O/0973/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00004206336
IN THE NAME
BRANDS UTD LTD
TO REGISTER THE FOLLOWING TRADE MARK:



IN CLASSES 25, 35 AND 41

AND

IN THE MATTER OF OPPOSITION THERETO
UNDER NO. OP000456159
BY ADMIRAL SPORTSWEAR LIMITED

BACKGROUND AND PLEADINGS

1. On 20 May 2025, BRANDS UTD LTD [1] ("the Applicant") applied to register the trade mark shown on the cover page of this decision in the UK ("the Applicant's mark"). The application was accepted and published in the Trade Marks Journal on 30 May 2025 in respect of the following goods and services:

    25: Jerseys; Football jerseys; Jerseys [clothing]; Sports jerseys; Football shirts; Soccer shirts; T-shirts; Tee-shirts; Hoodies; Sweatshirts; Shoes; Sneakers [footwear]; Tracksuits; Tracksuit bottoms; Tracksuit tops; Shoes for leisurewear; Hats; Beanie hats; Scarves; Soccer shoes.

    35: Business management of sporting clubs; Business management of sports personalities; Management of professional athletes; Promotion of sports competitions and events.

    41: Sports coaching; Coaching in the field of sports; Organisation of sports events in the field of football; Organization of sports competitions; Organisation of sports tournaments; Sports club services; Organising of sports and sports events; Sports coaching services; Sports training; Organisation of football competitions; Fan club organisation; Fan clubs; Organization of soccer games; Soccer camps; Organization of soccer competitions; Arranging of soccer games; Conducting of soccer games; Training of sports players; Organization, arranging and conducting of soccer games; Providing sports facilities for playing polo.

2. On 22 August 2025, ADMIRAL SPORTSWEAR LIMITED ("the Opponent") opposed the application under section 5(2)(b) of the Trade Marks Act 1994 ("the Act"). The opposition is directed against only the goods listed within class 25 of the Applicant's specification listed above.

3. The Opponent relies upon the following trade mark ("the Opponent's mark"):

[1] See "PRELIMINARY ISSUE" section below.

L.A. AZTECS

UK Trade Mark registration number UK00004236940
Filing date: 21 July 2025
Priority date: 27 February 2025 [2]
Registration date: 14 November 2025
Relying on all of the goods for which the mark is registered, namely:

Class 25: Clothing, footwear, headwear; sportswear; football shirts; football shorts; football socks; t-shirts; sweatshirts; hoodies; tracksuits; track jackets; track pants.

4. By virtue of its earlier priority date, the above registration constitutes an earlier mark within the meaning of section 6 of the Act. However, as it had not been registered for five years or more at the filing date of the application, it is not subject to the use requirements specified within section 6A of the Act.

5. The Opponent submits that the respective marks are closely similar and cover goods that are identical such that there exists a likelihood of confusion on the part of the public.

6. The Applicant filed a counterstatement denying that the marks are identical or confusingly similar. The Applicant acknowledges that both marks cover goods in class 25 (clothing and apparel) but denies that this overlap creates a likelihood of confusion.

7. The Opponent is represented by Wilson Gunn, and the Applicant is represented by Scott Michaels trading as Football Is For The Fans. Only the Applicant filed evidence, and neither party requested a hearing. Both parties filed submissions in lieu. I make this decision having taken full account of all the papers, referring to them as necessary.

[2] This is claimed from the EUIPO under filing no. 019149241

EVIDENCE

8. The Applicant's evidence comprises six exhibits, A to F. Exhibits A and B are extracts from the Trade Mark Register showing the Applicant's UK figurative mark and the Opponent's earlier word mark. Exhibit C comprises correspondence between the parties concerning licensing, branding and other commercial discussions relating to the LOS ANGELES AZTECS brand. Exhibit D contains media coverage concerning the revival of the LOS ANGELES AZTECS football club and the Applicant's associated project prior to the filing of the Opponent's UK mark. Exhibits E and F comprise copies of US trade mark applications for word and figurative marks filed with the USPTO.

