O/0974/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00004244867

BY EMMA JARVIS

FOR THE FOLLOWING TRADE MARK:

The Curl Confidence Method, See It. Speak It. Shape It. Support It

IN CLASSES 35, 41 AND 42

AND IN THE MATTER OF OPPOSITION THERETO

UNDER NO. 458147

BY NICOLA SAMPSON

BACKGROUND AND PLEADINGS

1. On 5 August 2025, Emma Jarvis ("the applicant") applied to register the trade mark shown on the cover page of this decision ("the applicant's mark"[1]) in the UK. Registration is sought for the following services:

Career advisory services (other than education and training advice). (Class 35)
Education; Education services relating to industry; Coaching; Coaching services; Training courses; Online education services. (Class 41)
Hosting of digital content online. (Class 42)

2. The application was published on 15 August 2025 for opposition purposes and, on 14 November 2025, the application was opposed in its entirety[2] by Nicola Sampson ("the opponent") based upon sections 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994 ("the Act").

3. Under sections 5(2)(b) and 5(3) of the Act, the opponent relies upon the following trade marks and the services set out below for which they are registered:

United Kingdom Trade Mark ("UKTM") 3218007:

Curl Confidence

("the first earlier mark")

Filing date: 11 March 2017
Registration date: 2 June 2017

Services relied upon: *Hairdressing for curly hair; curly cut, hairstyling services, hair colouring services, information, advice and consultancy all in relation to curly hair. (Class 44)*

[1] Application reference 4244867
[2] The opponent's objection under 5(2)(b) is aimed at some services only, with the first earlier mark targeting the applicant's class 41 services only and the second earlier mark targeting services in classes 35 and 41. The objections under sections 5(3) and 5(4)(a) extend to all terms applied for.

UKTM 3372653:



("the second earlier mark")

Filing date: 4 February 2019
Registration date: 26 April 2019

Services relied upon: *Hairdressing instruction; Educational seminars relating to hairdressing techniques. (Class 41)*
Hairdressing salon services; Hairdressing salons; Hairdressing services; Hairdressing; Salon services (Hairdressing -); Salons (Hairdressing -). (Class 44)

4. Under section 5(2)(b), the opponent claims that the parties' respective marks are highly similar and the parties' services identical or similar, giving rise to a likelihood of confusion. The opponent also completed a statement of use in respect of the earlier marks.

5. Under section 5(3), the opponent claims to have acquired a "very significant reputation" in the earlier marks and that use of the applicant's mark would, without due cause, be detrimental to the distinctive character or reputation of the earlier marks.

6. Under section 5(4)(a), the opponent relies upon two signs, identical to the earlier marks shown above, which she claims to have used throughout England and Wales since February 2017 in relation to *hairdressing services; hairstyling services, hair colouring services; information, advice and consultancy all in relation to hairdressing, hair styling and hair colouring; hairdressing instruction; hairstyling instruction; educational services relating to hairdressing techniques*. The opponent claims that use of the applicant's mark would be contrary to the law of passing off.

7. The applicant filed a counterstatement in which she denied the grounds of opposition and put the opponent to proof of use of both earlier marks.

8. Neither party requested a hearing, but both parties filed written submissions in lieu. This decision is taken following a careful consideration of the papers.

REPRESENTATION

9. The opponent is represented by Adamson Jones whilst the applicant is not professionally represented.

EVIDENCE AND SUBMISSIONS

10. The opponent's evidence in chief takes the form of a witness statement in the name of the opponent herself, Ms Nicola Sampson, dated 16 July 2026,[3] which is accompanied by five exhibits (NS1 to NS5).

11. The applicant did not file evidence.

12. Both parties filed written submissions in lieu of a hearing; the opponent's filed on 15 June 2026 and the applicant's on 16 June 2026.

RELEVANCE OF EU LAW

13. 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.

[3] The opponent's original statement was dated 20 February 2026 but it was later amended to meet administrative requirements.

DECISION

Proof of use

14. As the earlier marks had completed their registration process more than five years prior to the filing date of the application in issue, both are subject to the use provisions set out in section 6A of the Act. I will, therefore, begin by dealing with proof of use.

15. The relevant statutory provisions are as follows:

> "6(1) This section applies where:
>
> (a) an application for registration of a trade mark has been published,
>
> (b) there is an earlier trade mark of a kind falling within section 6(1)(a), (aa) or (ba) in relation to which the conditions set out in section 5(1), (2) or (3) obtain, and
>
> (c) the registration procedure for the earlier trade mark was completed before the start of the relevant period.
>
> (1A) In this section "the relevant period" means the period of 5 years ending with the date of the application for registration mentioned in subsection (1)(a) or (where applicable) the date of the priority claimed for that application.
>
> (2) In opposition proceedings, the registrar shall not refuse to register the trade mark by reason of the earlier trade mark unless the use conditions are met.
>
> (3) The use conditions are met if –
>
> (a) within the relevant period the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or

(b) the earlier trade mark has not been so used, but there are proper reasons for non- use.

