the assessment of the likelihood of confusion, as cited with approval by the Supreme Court in *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc & Anor*, [2025] UKSC 25. These principles are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG,* Case C-

251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc,* Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV,* Case C-425/98, *Matratzen Concord GmbH v Office for Harmonisation in the Internal Market ("OHIM")*, Case C-3/03, *Medion AG v Thomson Multimedia Sales Germany & Austria GmbH,* Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM,* Case C-334/05P and *Bimbo SA v OHIM,* Case C-591/12P:

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

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

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

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

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

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

(g) a lesser degree of similarity between the goods or services may be offset by a 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;

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

Comparison of services

12. In *Gérard Meric v OHIM,*[3] ("*Meric*"), the General Court held to the effect that goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by the trade mark application and vice versa (this principle equally applies to services).

13. When considering whether services are similar, all the relevant factors relating to the services should be taken into account. According to the judgment of the Court of Justice of the European Union ("CJEU") in *Canon,*[4] and the guidance from Jacob J. (as he then was) in the *Treat* case,[5] those factors include, *inter alia*:

(1) the physical nature of the acts of service;
(2) their intended purpose;
(3) their method of use / uses;
(4) who the users of the services are;
(5) the trade channels through which the services reach the market;
(6) whether they are in competition with each other;
or
(7) whether they are complementary to each other.

[3] Case T- 133/05
[4] Case C-39/97, paragraph 23.
[5] *British Sugar PLC v James Robertson & Sons Ltd.,* [1996] R.P.C. 281 – the *"Treat"* case.

14. Complementary means *"there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods [or services] lies with the same undertaking"*.[6] Complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity,[7] and can be clearly distinguished from mere 'use in combination',[8] where the services are not essential to one another but are merely used together, whether by choice or convenience.

15. When interpreting the terms in a specification I bear in mind:

(a) that it is *"necessary to focus on the core of what is described* [... and that] *trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise",* although *"where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods* [and services] *in question"*;[9]

(b) where *"the words chosen may be vague or could refer to goods or services in numerous classes* [of the Nice classification system]*, the class may be used as an aid to interpret what the words mean with the overall objective of legal certainty of the specification of goods and services"*;[10]

(c) the following applicable principles of interpretation:

"(1) General terms are to be interpreted as covering the goods or services clearly covered by the literal meaning of the terms, and not other goods or services.

[6] *Boston Scientific Ltd v OHIM,* Case T-325/06, paragraph 82
[7] *Kurt Hesse v OHIM*, Case C-50/15 P
[8] As Mr Daniel Alexander Q.C. noted as the Appointed Person in *Sandra Amalia Mary Elliot v LRC Holdings Limited,* BL O/255/13 - *"It may well be the case that wine glasses are almost always used with wine – and are, on any normal view, complementary in that sense - but it does not follow that wine and glassware are similar goods for trade mark purposes."*
[9] *YouView TV Ltd v Total Ltd* [2012] EWHC 3158 (Ch), paragraphs 11 - 12
[10] *Pathway IP Sarl (formerly Regus No. 2 Sarl) v Easygroup Ltd (formerly Easygroup IP Licensing Limited),* [2018] EWHC 3608 (Ch), paragraph 94

(2) In the case of services, the terms used should not be interpreted widely, but confined to the core of the possible meanings attributable to the terms.

(3) An unclear or imprecise term should be narrowly interpreted as extending only to such goods or services as it clearly covers.

(4) A term which cannot be interpreted is to be disregarded."[11]

16. The competing Class 35 services are set out below:

Opponent	Applicant
• Order fulfilment services; • providing product information for the purpose of assisting with the selection of general consumer merchandise to meet the consumer's needs; • retail and online retail store services in relation to a wide variety of consumer and commercial goods **namely**, computer software, portable and hand-held digital and electronic devices namely electronic book readers, voice controlled audio speakers, home automation control devices, audio and video players, electronic personal organizers, personal digital assistants, digital audio players, digital video players, DVD players, handheld media players, MP3 players, MP4 players, portable media players, video players, wireless remote controls for portable	• Advertising; • Advertising and marketing; • Advertising and publicity; • Advertising of business web sites; • Business networking; • Direct marketing; • Internet marketing; • Provision of an online marketplace for buyers and sellers of goods and services; • Telemarketing; • Marketing analysis services; • Marketing services;

