O/0966/26

TRADE MARKS ACT 1994

IN THE MATTER OF
TRADE MARK APPLICATION NO. 4007646
IN THE NAME OF GLOCE LTD
TO REGISTER AS A TRADE MARK

Gloce

IN CLASS 35

AND

IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 446759
BY HAWKER

BACKGROUND AND PLEADINGS

1. On 28 January 2024, Gloce Ltd ("the applicant") applied to register the trade mark shown on the cover page of this decision in the United Kingdom. The application was accepted and published for opposition purposes on 9 February 2024, in respect of services in class 35, as listed in the table under paragraph 12 of this decision.

2. The application is opposed by Hawker ("the opponent"). The opposition was filed on 9 April 2024 and is based upon section 5(2)(b) of the Trade Marks Act 1994 ("the Act"). The opposition is directed against all of the services in the application. The opponent relies upon its UK designations of the following three International Registrations ("IRs"):



International Registration No.: WO1638943
International Registration date: 10 May 2021
Priority claimed from FR 4709353, with a priority date of 7 December 2020
UK Date of Designation: 10 May 2021
Date protection conferred in the UK: 23 June 2022
Protected for services in classes 35, 38, 39, 41 and 42
Relying on services in class 35 only, as listed in the table under paragraph 12 of this decision.
(The '943 mark); and



International Registration No.: WO1641304

International Registration date: 10 May 2021

Priority claimed from FR 4709381, with a priority date of 7 December 2020

UK Date of Designation: 10 May 2021

Date protection conferred in the UK: 20 April 2022

Protected for services in classes 35, 38, 39, 41 and 42

Relying on services in class 35 only, as listed in the table under paragraph 12 of this decision.

(The '304 mark); and



International Registration No.: WO1638938

International Registration date: 10 May 2021

Priority claimed from FR 4707547, with a priority date of 1 December 2020

UK Date of Designation: 10 May 2021

Date protection conferred in the UK: 23 June 2022

Protected for services in classes 35, 38, 39, 41 and 42

Relying on services in class 35 only, as listed in the table under paragraph 12 of this decision.

(The '938 mark).

3. The above marks qualify as earlier marks under section 6(1) of the Act. As none of these trade marks had been protected for more than five years at the date the

application was filed, they are not subject to the use provisions contained in section 6A of the Act.

4. The opponent elected not to provide any further information on the initial filing of the opposition as to why it considered there to be a likelihood of confusion between the contested mark and any of its earlier marks, nor why it considered the marks or services at issue to be similar.

5. The applicant filed a counterstatement denying that there is any likelihood of confusion between the marks, and requests that the opposition under section 5(2)(b) be dismissed.

6. Both parties filed written submissions during the evidence rounds which will be referred to as and where appropriate during this decision. Neither party requested a hearing and neither party filed written submissions in lieu of a hearing. This decision is taken following careful consideration of the papers on file.

7. In these proceedings, the opponent is represented by Abion UK Limited[1], the applicant is unrepresented.

DECISION

8. 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.

[1] I note that Lada & Parry LLP filed all of the papers on behalf of the opponent during the course of these proceedings.

Section 5(2)(b)

9. Section 5(2)(b) is relied on and reads as follows:

> "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".

10. Section 5A states:

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

11. 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 to mind the earlier mark, is not sufficient;

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

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

Comparison of services

12. The services to be compared are:

Applicant's services
Class 35 *Online retail services for downloadable virtual clothing; Online retail store services in relation to clothing; Online retail services in relation to downloadable virtual footwear; Online retail services for downloadable digital music; Online retail store services relating to clothing; Online retail services in relation to downloadable virtual handbags; Online retail services in relation to downloadable virtual clothing; Online retail services relating to jewelry; Online retail services in relation to downloadable virtual headwear; Online retail services relating to handbags; Online retail services relating to cosmetics; Online retail services relating to clothing; Online retail services relating to toys; Online marketing; Online retail services in relation to downloadable virtual works of art; Business management of wholesale and retail outlets; Online retail services relating to luggage; Online advertising; Online retail services for downloadable ring tones; Online retail store services relating to cosmetic and beauty products; Advertising the goods and services of online vendors via a searchable online guide; Online retail services for downloadable and pre-recorded music and movies; Business management of retail outlets; Retail services in relation to downloadable virtual footwear; Online advertising services; Retail services in relation to downloadable virtual handbags; Retail services in relation to downloadable virtual clothing; Providing a searchable online advertising guide featuring the goods and services of online vendors; Online business networking services; Retail services in relation to downloadable virtual headwear; Retail store services in the field of clothing; Online ordering services; Providing a searchable online advertising guide featuring the goods and services of other on-*