(4) For these purposes -

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

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

(5)-(5A) [Repealed]

(6) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services."

16. Section 100 of the Act is also relevant, which reads:

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

17. The relevant period for assessing genuine use is the five-year period ending with the filing date of the application in issue i.e. 6 August 2020 to 5 August 2025.

18. In *easyGroup Ltd v Nuclei Ltd & Ors*[4], Arnold LJ summarised the law relating to genuine use as follows:

[4] [2023] EWCA Civ 1247

“105. The principles applicable to determining whether there has been genuine use of a trade mark have been considered by the CJEU in a considerable number of cases, the principal decisions being Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, Case C-259/02 *La Mer Technology Inc v Laboratories Goemar SA* [2004] ECR I-1159, Case C-416/04 P *Sunrider Corp* v *Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237, Case C-442/07 *Verein Radetsky-Order v Bundervsvereinigung Kamaradschaft 'Feldmarschall Radetsky'*[2008] ECR I-9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Merken BV v Hagelkruis Beheer BV* [EU:C:2012:816], Case C-609/11 *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], Case C-141/13 *P Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089], Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434] and Joined Cases C–720/18 and C–721/18 *Ferrari SpA v DU* [EU:C:2020:854].

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

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

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

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: *Ansul* at [36]; *Sunrider* at

[70]; *Verein* at [13]; *Silberquelle* at [17]; *Centrotherm* at [71]; *Leno* at [29]; *Gözze* at [37], [40]; *Ferrari* at [32].

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

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

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

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of

creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no *de minimis* rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72]; *Leno* at [55].

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

19. Proven use of a mark which fails to establish that "the commercial exploitation of the mark is real" because the use would not be "viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods or services protected by the mark" is, therefore, not genuine use.

20. In *Awareness Limited v Plymouth City Council*[5], Mr Daniel Alexander Q.C., as the Appointed Person, stated that:

"22. The burden lies on the registered proprietor to prove use..... However, it is not strictly necessary to exhibit any particular kind of documentation, but if it is likely that such material would exist and little or none is provided, a tribunal will be justified in rejecting the evidence as insufficiently solid. That is all the more so since the nature and extent of use is likely to be particularly well known to the proprietor itself. A tribunal is entitled to be sceptical of a case of use if, notwithstanding the ease with which it could have been convincingly demonstrated, the material actually provided is inconclusive. By the time the tribunal (which in many cases will be the Hearing Officer in the first instance) comes to take its final decision, the evidence must be sufficiently solid and specific to enable the evaluation of the scope of protection to which the proprietor is legitimately entitled to be properly and fairly undertaken, having regard to the interests of the proprietor, the opponent and, it should be said, the public."

[5] Case BL O/236/13

and further at paragraph 28:

"28. ..... I can understand the rationale for the evidence being as it was but suggest that, for the future, if a broad class, such as "tuition services", is sought to be defended on the basis of narrow use within the category (such as for classes of a particular kind) the evidence should not state that the mark has been used in relation to "tuition services" even by compendious reference to the trade mark specification. The evidence should make it clear, with precision, what specific use there has been and explain why, if the use has only been narrow, why a broader category is nonetheless appropriate for the specification. Broad statements purporting to verify use over a wide range by reference to the wording of a trade mark specification when supportable only in respect of a much narrower range should be critically considered in any draft evidence proposed to be submitted."

21. In *Dosenbach-Ochsner Ag Schuhe Und Sport v Continental Shelf 128 Ltd*[6], Mr Geoffrey Hobbs Q.C., as the Appointed Person, stated that:

"21. The assessment of a witness statement for probative value necessarily focuses upon its sufficiency for the purpose of satisfying the decision taker with regard to whatever it is that falls to be determined, on the balance of probabilities, in the particular context of the case at hand. As Mann J. observed in *Matsushita Electric Industrial Co. v. Comptroller- General of Patents* [2008] EWHC 2071 (Pat); [2008] R.P.C. 35:

> [24] As I have said, the act of being satisfied is a matter of judgment. Forming a judgment requires the weighing of evidence and other factors. The evidence required in any particular case where satisfaction is required depends on the nature of the inquiry and the nature and purpose of the decision which is to be made. For example, where a tribunal has to be satisfied as to the age of a person, it may sometimes be sufficient for that person to assert in a form or otherwise what his or her age is, or what their

[6] Case BL O/404/13

date of birth is; in others, more formal proof in the form of, for example, a birth certificate will be required. It all depends who is asking the question, why they are asking the question, and what is going to be done with the answer when it is given. There can be no universal rule as to what level of evidence has to be provided in order to satisfy a decision-making body about that of which that body has to be satisfied.

22. When it comes to proof of use for the purpose of determining the extent (if any) to which the protection conferred by registration of a trade mark can legitimately be maintained, the decision taker must form a view as to what the evidence does and just as importantly what it does not *'show'* (per Section 100 of the Act) with regard to the actuality of use in relation to goods or services covered by the registration. The evidence in question can properly be assessed for sufficiency (or the lack of it) by reference to the specificity (or lack of it) with which it addresses the actuality of use."