9. However, I do not consider this evidence to be of material assistance in determining the present proceedings. The assessment concerns the competing marks and their respective specifications. It does not require the Applicant to establish prior use of its mark, its commercial activities, or the history and development of the LOS ANGELES AZTECS brand. Further, the Opponent has not pleaded bad faith or otherwise placed the Applicant's motives or intentions in issue. Consequently, evidence concerning the Applicant's prior activities, its commercial intentions, or the parties' previous dealings does not bear upon the assessment I am required to undertake. Equally, the existence of corresponding applications in the United States does not affect the determination of these proceedings under UK trade mark law. Accordingly, while I have taken the evidence into account, it does not assist the Applicant.

PRELIMINARY ISSUE

10. The application was originally filed in the name of "Football Is For The Fans Ltd". However, ownership was subsequently transferred to "Brands United Corp" following the filing of a TM16 transfer of ownership form on 16 September 2025. In an email dated 15 October 2025, Scott Michaels, acting on behalf of "Brands United Corp", confirmed the undertakings. However, it has since come to light that a further TM16 form was filed on 1 October 2026 and subsequently processed on 02 October 2026, with the result that the current proprietor of the

application is “BRANDS UTD LTD”. Mr Michaels again confirmed the undertakings via an email dated 07 October 2026.

DECISION

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

11. The opposition is based upon section 5(2)(b) of the Act which reads as follows:

> “5(2) A trade mark shall not be registered if because –
>
> […]
>
> (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”

12. The following standard summary of the principles applicable to the assessment of the likelihood of confusion was approved by the Supreme Court in *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc & Anor*, [2025] UKSC 25:

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

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

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

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

(f) and beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

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

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

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

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

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

Comparison of goods

14. In the judgment of the Court of Justice of the European Union ("CJEU") in *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, Case C-39/97, the court stated at paragraph 23 of its judgment that:

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

15. The relevant factors identified by Jacob J. (as he then was) in *British Sugar Plc v James Robertson & Sons Limited* ("*Treat*") case, [1996] R.P.C. 281, for assessing similarity were:

(a) The respective uses of the respective goods or services;

(b) The respective users of the respective goods or services;

(c) The physical nature of the goods or acts of service;

(d) The respective trade channels through which the goods or services reach the market;

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

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

16. In *Gérard Meric v OHIM,* Case T-133/05, the General Court ("GC") stated that:

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

17. The goods to be compared are:

Opponent's Goods	**Applicant's Goods**
Class 25: Clothing, footwear, headwear; sportswear; football shirts; football shorts; football socks; t-shirts; sweatshirts; hoodies; tracksuits; track jackets; track pants.	**Class 25:** Jerseys; Football jerseys; Jerseys [clothing]; Sports jerseys; Football shirts; Soccer shirts; T-shirts; Tee-shirts; Hoodies; Sweatshirts; Shoes; Sneakers [footwear]; Tracksuits; Tracksuit bottoms; Tracksuit tops; Shoes for leisurewear; Hats; Beanie hats; Scarves; Soccer shoes.

18. The Opponent submits that each of the Applicant's goods is identical to its goods. The Applicant in its counterstatement acknowledges that both marks cover items in class 25 (clothing and apparel).

Jerseys; Football jerseys; Jerseys [clothing]; Sports jerseys; Football shirts; Soccer shirts.

19. It is self-evident that both specifications include the term “Football shirts”. These goods are identical. I also consider the Opponent’s terms “Clothing” and “sportswear” broad enough to cover the Applicant’s goods listed above. It is my view that the Applicant’s terms would be included in the more general category contained within the Opponent’s specification. The above goods of the Applicant are all types of clothing or sportswear and therefore, bearing in mind the principle of *Meric*, the respective goods are considered identical.

T-shirts; Tee-shirts.

20. The Opponent’s specification contains the term “t-shirts”, which appears identically in the Applicant’s specification. In addition, the Applicant’s specification includes “tee-shirts”, which is merely an alternative spelling of “t-shirts”. Consequently, both terms are identical to the corresponding term in the Opponent’s specification.

Hoodies; Sweatshirts.

21. These terms are identically reproduced in both parties’ specifications and are therefore identical.

Shoes; Sneakers [footwear]; Shoes for leisurewear; Soccer shoes.

22. I consider the Opponent’s broad term “footwear” to encompass all of the Applicant’s goods listed above. The Applicant’s goods fall within the scope of that general category and, as such, represent specific types of footwear. Accordingly, applying the principle established in *Meric*, I find the respective goods to be identical.

