O/1015/25

TRADE MARKS ACT 1994

IN THE MATTER OF INTERNATIONAL REGISTRATION NUMBER WO0000001766745

BY MONSIEUR LEGHBALI KYRIAN

TO REGISTER THE FOLLOWING TRADE MARK:

IN CLASSES 3, 5 AND 35

AND

AN OPPOSITION THERETO UNDER NUMBER OP000448267

BY ERKUL KOZMETIK SANAYI VE TICARET ANONIM SIRKETI

BACKGROUND AND PLEADINGS

1. International trade mark 1766745 ("***the IR***") consists of the sign shown on the cover page of this decision and stands registered in the name of Monsieur LEGHBALI Kyrian ("***the Holder***"). The IR is registered with effect from 19 October 2023 but claims priority from 19 April 2023.[1] With effect from the same date, the Holder designated the UK as a territory in which it seeks to protect the IR under the terms of the Protocol to the Madrid Agreement.

2. The Holder seeks protection of the IR in relation to the following goods and services:[2]

   Class 5: Dermatological preparations; gels, creams and solutions for dermatological use; antibacterial gels.

   Class 35: Retail sale service for cosmetics and cosmetic preparations for the face and body, dermo-cosmetic products, cosmetic creams, cosmetic oils, cosmetic masks, cosmetic soaps, skin care preparations, namely, creams, milks, serums, lotions, gels and powders for the face and body, serum for hair care, make-up products, make-up removing milk, gel and oil, dermatological preparations, gels, creams and solutions for dermatological use, antibacterial gels.

3. The request to protect the IR was published for opposition purposes on 22 March 2024.

4. ERKUL KOZMETIK SANAYI VE TICARET ANONIM SIRKETI ("***the Opponent***") opposes the IR on the basis of section 5(2)(b) of the Trade Marks Act 1994 ("***the Act***"). The Opponent relies upon the following five earlier marks ("***the Earlier Marks***"):

[1] This is claimed from French trade mark no. 4955210.

[2] The IR's original specification also contained class 3 goods. The Holder applied to WIPO to remove class 3 from the specification. On 15 September 2025, following official notification from WIPO, the Office confirmed the IR's specification had been amended to remove class 3.

GOLDEN ROSE

UK trade mark number: UK00801534499 ("***the first earlier mark***")
Filing date: 13 December 2019
Registration date: 04 November 2020
Relying upon the following services:

Class 35: Provision of an online marketplace for buyers and sellers of goods and services; the bringing together, for the benefit of others, of a variety of goods, namely, […] perfumery, cosmetics (except medicated cosmetics), fragrances, deodorants for personal use and animals, soaps (except medicated soap), dental care preparations, dentifrices, denture polishes, tooth whitening preparations, mouth washes, not for medical purposes, […] enabling customers to conveniently view and purchase those goods, such services may be provided by retail stores, wholesale outlets, by means of electronic media or through mail order catalogues.

Golden Rose®

International trade mark number: WO0000000777212 ("***the second earlier mark***")
International registration date: 13 February 2002
Designation date: 13 February 2002
Date of protection in UK: 26 July 2003
Relying upon the following goods:

Class 3: Soaps; cosmetics, hair lotions; dentifrices; deodorants for personal use; sanitary preparations being toiletries; lip liner, eyeliner, eyebrow pencil.

GOLDEN ROSE

International trade mark number: WO0000001249619 ("***the third earlier mark***")
International registration date: 19 March 2015
Designation date: 19 March 2015
Date of protection in UK: 27 August 2015
Priority date: 17 December 2014[3]
Relying upon the following goods:

Class 3: Perfumery; cosmetics; fragrances; deodorants for personal use and animals; soaps; dental care preparations.

UK trade mark number: UK00918088035 ("***the fourth earlier mark***")
Filing date: 27 June 2019
Registration date: 30 November 2019
Relying upon the following goods:

Class 3: Perfumery; fragrances; deodorants for personal use and animals; soaps (except medicated soap); dental care preparations, dentifrices, denture polishes, tooth whitening preparations, mouth washes, not for medical purposes; cosmetics and cosmetic preparations, make-up preparations; cosmetics and cosmetic preparations; rose oil for cosmetic purposes;

[3] Priority claimed from Turkey trade mark number 2014/104910.

nail varnish for cosmetic purposes; nail polish remover; lipsticks; eyeliner pencils; mascaras.