22. I summarise the opponent's evidence, to the extent that it is relevant, below:

- The opponent's website ***www.curlconfidence.co.uk*** has been in operation since 2017. Screenshots of the website at present are enclosed, alongside a selection of archived screenshots from 4 March 2021, 6 May 2021, 31 October 2023 and 16 August 2024. Each screenshot captures the website's main landing page which is used to inform users of the next release date for appointments, with most examples displaying the header reproduced below (or a variation thereof), showing categories "Home"; "About"; "Gallery/Services"; "Salon" and "Shop", and a representation of the figurative mark as seen here:



- The opponent makes use of the Facebook platform to promote her business. Her profile "Curl Confidence" currently boasts 4,700 followers and Ms Sampson estimates that she "would have had at least 4,500 followers in August last year." In a screenshot of the account's current homepage, the opponent's figurative mark is used as the main image. A further screenshot indicates that the business has received 289 reviews with a 100% recommendation rate.
- The opponent directs me to a number of positive reviews posted to the Facebook account referred to above. There are reviews published in every year between 2017 and 2025 (eighteen are dated within the relevant period).
- Ms Sampson explains that, for an extra fee, her clients' first appointment can be extended to allow time for tuition. The information set out on the (present day) screenshots of the opponent's website explain that "There is no 'conveyer-belt' hairdressing at Curl Confidence – you will receive one-to-one attention", with guidance for new clients explaining that "Your first appointment will include education & instruction at the backwash on how to get the best results at home". The services listed are "Curly Cut, Wash & Style" or "Trim Only".
- Between 2020 and 2023/24, the opponent offered online coaching provided under the "CURL CONFIDENCE" brand. Ms Sampson submits that she has had "very good feedback from everyone who has had the coaching session".
- The opponent's turnover is "around £50,000-£60,000 each year." She submits that "most" of the turnover relates to hairdressing services, which includes providing advice on haircare.
- During the Covid-19 pandemic, the opponent focused exclusively on the provision of online tuition and coaching and, in 2022, she underwent training to receive the Level 3 Award in *Education and Training through the Hair and Beauty Industry Authority.* In the "last 2 years", Ms Sampson has provided training to two hairdressers, charging up to £1500 for a 3-day course.

Assessment

23. The case law above makes clear that the burden of satisfying genuine use lies firmly with the opponent. Archived screenshots show that the opponent operated a UK website using the domain *www.curlconfidence.co.uk,* with the figurative mark used on the site's homepage, during the relevant period. Ms Sampson confirms that the site

was operational since 2017, though the earliest archived screenshot in evidence was captured on 4 March 2021. The figurative mark is also used as the profile picture of the opponent's Facebook page, which she estimates would have had "at least 4,500" in August of 2025. Reviews of the opponent's services are given via her Facebook page, "Curl Confidence", and were published on a range of dates throughout the relevant period. Of the opponent's £50,000-£60,000 annual turnover, "most" of it relates to hairdressing services. Between 2020 and 2023/24, the opponent offered online coaching under the "Curl Confidence" brand. She submits that during the pandemic her focus was providing online tuition and coaching and that she has trained two hairdressers "in the last two years".

24. In general terms, the opponent's evidence would have benefited from a greater degree of specificity and a greater degree of insight as to the actual use made of the earlier marks. Whilst the turnover is not broken down into specific services, I have no reason to doubt that the majority of it relates to hairdressing services as the opponent has stipulated, though it would have been helpful to have had annual figures set out over the relevant period, rather than a general indication. Still, I must look at the evidence in the round. On the balance of probabilities, taking into account the archived pages of the opponent's website which shows the services being advertised during the relevant period alongside the Facebook reviews and the opponent's submission regarding turnover, I am willing to accept that the earlier marks were put to genuine use during the relevant period in respect of hairdressing services. The figurative mark is shown on the opponent's website and Facebook platform and the word-only mark in the domain name and pages of her website.

25. The evidence concerning the remaining services such as educational seminars[7] is less compelling. The opponent submits that she offered online tuition and coaching between 2020 and 2023/24 and has trained two hairdressers over the last two years (presumably between 2024 and 2026 when her statement was drafted). There is little by way of exhibits to support such activities; I have no means of identifying how the earlier marks were used in relation to such services nor anything substantive to show precisely when the services were offered and how many consumers were engaged. I

[7] Relied upon under the second earlier mark

have no turnover figures nor any indication of promotional exercises that show the opponent's efforts to create a place in the market. The use provisions in respect of the relied-upon class 41 services are therefore not satisfied. For the avoidance of doubt, I have taken into account that the reviews laid out in evidence indicate that the opponent would routinely offer advice to clients whilst they attended appointments. Whilst the reviews suggest that such advice was certainly welcomed amongst the opponent's customers, to my view these interactions do not go beyond the hairdressing services for which I have found use above; it would not seem outside of the scope of what a hairdresser would be expected to provide as part of this service (aftercare advice for example) but it is not sufficient to show that the opponent has sought to create a share of the 'educational' market. Although I accept that the opponent may have undertaken training or sought to achieve an educational qualification, this does not speak to the use of the earlier marks.