[11] See *Sky v Skykick* [2020] EWHC 990 (Ch), paragraph 56 (wherein Lord Justice Arnold, in the course of his judgment, set out a summary of the correct approach to interpreting broad and/or vague terms)

and handheld electronic devices, portable and handheld electronic devices for video games, mobile phones, smart phones and tablet devices, and computers, lighting products, kitchen appliances, camera systems, computer hardware and software for controlling networked devices in the internet of things (IoT) devices, voice command and recognition software, speech text conversion software, voice-enabled software applications for personal information management; • provision of an on-line marketplace for buyers and sellers of innovative products **namely,** computer software, portable and hand-held digital and electronic devices namely electronic book readers, voice controlled audio speakers, home automation control devices, audio and video players, electronic personal organizers, personal digital assistants, digital audio players, digital video players, DVD players, handheld media players, MP3 players, MP4 players, portable media players, video players, wireless remote controls for portable and handheld electronic devices, portable and handheld electronic devices for video games, mobile phones, smart phones and tablet	• Procurement of contracts for the purchase and sale of goods and services for others; • Retail services for pharmaceutical, veterinary and sanitary preparations and medical supplies; • Wholesale services for pharmaceutical, veterinary and sanitary preparations and medical supplies; • Import and export agencies.

devices, and computers, lighting products, kitchen appliances, camera systems, computer hardware and software for controlling networked devices in the internet of things (IoT) devices, voice command and recognition software, speech to text conversion software, voice-enabled software applications for personal information management; • provision of an online marketplace for buyers and sellers of innovative services, **namely** Software as a Service (SaaS) services, Platform as a Service (PaaS) services, Application Service Provider (ASP) services, services comprising the monitoring of computer systems and camera systems.	

17. The Applicant's terms are underlined below, grouped where the same reasoning applies.[12]

Provision of an online marketplace for buyers and sellers of goods and services

18. The above term is broad and as such is identical to the following terms in the Opponent's specification in accordance with the principle outlined in *Meric*:

- *"provision of an on-line marketplace for buyers and sellers of innovative **products** namely, computer software, portable and hand-held digital and electronic devices namely [etc.]"*

[12] See *Separode Trade Mark* BL O/399/10, paragraph 5, with regard to grouping goods and services together.

and

- *"provision of an online marketplace for buyers and sellers of innovative **services**, namely Software as a Service (SaaS) services [etc.]"*

Advertising; Advertising and marketing; Advertising and publicity; Advertising of business web sites; Direct marketing; Internet marketing; Telemarketing; Marketing analysis services; Marketing services.

19. Advertising promotes awareness of goods and services to encourage sales. Marketing more broadly encompasses activities aimed at identifying and analysing consumer demand and using that information to encourage sales, including through advertising. Advertising therefore forms part of the broader marketing process. Since all of the above services are directed towards encouraging sales, I shall consider them together when comparing them with the Opponent's following online marketplace services:

> *"provision of an on-line marketplace for buyers and sellers of innovative products namely, computer software, portable and hand-held digital and electronic devices namely [etc.]"*

20. The Opponent's online marketplace services connect third-party sellers with prospective buyers by providing a platform on which sellers can advertise and offer their goods for sale. The Applicant's advertising and marketing services likewise assist businesses in identifying or reaching prospective customers, whether through promotional activities or through analysis of consumer demand to inform those activities. The services therefore overlap in purpose, as both help businesses reach prospective purchasers and encourage sales. They also overlap in users, who include businesses seeking to attract customers. However, they differ in nature and method of use – the Opponent's services provide a marketplace through which transactions can be concluded, whereas the Applicant's services concern the planning or delivery of advertising and marketing activities. Taking these similarities and differences into account, I find the services similar to a low degree.