Tracksuits; Tracksuit bottoms; Tracksuit tops.

23. The term “tracksuits” appears in both parties’ specifications and is therefore identical. I also consider the Opponent’s “track jackets” to be alternative wording for the Applicant’s “tracksuit tops”, and the Opponent’s “track pants” to be alternative wording for the Applicant’s “tracksuit bottoms”. Although the terminology differs slightly, the respective terms designate the same goods and are therefore identical.

Hats; Beanie hats.

24. I consider the Opponent’s broad term “headwear” to encompass the Applicant’s goods listed above. The Applicant’s goods fall within the scope of that general category and, as such, represent specific types of headwear. Accordingly, applying the principle established in *Meric*, I find the respective goods to be identical.

Scarves

25. The Applicant’s “scarves” fall within the broad category of the Opponent’s “clothing”. As scarves are items worn on the body, whether for warmth, protection, or adornment, they are encompassed by that general term. Accordingly, applying the principle established in *Meric*, I find the respective goods to be identical. However, if I am wrong in treating “scarves” as items of clothing, and they are instead regarded as clothing accessories, I would nevertheless find them to be highly similar to “clothing”. The goods are worn on the person, may share the purposes of providing warmth and enhancing appearance or style, and are directed at the same users. They are also likely to share trade channels, being commonly offered by the same retailers and encountered alongside one another. Notwithstanding any difference in their precise nature, these shared characteristics are sufficient for me to find a high degree of similarity between the goods.

The average consumer and the nature of the purchasing act

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

27. In *Iconix* (cited above), the Supreme Court approved the comments of Arnold LJ in *Lidl Great Britain Ltd & Anor v Tesco Stores Ltd & Anor (Rev1)* [2024] EWCA Civ 262, where he pointed out that:

> (a) Consumers who are ill-informed or careless, or consumers with specialised knowledge or who are excessively careful are excluded from consideration;
>
> (b) The average consumer provides a standard which enables the courts to strike a balance between the competing interests involved, such as trade mark owners, their competitors and consumers;
>
> (c) The average consumer is neither a single hypothetical person nor a mathematical average; assessment from the perspective of the average consumer does not involve a statistical test. There is no single meaning rule and if, having regard to the perceptions and expectations of the average consumer, the court considers that a significant proportion of the relevant public is likely to be confused, a finding of infringement may properly be made;
>
> (d) Assessment from the perspective of the average consumer is intended to facilitate adjudication of trade mark disputes by providing an objective criterion, by promoting consistency of assessment and by enabling courts and tribunals to determine such issues so far as possible without the need for evidence;
>
> (e) The average consumer’s level of attention varies according to the category of goods or services in question; and

(f) the average consumer rarely has the opportunity to make direct comparisons between trade marks (or between trade marks and signs) and must instead rely upon the imperfect picture of the trade mark they have kept in their mind.

28. The Applicant submits that the relevant consumer consists of purchasers of heritage football apparel and club merchandise who are likely to be historically informed, emotionally invested, and familiar with distinguishing between different club identities, eras, crests, badge formats and revival projects. Consequently, it contends that such consumers will exercise a heightened degree of attention and will not be confused by marks that convey different overall impressions, even where the goods are identical. Further, the Applicant submits that the Opponent has incorrectly characterised the relevant consumer as a general clothing purchaser. Instead, it argues that the relevant goods comprise football shirts, sportswear, supporter apparel and heritage football merchandise, which consumers typically select with particular attention to branding, crest identity, club affiliation and historical presentation.

29. The Opponent submits that the Applicant has defined the relevant consumer too narrowly, given the breadth of the goods protected by the earlier mark. In any event, it argues that even a consumer who is historically informed, attentive and familiar with different club identities, badge formats, eras and heritage projects would, when encountering identical Class 25 goods sold under the marks “L.A. AZTECS” and “LOS ANGELES AZTECS”, assume that the goods originate from the same undertaking.