26. As for devising a fair specification, in *Merck KGaA v Merck Sharp & Dohme Corp & Ors*[8], Kitchin LJ (as he then was) set out the approach to be followed when considering partial revocation of a trade mark. The same approach is relevant when framing a fair specification. He said:

> "245. First, it is necessary to identify the goods or services in relation to which the mark has been used during the relevant period.
>
> 246. Secondly, the goods or services for which the mark is registered must be considered. If the mark is registered for a category of goods or services which is sufficiently broad that it is possible to identify within it a number of subcategories capable of being viewed independently, use of the mark in relation to one or more of the subcategories will not constitute use of the mark in relation to all of the other subcategories.
>
> 247. Thirdly, it is not possible for a proprietor to use the mark in relation to all possible variations of a product or service. So care must be taken to ensure this exercise does not result in the proprietor being stripped of protection for goods

[8] [2017] EWCA Civ 1834

or services which, though not the same as those for which use has been proved, are not in essence different from them and cannot be distinguished from them other than in an arbitrary way.

248. Fourthly, these issues are to be considered having regard to the perception of the average consumer and the purpose and intended use of the products or services in issue. Ultimately it is the task of the tribunal to arrive at a fair specification of goods or services having regard to the use which has been made of the mark.

249. This approach does strike an appropriate balance. It gives effect to the clear intention of the EU legislature that marks must actually be used or, if not used, be subject to revocation. […] It is also fair to proprietors for it does not require a proprietor to prove that he has used his mark in relation to all possible variations of the goods or services covered by its registration but only those which are sufficiently distinct to constitute coherent categories or subcategories. I am also satisfied that it gives appropriate protection to the legitimate interest of a proprietor in being able in the future to extend his range of goods or services within the scope of the terms describing the goods or services for which its mark is registered."

22. This approach was endorsed by the Supreme Court in *SkyKick UK Ltd & Anor v Sky Ltd & Ors*[9], subject to the proviso that it must be seen in light of more recent guidance by the Court of Justice of the European Union ("CJEU") that the essential criterion to apply for the purposes of identifying a coherent subcategory of goods and services capable of being viewed independently is their purpose and intended use (for example, *Ferrari SpA v DU*[10]).

23. Applying that guidance, I find a fair specification for the earlier marks would read as follows:

[9] (Rev1) [2024] UKSC 36
[10] Joined Cases C-720/18 and C-721/18

First earlier mark: *Hairdressing for curly hair; curly cut; hairstyling services; information, advice and consultancy all in relation to curly hair. (Class 44)*

Second earlier mark: *Hairdressing salon services; Hairdressing salons; Hairdressing services; Hairdressing; Salon services (Hairdressing -); Salons (Hairdressing -). (Class 44)*

I do not find it necessary to reduce the terms relied upon under the second earlier mark to the same extent as they appear in the specification of the first earlier mark (i.e. "for curly hair") as I do not consider this would be deemed a subcategory of the broader term but, instead, an arbitrary distinction. The average consumer would simply perceive the services as relating to 'hairdressing' and would not look to reduce them to the particular nature of the hair on which the services are carried out.

Section 5(2)(b)

24. Section 5(2)(b) of the Act 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."

25. Section 5A of the Act is as follows:

> "5A 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."

26. 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*[11]:

> (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;

[11] [2025] UKSC 25

(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.

Preliminary matter – evidence of confusion

27. The opponent encloses at her final exhibit a screenshot which appears to be taken from *https://thbacademy.co.uk* promoting an event featuring the applicant scheduled for 22 February 2026[12], which the opponent submits was causing her "a great deal of concern" as it could "ramp up the confusion". She directs me toward what is later described in submissions as evidence of there already being "instances of actual confusion with consumers in the market place". She submits:

"I have already become aware of one individual associating the applicant's business with mine. I alerted one of my contacts to the fact that the applicant was starting to promote a business using the name The Curl Confidence Method. She instantly assumed the applicant and I were working together. A screenshot of our conversation is attached as Exhibit NS4. (This contact had attended a previous

[12] The image invites readers to "Join the curly revolution!" on 22 February 2026 and the event described as "Next Curl Confidence Method: Cut & Colour Edition". The applied-for mark does not feature in the screenshot.

Curly Craft Masterclass run by the applicant last year and said she told the applicant there and then that I did not style hair in the same way as the applicant was teaching.)"

28. I will not reproduce the conversation here but, in short, the opponent asked the contact whether they had noticed that the applicant was promoting *The Curl Confidence Method* for her training. The contact responds that they were not aware and comments "That's lovely for you, has she spoken to you?", to which the opponent replies that she was not in agreement.