Retail services for pharmaceutical, veterinary and sanitary preparations and medical supplies; Wholesale services for pharmaceutical, veterinary and sanitary preparations and medical supplies

21. I compare the above with the following service in the Opponent's specification:

> *"retail and online retail store services in relation to a wide variety of consumer and commercial goods namely, computer software, portable and hand-held digital and electronic devices namely [etc.]"*

22. The Applicant's retail and wholesale services concern pharmaceutical, veterinary and sanitary preparations and medical supplies, whereas the Opponent's retail services concern software and electronic goods. Nevertheless, the competing retail services share the same core nature, purpose and method of use because they involve bringing together goods so that consumers can conveniently view and purchase them. The differences between the goods being retailed may affect the providers, trade channels and consumers of the services, but do not remove those shared characteristics.

23. The Applicant's wholesale services substantially overlap with the Opponent's retail services in nature, purpose and method of use because they likewise involve bringing together goods so that customers can conveniently view and purchase them. They differ principally in their users, since wholesale services are directed towards trade customers rather than members of the general public.

24. Taking these factors into account, I find the contested retail and wholesale services similar to the Opponent's retail services to a low degree.

Procurement of contracts for the purchase and sale of goods and services for others

25. The Opponent's online marketplace services are the closest comparator. Procurement of contracts involves arranging or securing contracts for the purchase and sale of goods or services on behalf of others, whereas online marketplace services provide a platform through which buyers and sellers may conclude transactions. Although the services differ in nature and method of delivery, they overlap in purpose and users and may be provided through the same trade channels.

They may also be in competition, since a business seeking to purchase or sell goods or services may use either a procurement intermediary or an online marketplace. I therefore find the services similar to a low degree.

Import and export agencies

26. The Opponent's *"order fulfilment services"* are the closest comparator. Those services include the preparation, shipment and delivery of customer orders. Import and export agencies arrange or facilitate the movement of goods into or out of a country. Although the services differ in nature and purpose, both may form part of the same process by which goods are moved from a seller to a customer, particularly where orders are fulfilled across borders. There may therefore be some overlap in users, providers and trade channels. Taking these factors into account, I find the services similar to a low degree.

Business networking

27. The Opponent's online marketplace services are the closest comparator. However, those services facilitate transactions between buyers and sellers, whereas business networking facilitates the formation and development of professional or commercial relationships. The services therefore differ in nature and purpose. Any overlap in users is too general to establish similarity. They are not ordinarily provided by the same undertakings, do not share trade channels and are neither in competition nor complementary. Since business networking is dissimilar to the Opponent's closest comparator, it must also be dissimilar to its less closely related services. I therefore find it dissimilar to all of the Opponent's services.

28. Since some similarity between the services is required for the purposes of a section 5(2)(b) claim, the opposition must fail in respect of the dissimilar services identified above.[13] I therefore proceed with my assessment only in relation to the services found to be identical and similar. I note that whatever the outcome is of that assessment, the trade mark application will proceed to registration in respect of the Class 35 *"Business networking"* services and the unopposed Class 25 goods.

[13] See *Waterford Wedgwood plc v OHIM* – C-398/07 P (case of the CJEU); and *eSure Insurance v Direct Line Insurance,* [2008] ETMR 77 CA, paragraph 49.

The average consumer and the nature of the purchasing process

29. Trade mark questions, including the likelihood of confusion, must be viewed through the eyes of the average consumer of the goods and services in question. In *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc & Anor*, [2025] UKSC 25, 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, at [15]-[20], where he pointed out the following in relation to the average consumer:

> (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.

30. The Applicant submits that the relevant consumers are professional purchasing personnel, supply chain managers, pharmaceutical companies, marketing directors and brand managers, who will pay a high degree of attention. However, this characterises the relevant public too narrowly. The competing services are directed more broadly at members of the general public and, depending on the particular service, business users. In either case, the average consumer is likely to consider factors such as the nature and scope of the service, its cost, reliability, convenience and suitability for their needs. Although I take into account that the Applicant's services include the wholesale of pharmaceutical, veterinary and sanitary preparations and medical supplies, which would be used by business or professional users, it is the selection of the wholesale service, rather than the underlying goods, that is relevant. That selection will be based on ordinary commercial considerations such as cost, reliability and suitability, and the services do not, by their nature, require a particularly high level of technical scrutiny. Accordingly, for all of the services at issue, I consider that the average consumer will pay no more than a medium degree of attention.