30. In my view, the average consumer of the goods at issue will be a member of the general public. Whilst I have taken account of the Applicant’s submissions above, the assessment of the average consumer must be made by reference to the goods as specified. In the present case, the specifications cover ordinary items of clothing, footwear and headwear, together with sportswear, including football shirts. The majority of these goods are ordinary consumer goods which will be purchased by members of the general public. Although certain goods, such as “soccer boots”, are more specialised in nature and are likely to be

purchased by consumers with an interest in football, I do not consider them to be so specialised as to be directed towards a distinct or specialist class of consumer. Accordingly, the average consumer for the goods at issue is a member of the general public. The goods are likely to be purchased through a range of retail outlets, including high-street clothing stores, specialist sports retailers and their online equivalents. The purchasing process will predominantly be visual in nature, as consumers will encounter and select the goods by viewing them either in-store or on webpages. However, I do not discount an aural component arising through word-of-mouth recommendations or discussions with sales staff.

31. The goods are likely to be purchased with a reasonable degree of regularity and at moderate price points. When making their selection, consumers are likely to consider factors such as style, fit, appearance, comfort and material quality. Taking these considerations into account, I find that the goods will be purchased with a medium degree of attention.

Comparison of trade marks

32. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the trade marks must be assessed by reference to the overall impressions created by the trade marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

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

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

34. The trade marks to be compared are as follows:

The Opponent's mark	The Applicant's mark
L.A. AZTECS	

35. The Applicant submits that the marks create materially different overall impressions. It argues that its mark is a composite heritage football crest comprising the full wording "LOS ANGELES AZTECS", the year "1973", a stylised Aztec bird emblem and a shield-shaped badge format, whereas the Opponent's earlier mark consists solely of the plain word sign "L.A. AZTECS". The Applicant contends that the crest presentation, emblem, founding year and full-form wording are distinctive and significant elements which contribute to the mark's overall impression and cannot be disregarded simply because the parties' marks share the word "AZTECS". It further submits that the year "1973" carries visual and conceptual significance by conveying a specific historical football identity and heritage, such that the Applicant's mark evokes a particular historic club era, whereas the Opponent's mark conveys only an abbreviated word sign.

36. The Opponent submits that the marks are visually highly similar because both are dominated by the term “AZTECS”, combined with geographical indicators referring to Los Angeles, namely “LOS ANGELES” in the Applicant’s mark and “L.A.” in the earlier mark. It argues that these verbal elements are effectively interchangeable, a point it says is reinforced by the Applicant’s acknowledgement that “L.A.” is an abbreviation of “LOS ANGELES”. The Opponent further contends that the remaining elements of the Applicant’s mark, namely the year “1973” and the stylised bird device, are of lesser significance and do not detract from the high degree of visual similarity arising from the shared and distinctive wording.

37. The Opponent also submits that aurally the comparison is between the verbal elements “LOS ANGELES AZTECS” and “L.A. AZTECS”. It states that they are highly similar given the interchangeability of “LOS ANGELES” on the one hand and “L.A.” on the other. Further it states that the average consumer would not pronounce the “1973” part of the mark, which would be seen as merely a date of establishment. To the extent that “1973” would be pronounced as part of the Applicant’s mark, there would remain a high degree of aural similarity between the marks.

38. The Opponent submits that the marks are conceptually identical. It argues that consumers will understand both marks as referring to the “Los Angeles Aztecs”, with “L.A.” simply being an abbreviation of “Los Angeles” and therefore conveying the same meaning as the Applicant's full wording. The Opponent contends that the additional elements in the Applicant's mark, namely the year “1973” and the stylised Aztec bird device, do not alter the conceptual significance of the verbal element “LOS ANGELES AZTECS”. It further argues that consumers will perceive the two marks as interchangeable long-form and abbreviated versions of the same name, and that the Applicant's attempt to identify a conceptual distinction is inconsistent with its own acknowledgement that “L.A. AZTECS” is an abbreviation of “LOS ANGELES AZTECS”.

Overall Impression

39. The Opponent's mark consists solely of the words "L.A. AZTECS". As there are no additional elements, its overall impression resides in the combination of the words themselves. However, it is considered that the word "AZTECS" makes the greater distinctive contribution, while "L.A." will be understood as a geographical reference to Los Angeles and therefore makes a lesser distinctive contribution.