29. This evidence is not of any particular help to the opponent, not least because it is clear that she initiated the conversation to ask whether her contact had noticed the applicant's use of "The Curl Confidence Method". The contact then simply enquires as to whether the applicant has liaised with the opponent on the matter. To my mind, this does not constitute an instance of confusion. Asking existing clients or peers whether they have noticed another party's use of a similar mark or brand seems an unnatural way for confusion to arise. The question of whether there is a likelihood of confusion must be assessed objectively from the perspective of the notional average consumer. Even if the exchange relied upon by the opponent were considered an instance of confusion, there is no basis on which to conclude that the perception of one individual is representative of the relevant public.

Comparison of services

30. In light of my findings above, the competing services are as follows:

Opponent's services	**Applicant's services**
The first earlier mark: *Hairdressing for curly hair; curly cut, hairstyling services; information, advice and consultancy all in relation to curly hair. (Class 44)* *The second earlier mark:*	*Career advisory services (other than education and training advice).* (Class 35) *Education; Education services relating to industry; Coaching; Coaching services; Training courses; Online education services*. (Class 41)

Hairdressing salon services; Hairdressing salons; Hairdressing services; Hairdressing; Salon services (Hairdressing -); Salons (Hairdressing -). (Class 44)	

31. In the judgment of the CJEU in *Canon*[13], 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."

32. The relevant factors identified by Jacob J. (as he then was) in the *Treat*[14] case, 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;

[13] Case C-39/97
[14] [1996] R.P.C. 281

(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.

33. In *Gérard Meric v Office for Harmonisation in the Internal Market*[15], the General Court stated that:

"29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 *Institut for Lernsysterne 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."

34. Another factor to consider when assessing similarity is the extent to which the services at issue may be regarded as "complementary", which case law describes as meaning that "…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 the responsibility for those goods lies with the same undertaking."[16]

35. Specifications should be scrutinised carefully and terms should not be given a wide construction, but should be confined to the substance or core of their possible meanings.[17] For the purposes of assessing similarity, it is permissible to group specified terms together where they are sufficiently comparable in essentially the same way for essentially the same reasons.[18]

Career advisory services (other than education and training advice).

[15] Case T- 133/05

[16] *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM),* Case T-325/06

[17] See, for instance, *Avnet Incorporated v Isoact Limited* [1998] FSR 16, Jacob J (as he then was) at [19].

[18] See *Separode* Trade Mark (BL O/399/10)

36. These services are opposed on the basis of the opponent's second earlier mark only. I can see no meaningful similarity between the above services and those relied upon by the opponent. Other than a general overlap between the services' users insofar as each may be accessed at least in part by members of the general public, the services are distinct in their use and nature and I do not consider it likely that they will utilise the same trade channels or be viewed as complementary. The services are not competitive. Applying due weight, I find the services are dissimilar.

Education; Education services relating to industry; Coaching; Coaching services; Training courses; Online education services.

37. When it comes to the above services, they will be accessed for a distinct purpose to those relied upon and, whilst they may be accessed by some of the same users, broadly speaking, this does not carry a great amount of weight. The applicant's services will be selected by those wishing to achieve a certain qualification (for example) whilst the opponent's services will be selected by any member of the public requiring a hairdresser. I have kept in mind that hairdressing may (as the evidence indicates) incorporate an element of guidance or advice but I do not find this gives rise to any meaningful similarity in the services' nature; educational or coaching services such as those set out above are likely to differ in nature fairly significantly. The services are not competitive and, to my understanding, will not occupy the same channels or be viewed as complementary. Even if there were some overlap in the respective trade channels, this is not likely to be particularly common. I have noted the opponent's submission insofar as it asserts that "some providers of salon services also operate as, or out of, colleges and educational establishments. The opposite also exists where some educational establishments will provide salon services to the public as part of their training courses." This is not supported by the evidence and I am not satisfied that the consumer would expect the services, at their core meanings, to originate from the same undertaking. Weighing all considerations, I find the services dissimilar.

38. I have kept in mind throughout the above comparisons that the applicant's services are fairly broad, such that they could be used in some circumstances in respect of hairdressing (for example), and the applicant has not disputed that this is her intention, but I must be cautious of unnaturally limiting the scope of the applied-for services.

Having carefully considered the respective terms, and applying their natural meanings, even if this were the case I find the services are too far removed to reach a finding of similarity. As made clear in *Unicorn Studio Inc v Veronese*,[19] the overall purpose of considering similarity between goods or services is to identify similarities which might be relevant to the likelihood of confusion; the greater the level of generality at which some similarity can be found, the less relevant it may be. Given that some degree of similarity is required to reach a finding of a likelihood of confusion[20], the pleading under section 5(2)(b) must fail.

Section 5(3)

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

> "5(3) A trade mark which -
>
> > (a) is identical with or similar to an earlier trade mark, […] shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or repute of the earlier trade mark."

40. Section 5(3A) of the Act states:

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

41. The relevant case law can be found in the following judgments of the CJEU: *Case C-375/97, General Motors, Case 252/07, Intel, Case C-408/01, Adidas-Salomon, Case C-487/07, L'Oreal v Bellure and Case C-323/09, Marks and Spencer v Interflora*

[19] *2024 EWHC 1098 (Ch)*
[20] *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA

and Case C383/12P, Environmental Manufacturing LLP v OHIM. The law appears to be as follows.