31. The services are likely to be selected primarily by visual means, although I do not discount an aural component through word-of-mouth recommendations.

Comparison of marks

32. I have already set out the principles gleaned from established case law with regard to comparing competing marks. I also note that the Court of Justice of the European Union ("CJEU") stated in *Bimbo SA v OHIM*,[14] 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."

33. It would be wrong, therefore, to dissect the trade marks artificially, although it is necessary to take into account the distinctive and dominant components of the marks

[14] Case C-591/12P, at paragraph 34.

and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

34. The marks to be compared are shown below.

Opponent's mark	Applicant's mark
DAY 1 EDITIONS	Dayone Fulfillment

Overall impression

35. The Opponent's word mark consists of the expression 'DAY 1' (meaning the first day or the very beginning of something) followed by the word 'EDITIONS'. The numeral '1' will naturally be read and understood as 'one'. The overall impression of the Opponent's mark lies in the combination of the expression 'DAY 1' and the word 'EDITIONS'.

36. Although the Applicant's mark is figurative, the stylisation is minimal and does not make any significant contribution to its overall impression. Although the first element, 'Dayone', is conjoined, the average consumer is likely to perceive a natural break between the words and to read it as 'day one'. The overall impression of the mark therefore lies in the combination of the expression 'Dayone' and the word 'Fulfillment'.

Visual comparison

37. Although I take into account that the Opponent's mark is a word-only mark whereas the Applicant's is stylised, that stylisation is minimal and does little to distinguish it visually from the Opponent's mark.

38. Clearly both marks share the identical word 'DAY'. Whilst the numeral '1' and the word 'one' are visually different, that difference is somewhat offset by the fact that they are alternative representations of the same number.

39. The words 'EDITIONS' and 'Fulfillment' plainly represent points of visual difference. However, taking the marks as a whole, the common element is too significant for the visual similarity to be assessed at anything lower than a medium

degree overall, particularly given its prominent position at the beginning of the marks, where consumers tend to focus their attention.[15]

Aural comparison

40. The first elements 'DAY 1' and 'Dayone' will be pronounced identically. However, the words 'EDITIONS' and 'Fulfillment' are points of aural difference. On account of the identical pronunciation of the first part of the competing marks, I consider them to be aurally similar overall to a medium degree.

Conceptual comparison

41. Both marks convey the expression 'day one', meaning the first day or the beginning of something. There is therefore clear conceptual identity in respect of that shared element. The remaining words introduce different concepts. 'EDITIONS' refers to versions of something and may be perceived as indicating different versions of offerings made available under the 'DAY 1' designation. That concept is not particularly distinctive. 'Fulfillment' will be understood as the preparation and delivery of orders and may suggest that such services are provided by an undertaking called 'Dayone'. Whilst the concept conveyed by 'Fulfillment' is allusive and therefore not particularly distinctive when viewed in the commercial context of the Applicant's services, it nevertheless represents a point of conceptual difference between the marks. Taking into account the identical concept conveyed by 'DAY 1' and 'Dayone', balanced against the different concepts introduced by 'EDITIONS' and 'Fulfillment', I consider the marks to be conceptually similar overall to a medium degree.

Distinctive character of the earlier trade mark

42. The degree of distinctiveness of the earlier mark is one of the factors that must be taken into account when assessing whether there is a likelihood of confusion. This is because the more distinctive the earlier mark, the greater the likelihood of confusion may be.[16]

[15] *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02.
[16] *Sabel v Puma*.

43. Registered trade marks possess varying degrees of inherent distinctive character. Marks which are suggestive or allusive may have a low degree, while arbitrary or invented marks may possess a high degree, depending on their relationship to the goods or services. In *Janus*, BL O/0558/25, the Appointed Person stated:

> "34. I will however address one point made by Ms Watkinson. She submits that if Janus was not an invented word it would necessarily be less distinctive than if it were an invented word. I do not accept this submission. There is no reason why arbitrary marks (i.e. existing words used as trade marks) cannot be inherently distinctive to a high degree or why invented (fanciful) marks cannot have a lower degree of distinctiveness. The level of inherent distinctiveness will depend on the mark in question and its relationship to the goods or services."