GOLDEN ROSE
PRESTIGE
Intense

UK trade mark number: UK00801514375 ("***the fifth earlier mark***")
Filing date: 23 August 2019
Registration date: 30 November 2019
Relying upon the following goods:

Class 3: Perfumery; cosmetics (except medicated cosmetics); fragrances; deodorants for personal use and animals; soaps (except medicated soap); dental care preparations, dentifrices […]; […] hair colorants, hair coloring preparations, coloring preparations for cosmetic purposes.

5. Under Article 54 of the Withdrawal Agreement between the UK and the EU, the UK IPO created comparable UK trade marks for all right holders with an existing registered EUTM or International Registration designating the EU. As a result, the Earlier Mark were converted into comparable trade marks (UK and IR). Comparable UK and IR marks are now recorded in the UK trade mark register, have the same legal status as if they had been applied for and registered under UK law, and the original filing (or priority) dates remain the same.[4]

6. By virtue of their earlier filing dates, the above registrations all constitute earlier marks in accordance with section 6 of the Act. As the earlier rights WO0000001249619 and WO0000000777212 were registered more than five years prior to the priority date of the IR, these marks are subject to proof of use in accordance with section 6A of the Act. The earlier marks UK00801514375, UK00918088035 and UK00801534499 were registered less than five years prior to the priority date of the IR and are therefore not subject to proof of use in accordance with section 6A of the Act. The Opponent can, therefore, rely upon all

[4] See also Tribunal Practice Notice ("TPN") 2/2020 End of Transition Period – impact on tribunal proceedings.

of the goods and services it has identified without having to demonstrate use of marks UK00801514375, UK00918088035 and UK00801534499.

7. The Opponent submits that the marks are similar to a high degree and that the goods and services at issue are similar or identical, resulting in a likelihood of confusion, including a likelihood of association. The Opponent therefore requests that the contested application be refused in its entirety and an award of costs be made in its favour.

8. The Holder filed a defence and counterstatement denying the grounds of the opposition and puts the Opponent to proof of use for all goods relied upon by the opponent under the earlier marks WO0000001249619 and WO0000000777212. The Holder requires the opposition be dismissed and an award of costs be made in its favour.

9. The Holder is represented by Abion UK Limited and the Opponent is represented by RightPro IP & Legal Consultancy Ltd.

RELEVANCE OF EU LAW

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

EVIDENCE AND SUBMISSIONS

11. During the evidence rounds, only the Opponent filed evidence. This was in the form of a Statement of Use of Ahmet Erkul, shareholder and Executive Board Member of the Opponent, signed and dated 02 December 2024. The witness statement is accompanied by exhibits I – IV. The Opponent filed written submissions dated 02 December 2024. Neither party requested a hearing, however the Holder filed written submissions in lieu. I will not summarise the evidence and submissions here, but I will refer to them as and where appropriate during this decision. This decision is taken following a careful perusal of the papers.

PRELIMINARY MATTER

Section 5(3) claim

12. In its statement of use, the Opponent states that "*[…] we have been exporting our products to over 90 countries, including the UK, for more than five years. We offer quality with affordable prices and this helped us to build a goodwill before the UK consumer. Our trade mark is a well known mark in Turkiye and our products bearing the marks widely sold globally".*

13. The Opponent's consideration of matters such as those reproduced above are noted but nonetheless appear more consistent with a section 5(3) claim. For clarity, section 5(2)(b) is the only pleaded ground in the present proceedings and, in the absence of a direct pleading and any supporting evidence, the scope of the opposition does not extend, for example, to grounds such as section 5(3) of the Act.

DECISION

Proof of use

14. I will begin by assessing whether there has been genuine use of the second and third earlier marks.

The law

15. Section 6A of the Act states:

> "(1) This section applies where an application for registration of a trade mark has been published,
>
> (a) 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
>
> (b) 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 states that:

"100. 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. While section 6A of the Act (cited above) is silent on the issue of IRs, the Trade Marks (International Registration) Order 2008 sets out that this section of the Act

extends to apply to IRs. As such, the relevant period for the present assessment is the five-year period prior to the priority date of the IR, being 19 April 2023. The relevant period is, therefore, **20 April 2018 to 19 April 2023** ("***the relevant period***"). The onus is upon the Opponent to prove that genuine use of the second and third earlier marks was made in the relevant period.