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

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

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

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

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

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

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

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

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

42. The conditions of section 5(3) are cumulative. Firstly, the opponent must show that the earlier marks and the applicant's mark are similar. Secondly, the opponent must show that the earlier marks have achieved a level of knowledge/reputation amongst a significant part of the public. Thirdly, it must be established that the level of reputation and the similarities between the marks will cause the public to make a link between them in the sense of the earlier marks being brought to mind by the later mark. Finally, assuming the first three conditions have been met, section 5(3) requires that one or more of the types of damage will occur. It is unnecessary for the purposes of section 5(3) that the services be similar, although the relative distance between them is one of the factors which must be assessed in deciding whether the public will make a link between the marks.

Similarity of the marks

43. I am satisfied that there is an element of similarity between the earlier marks and the mark for which registration is sought on account of the shared combination of "Curl" and "Confidence". Whilst there are a number of other word elements in the applicant's mark (and further words and a device element in the opponent's figurative mark), to my mind this gives rise to at least a low degree of visual similarity between the respective marks, at least a low degree of aural similarity (with both parties' marks incorporating an identical syllabic sequence in CURL/CON/FIH/DENCE) and at least a medium degree of conceptual similarity. I say this having considered the overall impressions of the competing marks and the weight attributed to each of the elements therein. I find it likely, for example, that the "passionate about curls" element in the opponent's figurative mark and the "See it, Speak it, Shape it, Support it" element in the application will be given lesser trade mark weight, being seen more so as supporting slogans (for example). Whilst both marks allude to the idea of the user having confidence in their curly hair, the notion of there being a 'method' to embrace in order to facilitate this is absent from the earlier marks. All things considered, I find the first requirement of establishing that the marks are similar is satisfied.

Reputation

44. In *General Motors*[21], the CJEU held that:

> "25. It cannot be inferred from either the letter or the spirit of Article 5(2) of the Directive that the trade mark must be known by a given percentage of the public so defined.
>
> 26. The degree of knowledge required must be considered to be reached when the earlier mark is known by a significant part of the public concerned by the products or services covered by that trade mark.

[21] Case C-375/97

27. In examining whether this condition is fulfilled, the national court must take into consideration all the relevant facts of the case, in particular the market share held by the trade mark, the intensity, geographical extent and duration of its use, and the size of the investment made by the undertaking in promoting it.

28. Territorially, the condition is fulfilled when, in the terms of Article 5(2) of the Directive, the trade mark has a reputation 'in the Member State'. In the absence of any definition of the Community provision in this respect, a trade mark cannot be required to have a reputation 'throughout' the territory of the Member State. It is sufficient for it to exist in a substantial part of it."

45. As the proof of use provisions are equally applicable to the section 5(3) ground as they were to the section 5(2) ground, the only services for which I need to consider the matter of reputation are those for which I found use (set out above). Whilst I may have found the evidence sufficient to demonstrate use, the burden for showing a reputation is much more onerous.[22] I have not any means of determining the market share enjoyed by the earlier marks. I expect the size of the hairdressing market is vast and to my mind, an annual turnover of £50-60,000 (the *majority* of which relates to hairdressing) is fairly insignificant in context. As for the intensity or scale of use, absent of customer numbers or promotional investment for example, this is also very difficult to determine. The evidence indicates that the opponent operates from a single branch located in Shrewsbury. Other than the use of an active website and Facebook page, there is very little in evidence pointing toward any promotional efforts to raise awareness of the opponent's business. The figures shown in evidence are not only vague but extremely modest and, in its entirety, the evidence falls far short of establishing that the earlier mark is known by a significant part of the relevant public.

46. Given that I have found no reputation, I need not consider whether a link will be made between the parties' marks and the section 5(3) ground cannot succeed.

Section 5(4)(a)

[22] I say this because a genuine use finding only requires a sufficient level of use (as per the case of *easyGroup Ltd v Nuclei Ltd & Ors,* this need not be quantitively significant) whereas a finding of reputation requires that the marks relied upon are known by a significant part of the relevant public in the relevant territory.

Statutory provisions

47. Section 5(4)(a) of the Act states as follows:

> "5(4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented –
>
> (a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, where the condition in subsection (4A) is met,
>
> […]
>
> A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of "an earlier right" in relation to the trade mark."

Relevant case law

48. In *Discount Outlet v Feel Good UK*[23], Her Honour Judge Melissa Clarke, sitting as a Deputy Judge of the High Court, conveniently summarised the essential requirements of the law of passing off as follows:

> "55. The elements necessary to reach a finding of passing off are the 'classical trinity' of that tort as described by Lord Oliver in the *Jif Lemon* case (*Reckitt & Colman Product v Borden* [1990] 1 WLR 491 HL, [1990] RPC 341, HL), namely goodwill or reputation; misrepresentation leading to deception or a likelihood of deception; and damage resulting from the misrepresentation. The burden is on the Claimants to satisfy me of all three limbs.
>
> 56. In relation to deception, the court must assess whether "a substantial number" of the Claimants' customers or potential customers are deceived, but it

[23] [2017] EWHC 1400 IPEC

is not necessary to show that all or even most of them are deceived (per *Interflora Inc v Marks and Spencer Plc* [2012] EWCA Civ 1501, [2013] FSR 21)."