line vendors on the internet; On-line advertising; Retail of third-party pre-paid cards for the purchase of entertainment services; Administration of the business affairs of retail stores; Online advertisements; Retail services in relation to downloadable electronic publications; Retail of third-party pre-paid cards for the purchase of multimedia content; Unmanned retail store services relating to food; Retail of third-party pre-paid cards for the purchase of clothing; Unmanned retail store services relating to drink; Mail order retail services for cosmetics; Retail services connected with the sale of furniture; Mail order retail services for clothing; Retail services in relation to downloadable virtual works of art; Retail of third-party pre-paid cards for the purchase of telecommunication services; Retail services for computer software; Rental of advertising space on-line; Compilation of online business directories; On-line advertising and marketing services; Retail services in relation to games; Business management of wholesale outlets; Retail services via catalogues related to beer; Shop retail services connected with carpets; Retail services in relation to smartphones; Retail services relating to jewelry; Mail order retail services for clothing accessories; Retail services in relation to jewellery; Online advertising on a computer network; Arranging commercial transactions, for others, via online shops; Promotion, advertising and marketing of on-line websites; Online community management services; Providing online marketplaces for sellers of goods and or services; Business information services provided online from a computer database or the internet; Business information services provided online from a global computer network or the internet; Providing searchable online advertising guides; Retail services connected with stationery; Retail services in relation to computer software; Online ordering services in the field of restaurant take-out and delivery; Online advertising on computer networks; Retail services in relation to computer hardware; Retail services in relation to footwear; Retail services in relation to downloadable music files; Mail order retail services related to beer; Retail services in relation to pet products; Retail services in relation to fashion accessories; Retail services via global computer networks related to beer; Provision of an online marketplace for buyers and sellers of goods and services; Retail services in relation to coffee; Retail services in relation to bakery products; Mail order retail services connected with clothing accessories; Retail services relating to bakery products; Retail services in relation to clothing; Retail services in relation to beer; Retail

services relating to furniture; Retail services relating to clothing; Retail services in relation to furniture; Retail services in relation to saddlery; Retail service connected with the sale of vehicles via a dealership; Retail services in relation to gardening products; Retail services relating to delicatessen products.

Opponent's services (identical to all three IRs)

Class 35

Analysis of commercial business management; marketing analysis; marketing assistance; marketing campaigns; collection of information for companies; design of marketing strategies; advice relating to advertising and marketing; advice relating to sales promotion; consultancy regarding commercial analysis; development of marketing strategies and concepts; provision of advice with respect to sale methods and techniques; commercial management of retail sale outlets; management of promotional and incentive sale programs; commercial management and consultancy relating to marketing activities; commercial information relating to sales methods; marketing of goods; provision of sales analysis; providing sale staff; organization and conducting of marketing promotional events for others; organization and conducting of promotional events; business management for freelance service providers; sales promotion for others; conducting of marketing studies; marketing agency services; organization and conducting of advertising events; consulting services for companies relating to strategic marketing; advertising, marketing and promotional consultancy, advisory and assistance services; development and implementation of marketing strategies for third parties; event marketing services; sales promotion services at point of purchase or sale, for others; marketing services relating to product presentation to the public; advertising; commercial administration; arranging newspaper subscriptions [for others]; bill-posting; employment agencies; advertising mail; shop window dressing; demonstration of goods; dissemination of advertisements; distribution of advertising material [leaflets, prospectuses, printed matter, samples]; organization of trade fairs for commercial or advertising purposes; computer file management; business information; rental of advertising material; rental of advertising time on all communication media; rental of advertising space; modeling services for advertising or sales promotion purposes; market study; market research; updating