44. The Opponent makes no claim to enhanced distinctiveness through the use made of the earlier word mark and has filed no evidence of use of its mark. I therefore have only the inherent distinctiveness of the mark to consider.

45. Whilst distinctiveness is assessed by reference to the mark as a whole, simply stating the overall level of distinctiveness of the earlier mark is not sufficient, it is the distinctive character of the component or components that are similar between the marks that is of particular relevance.[17] In this instance, it is the distinctiveness of the first component, 'DAY 1', which is particularly relevant, since that is the expression which the competing marks have in common.

46. 'DAY 1' is an expression defined as the first day or the beginning of something.[18] Although it is an established, dictionary-defined expression, it is arbitrary in relation to the relevant services, being neither descriptive nor allusive of them and bearing no obvious relationship to them. Accordingly, 'DAY 1' possesses a medium to high degree of inherent distinctive character.

47. The word 'EDITIONS' does not materially increase the distinctive character of the earlier mark, particularly given that the concept it conveys is not particularly distinctive.

[17] *Kurt Geiger v A-List Corporate Limited*, BL O-075-13, [39] to [40].
[18] See Exhibit NB1 for the definition entered in English dictionaries.

Accordingly, the earlier mark has a medium to high degree of inherent distinctive character overall.

Conclusions on Likelihood of Confusion

48. In assessing the likelihood of confusion, I must adopt the global approach advocated by case law and take into account the fact that marks are rarely recalled perfectly, the consumer relying instead on the imperfect picture of them that they have kept in mind.[19] I must also consider the average consumer of the goods and services, the nature of the purchasing process and bear in mind that a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa.[20]

49. Making an assessment as to the likelihood of confusion is a matter of considering the relevant factors from the viewpoint of the average consumer and determining whether they are likely to be confused. The global assessment is supposed to emulate what happens in the mind of the average consumer on encountering the later mark with an imperfect recollection of the earlier mark in mind. It is not a process of analysis or reasoning, but an impression or instinctive reaction.[21] The relative weight of the factors is not laid down by law but is a matter of judgement for the tribunal on the particular facts of each case.[22]

50. It is well established that direct confusion arises where the consumer mistakes one mark for the other; whereas indirect confusion arises where the consumer recognises that the marks are different, but because of their similarities, believes that the goods or services bearing the later mark come from the same undertaking, or from an economically linked undertaking.[23] For example, the consumer concludes that the later mark is another brand of the owner of the earlier mark because the marks share a common element.[24]

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[19] *Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V.*, Case C-342/97, paragraph 27

[20] *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer Inc*, Case C-39/97, paragraph 17

[21] *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17, paragraph 81

[22] See paragraph 33 of the Appointed Person's decision in Case No. O/049/17, (*Rochester Trade Mark*).

[23] *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, paragraph 10

[24] *L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10, paragraphs 16-17 wherein Mr Iain Purvis QC, sitting as the Appointed Person, dealt with the distinction between direct and indirect confusion. In *Liverpool Gin Distillery* Arnold LJ approved Mr Purvis's formulation but added at [12] that it is a helpful explanation of the concept of indirect

51. I summarise my findings as follows:

(1) the relevant competing services are either identical or similar;

(2) the average consumer is a member of the general public or a business user, who will pay a medium degree of attention during the selection of the services;

(3) the selection process is predominantly visual, although I do not discount an aural component;

(4) the marks coincide in their shared first element ‘DAY 1’ / ‘Dayone’. They share visual identity in respect of the word ‘day’. On account of the identified differences, the marks are visually similar overall to a medium degree.

(5) ‘DAY 1’ and ‘Dayone’ are aurally and conceptually identical. The differences introduced by the words ‘EDITIONS’ and ‘Fulfillment’ render the marks aurally and conceptually similar to a medium degree overall.