Relevant date

49. In *Advanced Perimeter System Limited v Multisys Computers Limited*[24], Mr Daniel Alexander KC, as the Appointed Person, endorsed the Registrar's assessment of the relevant date for the purposes of section 5(4)(a) of the Act, as follows:

> "43. In *SWORDERS TM* O-212-06 Mr [Allan] James acting for the Registrar well summarised the position in s.5(4)(a) proceedings as follows: 'Strictly, the relevant date for assessing whether s.5(4)(a) applies is always the date of the application for registration or, if there is a priority date, that date: see Article 4 of Directive 89/104. However, where the applicant has used the mark before the date of the application it is necessary to consider what the position would have been at the date of the start of the behaviour complained about, and then to assess whether the position would have been any different at the later date when the application was made.'"

50. Because the applicant has not provided evidence that she used her mark before the filing date, the relevant date for the section 5(4)(a) assessment is 5 August 2025.

Goodwill

51. Goodwill was described in *Inland Revenue Commissioners v Muller & Co's Margarine Ltd*[25] in the following terms:

> "What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation and connection of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a new business at its first start."

[24] BL O/410/11
[25] [1901] AC 217 (HOL)

52. I discussed the opponent's evidence in relation to my assessment of genuine use earlier in my decision. The signs relied upon under section 5(4)(a) are identical to the opponent's earlier marks relied upon under section 5(2)(b). I will therefore keep in mind my summary of the evidence when approaching the present ground.

53. All other factors being equal, there cannot be goodwill for services for which I found no use. Therefore, in line with the fair specification decided upon in my genuine use assessment, I will now proceed to determine whether the opponent has demonstrated goodwill for the services that I found use had been shown for which are, broadly speaking, hairdressing services.

54. It is well-established that for the purpose of an objection under the current ground any goodwill must be more than trivial in its extent. In *Hart v Relentless Records*[26], Jacob J. (as he then was) stated that:

> "62. In my view the law of passing off does not protect a goodwill of trivial extent. Before trade mark registration was introduced in 1875 there was a right of property created merely by putting a mark into use for a short while. It was an unregistered trade mark right. But the action for its infringement is now barred by s.2(2) of the Trade Marks Act 1994.. The provision goes back to the very first registration Act of 1875, s.1. Prior to then you had a property right on which you could sue, once you had put the mark into use. Even then a little time was needed, see per Upjohn L.J. in *BALI Trade Mark* [1969] R.P.C. 472. The whole point of that case turned on the difference between what was needed to establish a common law trade mark and passing off claim. If a trivial goodwill is enough for the latter, then the difference between the two is vanishingly small. That cannot be the case. It is also noteworthy that before the relevant date of registration of the BALI mark (1938) the BALI mark had been used "but had not acquired any significant reputation" (the trial judge's finding). Again that shows one is looking for more than a minimal reputation."

[26] [2002] EWHC 1984 (Ch)

55. In *Smart Planet Technologies, Inc. v Rajinda Sharma*[27], Mr Thomas Mitcheson QC (now KC), as the Appointed Person, reviewed the following authorities about the establishment of goodwill for the purposes of passing-off: *Starbucks (HK) Ltd v British Sky Broadcasting Group Plc*[28], paragraph 52, *Reckitt & Colman Product v Borden*[29] and *Erven Warnink B.V. v. J. Townend & Sons (Hull) Ltd*[30]. After reviewing these authorities Mr Mitcheson concluded that:

> "... a successful claimant in a passing off claim needs to demonstrate more than nominal goodwill. It needs to demonstrate significant or substantial goodwill and at the very least sufficient goodwill to be able to conclude that there would be substantial damage on the basis of the misrepresentation relied upon."

56. However, a small business which has more than a trivial goodwill can protect signs which are distinctive of that business under the law of passing off even though its goodwill and reputation may be small.[31]

57. In *South Cone Incorporated v Jack Bessant, Dominic Greensmith, Kenwyn House and Gary Stringer (a partnership)*[32], Pumfrey J. stated:

> "27. There is one major problem in assessing a passing of claim on paper, as will normally happen in the Registry. This is the cogency of the evidence of reputation and its extent. It seems to me that in any case in which this ground of opposition is raised the registrar is entitled to be presented with evidence which at least raises a prima facie case that the opponent's reputation extends to the goods comprised in the applicant's specification of goods. The requirements of the objection itself are considerably more stringent that the enquiry under s.11 of the 1938 Act (see *Smith Hayden & Co. Ltd's Application (OVAX)* (1946) 63 R.P.C. 97 as qualified by *BALI Trade Mark* [1969] R.P.C. 472). Thus the evidence will

[27] BL O/304/20
[28] [2015] UKSC 31
[29] [1990] RPC 341, HL
[30] [1980] R.P.C. 31
[31] See, for example, *Lumos Skincare Limited v Sweet Squared Limited and others* [2013] EWCA Civ 590
[32] [2002] RPC 19 (HC)

include evidence from the trade as to reputation; evidence as to the manner in which the goods are traded or the services supplied; and so on.