of advertising material; opinion polling; organization of exhibitions for commercial or advertising purposes; sales promotion [for others]; retail, wholesale, mail order, online sales services connected with the sale of cosmetics, food, textiles; publication of advertising texts; online advertising on a computer network; advertising by mail order; radio advertising; television advertising; collection of data in a central file; public relations; document reproduction; news clipping services; communication strategy services; marketing strategy services; presentation of goods on all communication media, for retail purposes; advisory services for the creation, conduct and execution of advertising or promotional campaigns; drafting of media plans (advertising); marketing communication services; marketing study services; advertising analysis service, publicity text writing service; market research services; telemarketing services; organizing subscriptions to telecommunication services for others; dissemination of advertising documents; sales promotion service (for others); procurement services for others (purchasing goods and services for other businesses); marketing services; business auditing services (commercial analysis); sociological and socio-economic analysis and expert appraisal services for advertising and commercial purposes; advertising sponsorship; advertising event creation services; advertising text creation services; advertising campaign creation services; advisory and consulting services with respect to employment, careers guidance and development; personnel recruitment services; recruitment and placement of temporary, interim and permanent personnel; information relating to personnel recruitment; outplacement, namely, services to assist the professional retraining of unemployment executives; office functions; interim business management; conducting of (psychological) assessments of attitudes and behaviors in connection with personnel placement and evaluations; temporary employment agencies; secondment of personnel; information with respect to personnel; employment agency services and advice with respect to personnel and personnel management; recruitment and selection, also via psychological methods; advice on commercial organization and administration; advertising creation services; creation and development services with regard to advertising and commercial communication strategies; marketing, advertising, content development and brand support in the field of brand communication strategy services; brand services, namely, brand analysis and support for

businesses; customer segmentation services, namely, marketing services in the nature of conducting follow-up analyses of consumer behavior and consumer trends; commercial assistance and advisory services relating to analysis of consumer buying interests and habits; advertising management services, namely, management of multimedia commercial and advertising material and content; media planning and purchasing services; rental of advertising time and advertising spaces on all communication media; creation, writing, editing, publication and distribution of advertising texts, visual content, advertising content and material (leaflets, prospectuses, printed matter, direct mail campaigns, media kits, samples); support services in connection with the optimization of traffic on online sites; provision, compilation and analysis of commercial information, commercial statistics and information of a commercial nature; organization, development and management of events for commercial or advertising purposes; organizational assistance, development and conducting of events for commercial or advertising purposes; commercial lobbying services; advisory services in connection with the search for advertising sponsorship; consultancy in connection with social media strategy; services provided by consultants relating to marketing and social media strategy; commercial business appraisal; evaluations relating to business matters; commercial evaluation services for brands; business strategy services; arranging pop-up sales; personnel recruitment services; information relating to personnel recruitment; assessment of professional skills.

13. Pursuant to section 60A of the Act, the services are not to be automatically regarded as being similar to each other on the ground that they appear in the same class, nor automatically regarded as dissimilar from each other on the ground that they appear in different classes.

14. Where the services in the specification of one party are included in a broader term from the other party's specification, those services are considered to be identical: see *Gérard Meric v OHIM,* Case T-133/05 at [29].

15. In *Canon*, Case C-39/97, the Court of Justice of the European Union ("CJEU") stated that:

> "23. In assessing the similarity of the goods or services concerned, … all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary".

16. Additionally, the factors for assessing similarity between the services identified in *British Sugar Plc v James Robertson & Sons Limited* ("*Treat*") [1996] R.P.C. 281 include an assessment of the users and the channels of trade of the respective services.

17. In the case of services, the correct approach in considering the specification is to confine terms which are not clear or precise to the substance or core of their possible meanings.[2]

My approach

18. In its written submissions, the opponent submits that "the opposed trade mark application is designating services identical and/or highly similar to services designated by the … earlier "GLOBE" trade marks". However, it has not provided any breakdown as to how or to what degree it considers each individual term to be similar. That being said, I consider there to be an overlap in at least some of the services at issue, for example, the applicant's "*Business information services provided online from a computer database or the internet; Business information services provided online from a global computer network or the internet*" would be encompassed by the opponent's broad term "*business information*", rendering the services identical as per the principle outlined in *Meric*. The applicant's "*Online retail store services relating to cosmetic and beauty products*" are also encompassed by the opponent's "*retail, wholesale, mail order, online sales services connected with the sale of cosmetics, food, textiles*" and as such these services are identical as per *Meric*. I also find that the applicant's "*Online advertising*" to coincide in its general nature,