40. The Applicant's mark consists of the words "LOS ANGELES AZTECS", with "AZTECS" displayed in a larger stylised font beneath "LOS ANGELES". The mark also includes the date "1973", together with a stylised bird device surmounted by a star, all contained within a shield-shaped device. In the mark as a whole, I consider the verbal elements to make the greater contribution to the overall impression as consumers are likely to focus primarily on the word elements that can be read [3], although the figurative elements remain significant and will not go unnoticed. Further, as with the Opponent's mark, I consider the word "AZTECS" to play the greater role in the overall impression of the mark. The words "LOS ANGELES", being geographical in nature, are of lesser distinctive significance.

Visual Comparison

41. While the marks differ in their overall visual presentation as a result of the figurative and decorative elements contained within the Applicant's mark, they share the identical word "AZTECS". The Opponent's mark includes the abbreviation "L.A.", whereas the Applicant's mark contains the words "LOS ANGELES". The Applicant's mark also includes the date "1973", which has no counterpart in the Opponent's mark. These additional figurative and stylised features serve to reduce the visual similarity between the marks. Taking account of the overall impressions conveyed by the marks as a whole, I consider them to be visually similar to a low degree.

[3] *Migros Genossenschafts-Bund v EUIPO*, T-68/17

Aural Comparison

42. The Opponent's mark consists of the letters "L.A." and the word "AZTECS" which will ordinarily be pronounced in four syllables, with 'L.A.' articulated as two letters. I find this to be the case because of the full stops between the letters, as well as average consumer's familiarity with "L.A." as a common abbreviation for Los Angeles. The word "AZTECS" is an ordinary dictionary word and is likely to be pronounced in the usual manner.

43. The Applicant's mark is likely to be articulated as "LOS ANGELES AZTECS", comprising six syllables, where the date "1973" is not verbalised. In my view, a significant proportion of consumers will pronounce the mark in this manner, given the date's secondary position and its likely perception as a year of significance rather than wording by which the mark would ordinarily be spoken. For the avoidance of doubt, I am not suggesting that the average consumer will overlook or fail to notice the date "1973". Rather, whilst the date will be perceived as part of the mark, I consider it unlikely that consumers will verbalise it when referring to the mark. The word "AZTECS" will be pronounced identically in both marks, although the Applicant's mark differs in that "LOS ANGELES" will be spoken in full rather than abbreviated as "L.A.". The figurative elements of the Applicant's mark will not be articulated. Taking into account the overall impressions of the marks, I find them to be aurally similar to a medium degree.

Conceptual Comparison

44. Conceptually, both marks contain a reference to Los Angeles, with the Opponent's mark using the abbreviation "L.A." and the Applicant's mark using the words "LOS ANGELES" in full. As these geographical elements refer to the same location, they do not create a conceptual distinction between the marks. In addition to this, both marks contain the word "AZTECS" which, in my view, would be understood by the average consumer as a reference to an indigenous group of people (the Aztecs) who are historically associated with originating from central Mexico. In combination these elements of both marks convey the

identical concept of a group of indigenous people of Mexico who have moved to or are associated with Los Angeles (L.A.). However, the Applicant's mark also includes the date "1973", which may be perceived as indicating a year of significance, such as a founding date. Whilst this contributes an additional conceptual element, it does not materially alter the overall concept conveyed by the mark. Further, the Applicant's mark contains a stylised bird device which both parties describe as an "Aztec bird". If the average consumer perceives the bird device as having any association with the Aztecs, that association would serve to reinforce, rather than materially alter, the concept conveyed by the word “AZTECS”. Consequently, I find the marks to be conceptually similar to a high degree.

Distinctive character of the earlier trade mark

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

> “22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee* v *Huber and Attenberger* [1999] ECR I-0000, paragraph 49).
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> 23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the

amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51)."

46. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods and services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use that has been made of it. However, as the Opponent has not filed any evidence of use of its mark, I only have the inherent position to consider.

47. I have no specific submissions from either party regarding the distinctive character of the earlier mark.

48. The Opponent's mark comprises the plain word elements "L.A. AZTECS", presented without any stylisation or figurative features. Consequently, its distinctive character resides entirely in those verbal elements. As outlined above, I consider that the average consumer will perceive the mark, taken as a whole, as referring to a group of people indigenous to Mexico but associated with Los Angeles. Although "L.A." has geographical significance and makes a lesser distinctive contribution, the combination "L.A. AZTECS", taken as a whole, is neither descriptive nor allusive of the goods. Accordingly, I find the Opponent's mark possesses a medium degree of inherent distinctive character.