28. Evidence of reputation comes primarily from the trade and the public, and will be supported by evidence of the extent of use. To be useful, the evidence must be directed to the relevant date. Once raised, the applicant must rebut the prima facie case. Obviously, he does not need to show that passing off will not occur, but he must produce sufficient cogent evidence to satisfy the hearing officer that it is not shown on the balance of probabilities that passing off will occur."

58. However, in *Minimax GmbH & Co KG v Chubb Fire Limited*[33], Floyd J. (as he then was) stated that:

"[The above] observations are obviously intended as helpful guidelines as to the way in which a person relying on section 5(4)(a) can raise a case to be answered of passing off. I do not understand Pumfrey J to be laying down any absolute requirements as to the nature of evidence which needs to be filed in every case. The essential is that the evidence should show, at least prima facie, that the opponent's reputation extends to the goods comprised in the application in the applicant's specification of goods. It must also do so as of the relevant date, which is, at least in the first instance, the date of application."

59. The signs relied-upon are said to have been used since 2017, with the opponent operating from a single salon based in Shrewsbury. Whilst I have acknowledged that it is possible for a small business to enjoy a protectable goodwill, the opponent's evidence is far from comprehensive. I do not, for example, have means to determine the number of customers accessing the services available under the relied-upon signs prior to the relevant date. Without a way of identifying the customers, I am also unable to determine whether there have been any instances of repeat custom, for example. Whilst I do accept that the services' turnover need not necessarily be quantitatively significant, a turnover of £50-60,000 annually (with "most" relating to hairdressing"), in what I expect is a vast market, is likely to reflect only a very small proportion of

[33] [2008] EWHC 1960 (Pat)

engagement. I have no indication of the extent to which the services were promoted prior to the relevant date, outside of maintaining an active website and Facebook page, and still it is unclear to what extent or frequency these platforms were updated. Although the opponent has estimated that her Facebook account would have had "around 4,500" followers in August of 2025, I do not have figures concerning website activity. Goodwill arises as a result of trading activities and, put simply, there is not a great deal of evidence of such activities, whereby the signs relied-upon can be seen in use. I have, however, considered the nature of the reviews shown on the opponent's Facebook page, which come alongside a 100% recommendation rate. Customers praise the quality of her haircuts and knowledge of curly hair, for example. Still, the number of reviews is modest at best (twenty-four posted prior to the relevant date). Whilst this may represent only a proportion of the total number of clients, I do not have an indication of how large or small a proportion it is. I take the view, having reflected on the evidence in its entirety, that it falls short of demonstrating that the opponent's business benefited from a protectable goodwill at the relevant date. There is simply not enough in evidence to indicate a real effort on the opponent's part to promote the services or raise the profile of the business in the UK.

60. In the interest of completeness, if I am considered to be wrong to have found that the opponent has not demonstrated the requisite goodwill in her business, for the reasons set out above, given the limited nature of the evidence I would not be able to conclude that it was of any more than a low level. Earlier in my decision I found that the services for which use had been established were dissimilar to those for which the applicant seeks registration, at least those in classes 35 and 41. Having revisited the relevant factors set out above, I also cannot see any meaningful similarity between the relied-upon services and those applied for in class 42. On this point I am reminded that, whilst a common field of activity is not fatal to a passing-off claim, the burden of proving a likelihood of confusion and resulting damage in such circumstances is a particularly heavy one.[34] With that in mind, I do not find the level of goodwill shown by the opponent (if goodwill is shown at all) sufficient to overcome such a burden. In short, even if my primary finding concerning goodwill is found to be incorrect, I find the

[34] *Harrods Limited v Harrodian School Limited* [1996] RPC 697 (CA)

opponent's objection under the present ground falls away regardless, having considered the distance between the parties' services and level of goodwill exhibited.

CONCLUSION

61. The opposition has failed. Subject to a successful appeal, the application will proceed to registration in respect of all services applied for.

COSTS

62. The applicant has been successful and would, therefore, ordinarily be entitled to a contribution toward her costs. However, given that the applicant is not professionally represented, at the end of the evidence rounds she was invited to file a costs pro-forma should she wish to make a request for costs in respect of the proceedings. The relevant part from the official letter issued on 18 May 2026 reads as follows:

> "If you intend to make a request for an award of costs you must complete and return the attached pro-forma and send a copy to the other party. Please send these by e-mail to tribunalhearings@ipo.gov.uk.
>
> If there is to be a decision from the papers, your request for an award of costs should be provided by 15 June 2026.
>
> …
>
> 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."

62. As the pro-forma was not returned by the applicant, given that no official fees were incurred, I decline to make an award of costs.

Dated this 29th day of October 2026

Laura Stephens
For the Registrar