[2] *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1) [2024] UKSC 36*, at [365].

purpose and method of use to the opponent's "*advertising, marketing and promotional consultancy, advisory and assistance services*", with an overlap in users and trade channels. The same can be said of the applicant's various retail services with the opponent's "*presentation of goods on all communication media, for retail purposes*" resulting in a medium degree of similarity between each of the aforementioned services.

19. I do not intend to undertake a comparison of the competing services at this stage of the decision. I will instead proceed on the basis most favourable to the opponent, i.e. that at least some of the contested services are identical or similar to at least a medium degree to those covered by the earlier marks. If the opposition fails even where the services are considered similar to a medium degree or higher, it follows that the opposition will also fail where the services are found to be similar to a lesser degree, or are considered to be dissimilar.[3] However, if a likelihood of confusion is found, I will proceed to assess the services at issue in full.

The average consumer and the nature of the purchasing act

20. The average consumer is a legal construct, deemed to be reasonably well informed and reasonably circumspect. 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, where he pointed out that, inter alia, the average consumer's level of attention is likely to vary according to the category of goods or services in question.

21. The applicant submits that the opponent's services are Business-to-Business (B2B) offerings such as advertising consultancy, recruitment, market analysis, and management of promotional events, while its own services are Business-to-Consumer

[3] Under section 5(2)(b), a degree of similarity between the services is essential for there to be a finding of likelihood of confusion: see paragraph 49 of *eSure Insurance v Direct Line Insurance,* [2008] ETMR 77 CA.

(B2C) offerings, specifically in online retail.[4] The opponent has made no submissions regarding the potential average consumer(s) of the services of either party.

22. In my view, the average consumer for the competing services will be businesses, in relation to, inter alia, the provision of business information and the like, as well as the general public (particularly in relation to the retail services). This will, of course, depend on the particular service being procured. The services will be encountered through predominantly visual means, such as signage on physical outlets as well as on internet websites, although I do not discount aural considerations, such as word of mouth recommendations or through tele-sales. The business consumer in particular, bearing in mind that their own reputation will be of high importance to them, is likely to base their selection on the suitability of the services, as well as the cost and the reputation of the provider. Depending on the exact nature and importance of the services to the consumer and the reason for them procuring the given service selected, the level of attention is likely to vary between a medium to high degree for both the general public and the business consumer.

Comparison of marks

23. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated in *Bimbo SA v OHIM* Case C-591/12P, that:

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

[4] The applicant's written submissions filed on 19 November 2024.

24. 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.

25. The respective trade marks are as follows:

<table>
<tr><th>Opponent's trade marks</th><th>Applicant's trade mark</th></tr>
<tr><td>The '943 mark:

</td><td rowspan="3">Gloce</td></tr>
<tr><td>The '304 mark:

</td></tr>
<tr><td>The '938 mark:

</td></tr>
</table>

26. I note the opponent's submission that "the taglines "GROUPE", "FACTORY", and "TRAVEL RETAIL" are secondary as they are written in a different font and below the

distinctive element present in all the trade marks".[5] It goes on to submit that therefore, the signs to be compared are as follows:

Earlier trade marks	Trade mark application
GLOBE GLOBE GLOBE	GLOCE

[6]

27. As guided by the case law outlined under paragraph 23 of this decision, I will proceed to compare the trade marks at issue, as a whole (i.e. as represented in the table under paragraph 25 of this decision), taking into account the overall impressions created by the marks whilst bearing in mind their distinctive and dominant components. I also note that in *L&D SA v OHIM* [2008] E.T.M.R. 62, the CJEU stated that:

> "55 Furthermore, inasmuch as L & D further submits that the assessment of the Court of First Instance, according to which the silhouette of a fir tree plays a predominant role in the ARBRE MAGIQUE mark, diverges from the case-law of the Court of Justice, it need only be stated that, contrary to what the appellant asserts, that **case-law does not in any way show that, in the case of mixed trade marks comprising both graphic and word elements, the word elements must systematically be regarded as dominant**." (**My emphasis**).