(6) the component common to the competing marks (which is the element of particular relevance), namely the expression ‘DAY 1’, possesses a medium to high degree of inherent distinctiveness.

52. As regards the visual difference between ‘DAY 1’ and ‘Dayone’, the numeral ‘1’ and the word ‘one’ are plainly different in appearance. However, they are interchangeable representations of the same number, and the average consumer is unlikely to keep in mind whether ‘one’ was presented numerically or in words. Even if that difference is noticed and recalled, it does not alter the meaning or distinctive character of the expression ‘day one’ and is likely to be attributed to a marketing choice rather than differing commercial origins.

53. The words ‘EDITIONS’ and ‘Fulfillment’ also introduce visual, aural and conceptual differences. However, ‘Fulfillment’ is allusive when viewed in the commercial context of the Applicant’s services, while the concept conveyed by ‘EDITIONS’ is not particularly distinctive. Both words also follow the respective ‘DAY 1’ and ‘Dayone’ elements, which appear at the beginnings of the marks, where consumer attention is likely to be focused. Bearing in mind that the shared expression ‘day one’ possesses

confusion, which has frequently been cited subsequently, but as Mr Purvis made clear it was not intended to be an exhaustive definition.

a medium to high degree of inherent distinctive character, the average consumer is likely to perceive 'EDITIONS' and 'Fulfillment' as secondary elements qualifying the respective 'DAY 1' and 'Dayone' designations. The shared expression is therefore likely to remain the principal point by which the marks are recalled.

54. The differences between the marks, particularly those arising from the words 'EDITIONS' and 'Fulfillment', are sufficient to enable the average consumer to distinguish one mark from the other. I therefore find no likelihood of direct confusion.

55. However, in my view, a significant proportion of the relevant public is likely to be indirectly confused. I bear in mind that indirect confusion may arise where the common element is similar, rather than identical, owing to imperfect recollection.[25] For the reasons given above, the relevant consumer is likely to attribute the differences introduced by 'EDITIONS' and 'Fulfillment' to sub-branding, brand extension or range segmentation by the same or economically linked undertaking trading under the 'DAY 1'/ 'Dayone' designation, rather than to the services originating from different undertakings. Accordingly, I find that there is a likelihood of indirect confusion.

OUTCOME

56. The opposition is successful against all contested Class 35 services except *"Business networking"*. Subject to any appeal, contested trade mark application number 4180288 shall:

(1) be **refused registration** in respect of the following services:

Class 35

Advertising; Advertising and marketing; Advertising and publicity; Advertising of business web sites; Direct marketing; Internet marketing; Provision of an online marketplace for buyers and sellers of goods and services; Telemarketing; Marketing analysis services; Marketing services; Procurement of contracts for the purchase and sale of goods and services for others; Retail services for pharmaceutical, veterinary and sanitary preparations and medical supplies; Wholesale services for pharmaceutical,

[25] *Aveda Corporation v Dabur India Limited* [2013] EWHC 589 (Ch); *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271).

veterinary and sanitary preparations and medical supplies; Import and export agencies.

(2) **proceed to registration** in respect of the following goods and services:

Class 25

Belts [clothing]; Inner soles; Down suits; Gym suits; Swim suits; Pajamas; Sports shoes; Shapewear; Tee-shirts; Slippers; Footwear; Undergarments; Sweaters; Blouses; Costumes; Hats; Socks; Gloves; Scarves; Eye masks.

Class 35

Business networking.

COSTS

57. The Opponent has been successful in respect of all but one of the Applicant's Class 35 services and is therefore entitled to an award of costs. In the circumstances I award the Opponent the sum of £900 based on the contributory scale set out in Tribunal Practice Notice 1/2023. This sum is calculated as follows:

Official fee	£100
Preparing the Statement of Grounds and considering the Counterstatement	£250
Preparation of evidence	£200
Preparation of submissions in lieu of a hearing	£350
TOTAL	**£900**

58. I therefore order Ningbo Anrui Information Technology Co. Ltd. to pay Amazon Technologies, Inc. the sum of **£900** within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 27th day of October 2026

Daniela Ferrari

For the Registrar