Likelihood of confusion

49. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the

similarity that exists between the marks and the goods and services down to the responsible undertakings being the same or related.

50. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The factors are interdependent, and, for instance, 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. It is necessary for me to keep in mind the distinctive character of the earlier mark, the average consumer for the goods and services, and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he has retained in his mind.

51. Throughout the course of this decision, I have determined that:

- The goods are either identical under the principle in *Meric,* or where "scarves" are concerned, highly similar to the Opponent's "Clothing".

- The average consumers are members of the general public who will pay a medium degree of attention when purchasing the goods at issue. The purchasing process is mainly visual but aural considerations may play a part.

- The marks at issue are visually similar to a low degree, aurally similar to a medium degree and conceptually similar to a high degree.

- The Opponent's mark is considered to possess a medium level of inherent distinctive character.

52. Having considered all of the relevant factors I find there to be no likelihood of direct confusion. Although the marks share the distinctive element "AZTECS" and convey a similar concept, there are notable visual and aural differences arising from the presence of the full geographical indication "LOS ANGELES", the shield device, decorative elements and the date "1973" in the Applicant's mark, compared with the Opponent's mark, "L.A. AZTECS". I consider that the average consumer, paying a medium degree of attention during the purchasing process, would notice those differences and would not simply mistake one mark for the other.

53. That leaves indirect confusion to be considered. In respect of such, I remind myself of the case of *L.A. Sugar Limited v By Back Beat Inc,* Case BL O/375/10, wherein Mr Iain Purvis Q.C., as the Appointed Person, explained that:

> "16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: 'The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark'.
>
> 17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:

(a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right ('26 RED TESCO' would no doubt be such a case).

(b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as 'LITE', 'EXPRESS', 'WORLDWIDE', 'MINI' etc.).

(c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension ('FAT FACE' to 'BRAT FACE' for example)".

54. These three categories are not exhaustive. Rather, they were intended to be illustrative of the general approach. [4]

55. The earlier mark consists of "L.A. AZTECS", where "L.A." is a well-known abbreviation for "Los Angeles". The Applicant's mark contains the identical and distinctive element "AZTECS" and replaces the abbreviated geographical reference with its unabbreviated form, "LOS ANGELES". In my view, a significant proportion of consumers would perceive the marks as denoting the same commercial sign presented in different formats. Although the additional figurative elements and the date "1973" contribute to the overall impression and will be noticed, I consider that they may nevertheless be perceived as figurative presentation or embellishment of the same underlying brand, rather than as indicating a different trade origin.

[4] As was confirmed by the Court of Appeal in *Liverpool Gin Distillery and others v Sazerac Brands, LLC and others* [2021] EWCA Civ 1207, paragraph 12.

56. Consequently, consumers who notice the differences between the marks may nonetheless assume that they represent different versions, different presentations or variants of the same brand, or marks used by economically linked undertakings. The shared use of the distinctive term "AZTECS", coupled with the equivalence between "L.A." and "LOS ANGELES", provides a logical basis for consumers to believe that the marks identify the same commercial source. Accordingly, I find there to be a likelihood of indirect confusion.

Conclusion

57. The opposition under section 5(2)(b) succeeds in respect of the goods in Class 25. Subject to any successful appeal, the application will be refused in respect of Class 25 but may proceed to registration in respect of the unopposed Classes 35 and 41.

Costs

58. As the Opponent has been successful, it is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice ("TPN") 1/2023.[5] In the circumstances, I award the Opponent the sum of £1000. The sum is calculated as follows:

Official Fee	£100
Preparing the notice of opposition and considering the counterstatement	£250
Considering and commenting on the other side's evidence[6]	£300

[5] As the proceedings were commenced after 01 February 2023
[6] Given the limited relevance of the evidence to the matters at issue, I consider it appropriate to reduce the costs award.

Preparation of written submissions	£350
Total	**£1000**

59. I therefore order **BRANDS UTD LTD** to pay **ADMIRAL SPORTSWEAR LIMITED** the sum of **£1000**. This sum is to be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 28th day of October 2026

Oliver Rose'Meyer
For the Registrar