Overall impression

28. Each of the opponent's marks are composite marks:

[5] At page 5 of the opponent's written submissions dated 20 September 2024.
[6] Opponent's written submissions dated 20 September 2024.

- The ‘943 mark comprises a device element which is made up of the top half of a circular hoop infilled in blue, with its bottom counterpart appearing in white. This bottom hoop is flanked on the outside by a larger semi-circular blue hoop, with a solid blue semi-circle positioned within. The device is positioned centrally above the word “GLOBE”, which is presented in capital letters in a relatively standard black typeface. Directly beneath and to the right of the word “GLOBE” is the word “GROUPE”, presented in the same black typeface, but in a much smaller font size. Given its prominent position at the top of the mark as a whole, the device element is clearly visible and will not go unnoticed. The word “Groupe” will not be entirely overlooked, however, it makes a lesser contribution to the overall impression. To my mind, it is the word “GLOBE” to which the eye is drawn and which dominates and plays the greater role in the overall impression of the mark as a whole, while the device element will make a lesser, but still significant, contribution.[7]
- The ‘304 mark consists of the word “GLOBE” positioned directly and centrally above the word “FACTORY”. The letters G L B E are presented in capital letters in a relatively standard black typeface, while the central capital letter “O” is infilled in the colour green. The word “FACTORY” is presented in the same, albeit finer, typeface, also in the colour green. In spite of the bolder typeface used for the “GLOBE” element, and the presence of the colour green in both word elements, the stylisation of the words does not add greatly to the trade mark message conveyed by the words. To my mind, the words will be seen as a unit, with neither word dominating. As such, the overall impression of the mark lies in the words themselves.
- The ‘938 mark consists of the word “GLOBE” positioned directly and centrally above the words “TRAVEL RETAIL”. The letters G L B E are presented in capital letters in a relatively standard black typeface, while the central capital letter “O” is infilled in the colour pink. The words “TRAVEL RETAIL” are presented in the same, albeit finer, typeface, also in the colour pink. While some of the letters are conjoined (such as the A and V in TRAVEL), the words are clearly discernible. In relation to retail services which concern travel, these

[7] See *Wassen International Ltd v OHIM (SELENIUM-ACE)*, Case T-312/03, at [37].

two words are non-distinctive. However, to the unrelated services, I consider them to be distinctive. That being said, in my view, it is the word "GLOBE" to which the eye is drawn and which plays the greater role in the overall impression of the mark as a whole, while the words "TRAVEL RETAIL" will make a lesser, but still significant, contribution in relation to non-retail travel-related services.

29. The applicant's mark consists of the single word "Gloce", presented in a standard black typeface.[8] As the mark contains no other elements, the overall impression therefore rests in the word itself.

30. I remind myself that in *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02, the General Court ("GC") noted that the beginning of words tend to have more visual and aural impact than the ends. However, I accept that this is not always the case, and it is not a "hard and fast rule of law", but rather "a practical rule of thumb".[9]

31. I note the opponent's written submissions regarding the visual and aural comparison of the marks, and the reference to the findings of similarity by this Tribunal in other proceedings, being the *CANDO* and *UNIVA* trade mark cases.[10] However, I do not find these decisions to be on all fours with the matter before me. Further, I am not bound by previous findings of the Tribunal,[11] and I draw my own conclusions on the similarity of the marks before me, as rationalised in the following paragraphs.

Visual comparison

32. All three earlier marks share a degree of visual similarity by way of the word "GLOBE" with the applicant's "Gloce", which differ by one letter. I do not consider the difference in capitalisation/title case is relevant to the visual impact, as the registration

[8] I note that registration of a mark in black and white covers use of the mark in colour: *Specsavers* [2014] EWCA Civ 1294, at [5].
[9] See the appeal decision of Dr Brian Whitehead, sitting as the Appointed Person, in case BL O/0648/24, at [21].
[10] I also note the applicant's submissions regarding the same marks to support a conclusion of no likelihood of confusion overall.
[11] See the appeal decision of Phillip Johnson, sitting as the Appointed Person, in case BL O/669/19, at [29].

of a word mark gives protection irrespective of capitalisation: see *Bentley Motors Limited v Bentley 1962 Limited*, BL O/158/17. I note that a word mark is not limited to any particular script or font, although normal and fair use of word-only marks should not be taken to include stylisation that goes beyond normal and fair use.[12] While I do not consider that the stylisation of the words themselves deviates from what would be seen as a "normal" font, to my mind, the infilled coloured letter "O" of the opponent's '304 and '938 marks goes beyond normal and fair use.

33. The earlier '943 mark contains the additional device element, which will not go unnoticed by the average consumer. Given its smaller typeface and position within the mark as a whole, the additional word "GROUPE" does not have the same visual impact as the other elements, although I do not consider that it will be entirely overlooked. Neither the device element nor the word "GROUPE" are present in the applicant's mark, which coupled with the difference in spelling between "GLOBE" and "Gloce", all serve to create a visual disparity between the marks. Considering the marks as a whole, I find there to be a low degree of visual similarity between them.

34. The '304 mark contains the green-infilled letter "O" in the word "GLOBE" which stands out in the otherwise black typeface of the remaining letters, and the additional word "FACTORY", presented in the contrasting colour green, neither of which will go unnoticed by the average consumer. As both of these components are absent from the applicant's mark, this creates a point of visual difference, as does the different fourth letters of the respective words "GLOBE" and "Gloce". Considering the marks as a whole, I find there to be a low degree of visual similarity between them.

35. The '938 mark contains the pink-infilled letter "O" in the word "GLOBE" which stands out in the otherwise black typeface, and the additional words "TRAVEL RETAIL", presented in the contrasting colour pink, which will not go unnoticed by the average consumer. These components are absent from the applicant's mark, and create a point of visual difference. Once again, there is a further visual disparity between the words "GLOBE" and "Gloce". Considering the marks as a whole, I find there to be a low degree of visual similarity between them.

[12] See *Migros-Genossenschafts-Bund v EUIPO*, Case T-189/1.

Aural comparison

36. The device element in the earlier '943 mark will not be voiced. I also consider that some consumers may not articulate the word "GROUPE" and would therefore only pronounce the word "GLOBE", in the usual way. It is difficult to know exactly how the consumer would pronounce the applicant's mark, although I note that the applicant submits in its written submissions that it is pronounced "Glow-ss". In whichever way the applicant's mark is articulated, I consider there to be a discernible difference between the sounds made by the sibilant letter "c" in the contested mark "Gloce" and the letter "b" in the earlier "GLOBE" marks. To those consumers who do not articulate the "GROUPE" element of the earlier mark, I consider the marks to be aurally similar to a medium degree, being lower to those consumers who voice both word elements which make up the '943 mark.

37. I consider that the '304 mark will be voiced in its entirety, as two words, "GLOBE FACTORY", compared to the single word of the applicant's mark. Aurally, I consider the marks to be similar to a low degree.

38. I consider that some consumers may only voice the "GLOBE" element of the '938 mark and omit to voice the words "TRAVEL RETAIL", resulting in a medium degree of aural similarity to the contested mark. To those consumers who articulate the earlier mark in its entirety, as five syllables "GLOBE TRAVEL RETAIL", the marks are aurally similar to a low degree.

Conceptual comparison

39. For a conceptual message to be relevant, it must be capable of immediate grasp by the average consumer - Case C-361/04 P *Ruiz-Picasso and others v OHIM* [2006][13].

[13] Paragraph 56.

40. The opponent has offered no submissions regarding the concept of either the contested mark or any of the earlier marks relied upon. The applicant submits that "GLOCE" derives from Middle English, being an archaic term derived from "gloze", meaning a gloss or explanatory note. However, it has not provided any evidence to support this. In my view, a significant proportion of the average consumer will be unaware of the meaning attributed to the contested mark by the applicant and will instead consider the word "gloce" to be an invented word with no easily distinguishable semantic concept.

41. The word "GLOBE" which is present in all three earlier marks is a dictionary-defined word with a clearly recognisable concept, referring to a ball-shaped object with a map of the world on it, or something large and round in shape. I also consider that in relation to the earlier '304 mark, the words "GLOBE FACTORY" form a unit, with the word "GLOBE" qualifying the word "FACTORY", and thus conveying the idea of a factory which produces globes.

42. On consideration of the above, and given that I do not find that the applicant's "Gloce" mark would immediately bring to mind any singular clear significance for the average UK consumer, I do not find any of the competing marks to be conceptually similar to the applicant's mark.[14]

Distinctive character of the earlier marks

43. The distinctive character of a trade mark can be appraised only, first, by reference to the goods/services in respect of which registration is sought and, secondly, by reference to the way it is perceived by the relevant public – *Rewe Zentral AG v OHIM (LITE)* [2002] ETMR 91. The factors I must take into account in assessing the level of distinctive character were set out by the CJEU in *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97:

> "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

[14] See *Unicorn Studio Inc v Veronese (Societe par Actions Simplifee)*, [2024] EWHC 1098 (Ch), at [16].

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)."

44. Registered trade marks possess varying degrees of inherent distinctive character, being lower where they are allusive or suggestive of a characteristic of the goods and/or services, ranging up to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use made of it. The opponent has not claimed that its marks have enhanced distinctiveness and no evidence of use has been filed. Therefore, I only have the inherent characteristics of the marks to consider.

45. The earlier marks all contain the same word "GLOBE", alongside the additional elements as outlined earlier in paragraph 28 of this decision. As mentioned earlier, I consider that the words "GLOBE FACTORY" in the '304 mark form a unit. The mark neither describes nor alludes to the services relied upon, and therefore, I consider that it enjoys a medium degree of inherent distinctive character.

46. For the remaining two marks, it is the distinctiveness of the common element that is important here: *Kurt Geiger v A-List Corporate Limited*, BL O/075/13. While the additional device element present only in the '943 mark elevates it slightly overall, it is on the comparison of the word "GLOBE" as the distinctive element of the earlier marks that the opponent bases the opposition, being the only element of the composite marks to bear any similarity to the contested mark "Gloce" in the overall comparison.[15] I do not consider that either the "GLOBE" element *solus* or the marks as a whole describe or allude to the services at issue and I therefore find the earlier marks to be inherently distinctive to a medium degree.

[15] See paragraph 26 of this decision.

Likelihood of confusion

47. There is no simple formula for determining whether there is a likelihood of confusion. It is clear that I must make a global assessment of the competing factors (*Sabel* at [22]), keeping in mind the interdependency between them 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 (*Canon* at [17]). I must consider the various factors from the perspective of the average consumer, bearing in mind 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 he has retained in his mind (*Lloyd Schuhfabrik* at [26]).

48. There are two types of possible confusion: direct, where the average consumer mistakes one mark for the other, or indirect, where the average consumer recognises that the marks are different, but assumes that the goods and/or services are the responsibility of the same or connected undertakings. The distinction between these was explained by Mr Iain Purvis Q.C. (as he then was), sitting as the Appointed Person, in *L.A. Sugar Limited v Back Beat Inc*, Case BL-O/375/10. He said:

> "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)."

49. The above are examples only which are intended to be illustrative of the general approach. These examples are not exhaustive but provide helpful focus.

50. As explained at paragraphs 18-19 of this decision, I have proceeded on the basis that the services at issue are either self-evidently identical/*Meric* identical or that they are at least similar. I considered the average consumer of the overlapping services to be both the general public and businesses, who would pay a medium degree of attention as a minimum[16] during the selection of those services, by predominantly visual means, although I also took into account aural considerations.

51. I found each of the competing marks to be visually similar to a low degree. I found the '943 and '938 marks to be aurally similar to the applicant's mark to a medium degree where only the "GLOBE" element of the earlier marks is voiced, being similar to a low degree where the opponent's marks are voiced in their entirety, and I

[16] I note that in relation to the assessment of the likelihood of confusion, it is the section of the public with the lowest level of attention which must be taken into consideration - Case T-247/12, *Argo Group International Holdings Ltd. v OHIM*.

considered the '304 mark to be aurally similar to the applicant's mark to a low degree. I did not find any of the competing marks to be conceptually similar. I considered each of the earlier marks to be inherently distinctive to a medium degree.

52. I have made a multi-factorial assessment of the various considerations in play. I take into account that the average consumer is unlikely to see the marks side-by-side and will therefore be reliant on the imperfect picture of them they have kept in their mind. I bear in mind the medium degree of attention (at its lowest) paid by the average consumer. Although I accept that conceptual differences do not neutralise previously established visual or aural similarities,[17] I consider the overall differences between each of the marks to be sufficient to avoid them being mistakenly recalled as each other. I find this particularly because the conceptual message conveyed by the "GLOBE" element of the opponent's marks will prompt the consumer to accurately recall it. I therefore find that there is no likelihood of direct confusion. I find this even for identical services, which offsets a lesser degree of similarity between the marks.

53. Taking into account the previously outlined guidance of Mr Iain Purvis Q.C. (as he then was), in *L.A. Sugar*, I will now consider whether there might be a likelihood of indirect confusion.

54. In *Duebros Limited v Heirler Cenovis GmbH,* BL O/547/17, Mr James Mellor Q.C. (as he then was), as the Appointed Person, stressed that a finding of indirect confusion should not be made merely because the two marks share a common element. In this connection, he pointed out that it is not sufficient that a mark merely calls to mind another mark. This is mere association not indirect confusion.

55. In *Liverpool Gin Distillery Ltd and others v Sazerac Brands, LLC and others* [2021] EWCA Civ 1207, Lord Justice Arnold referred to the comments of James Mellor QC (as he then was) sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said (at [16]) that "a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion". Lord Justice Arnold added that there must be "a proper basis" for

[17] *Nokia Oyj v OHIM*, Case T-460/07, at [66].

concluding that there is a likelihood of indirect confusion when there is no likelihood of direct confusion.

56. Keeping in mind the global assessment of the competing factors in my decision, and in particular the low degree of visual similarity, alongside the finding of no conceptual similarity, between the marks, not discounting the low to medium degree of aural similarity between them, it is my view that it is unlikely that the average consumer would assume that there is a connection between the parties. I acknowledge that the categories listed by Mr Iain Purvis Q.C. (as he then was) are not exhaustive, however, to my mind, there would be no logical reason for consumers (either members of the public or business consumers) to believe one mark is a brand extension of the other, or assume that there is an economic relationship between the undertakings. I therefore find no likelihood of indirect confusion in relation to any of the marks relied upon.

57. The opposition under section 5(2)(b) of the Act fails in its entirety.

Final Remarks

58. I bear in mind the finding of a low degree of visual similarity between the marks, as well as the medium degree of aural similarity (at best) and the finding that the marks are not conceptually similar, coupled with the medium degree of inherent distinctiveness of the earlier marks. For the avoidance of doubt, I would have reached the same conclusion on the likelihood of confusion even had I made a full comparison of the services and found them *all* to be identical. In light of my findings, it is unnecessary for me to return to undertake an assessment in relation to the services. I have already proceeded on the basis which best represents the opponent's interests: I do not consider that any further assessment would alter my decision in the opponent's favour.

CONCLUSION

59. The applicant has been successful. Subject to any successful appeal, the application by Gloce Ltd may proceed to registration.

COSTS

60. As the applicant has been successful, it is, in principle, entitled to a contribution towards its costs. For parties without professional representation, such costs would be based on £19 per hour,[18] reflecting the number of hours spent on the different stages of the opposition. In a letter to the parties dated 24 November 2024, the Tribunal invited the unrepresented applicant to indicate whether it wished to make a request for an award of costs and, if so, to complete and return the attached costs pro-forma by **23 December 2024**. The letter stated that "If the pro-forma is not completed and returned, costs, other than official fees arising from the action (excluding extensions of time), may not be awarded. You must include a breakdown of the actual costs, including accurate estimates of the number of hours spent on each of the activities listed and any travel costs". As the pro-forma was not returned, and as no official fees have been incurred in defence of the application, I make no order as to costs in this case.

Dated this 27th day of October 2026

Suzanne Hitchings
For the Registrar,
the Comptroller-General

[18] As was pertinent at the time these proceedings were launched and as set out in The Litigants in Person (Costs and Expenses) Act 1975 (as amended).