18. In *easyGroup Ltd v Nuclei Ltd & Ors* [2023] EWCA Civ 1247, Arnold LJ summarised the law relating to genuine use as follows:

> "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 I9223, 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 subcategory 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].

107. The trade mark proprietor bears the burden of proving genuine use of its trade mark: see section 100 of the 1994 Act and *Ferrari* at [73]-[83]. The General Court of the European Union has repeatedly held that genuine use of a trade mark cannot be proved by means of probabilities or suppositions, but must be demonstrated by solid and objective evidence of effective and sufficient use of the trade mark on the market concerned: see e.g. Case T-78/19 *Lidl Stiftung & Co KG v European Union Intellectual Property Office* [EU:C:2020:166] at [25]. It has also repeatedly held that the smaller the commercial volume of the exploitation of the mark, the more necessary it is for the proprietor to produce additional evidence to dispel any doubts as to the genuineness of its use: see e.g. *Lidl* at [33]. In *Awareness Ltd v Plymouth City Council* [2013] RPC 24 Daniel Alexander QC sitting as the Appointed Person said:

‘19. For the tribunal to determine in relation to what goods or services there has been genuine use of a mark during the relevant period, it should be provided with clear, precise, detailed and well-supported evidence as to the nature of that use during the period in question from a person properly qualified to know.

[…]

22. […] 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 […] 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.'"

19. Proven use of a mark which fails to establish that "the commercial exploitation of the mark is real"[5] 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.

Evidence of use

20. In Mr Erkul's statement of use it is reported that the marks at hand have been used throughout the UK and that the Opponent has been exporting its goods to over 90 countries, including the UK, for more than 5 years. The Opponent provided me with various sample invoices.[6] The invoices are partly in a foreign language that seems to be Turkish. No translation was provided by the Opponent for those parts of the invoices that are not in English. From what I can understand, the invoices seem to have been all issued to one business located in the UK (i.e., London) for a variety of cosmetic products such as, for example, lipsticks, mascaras, foundations, concealers, nail lacquers, make-up fixing sprays, illuminators, eyebrow pencils, eyeliners, as well as cream beauty balms. The invoices feature dates that seem to

[5] *Jumpman* BL O/222/16.
[6] Exhibit I.

fall within the relevant period (i.e., June 2018 – October 2019). However, the invoices contain different dates and the descriptions next to the invoices are in a foreign language (presumably Turkish). Thus, I am unable to clearly determine what these dates indicate (see Figure 1). I also note that the prices are all in US dollars.

Özelleştirme No:	TR1.2
Senaryo:	IHRACAT
Fatura Tipi:	ISTISNA
Fatura No:	EKL2018000002445
Fatura Tarihi:	20-12-2018
Fatura Zamanı:	16:28:40
İrsaliye No:	H-889174
İrsaliye Tarihi:	19-12-2018
Sipariş No:	SAT8-2780
Sipariş Tarihi:	18-12-2018
Vade Tarihi:	20-03-2019

Figure 1

21. The evidence contains a series of extracts showing the results deriving from an Internet search for the words 'golden rose makeup' carried out on Google for the period 19 October 2018 – 18 October 2023.[7] The evidence features links of websites where the Opponent's cosmetics products are available for purchase. The evidence shows what seems to be the Opponent's website ('www.goldenrosecosmetics.gr') along with other third-party websites (e.g., 'www.makeup.uk', 'Amazon UK', 'www.houseofbeauty.co.uk', www.emma-rosedistribution.co.za' and 'glamcosmetics.com', 'Notino.co.uk'). Among the links reported, only 4 links clearly target the UK and fall within the relevant period. The remaining links either do not target the UK market (i.e., show prices in US dollars) or do not show a date.

22. The Opponent provides the 2023 international product catalogue distributed in the UK. The catalogue features both earlier marks in object by themselves and placed

[7] Exhibit II.

on the products at hand. The catalogue features a series of cosmetic products.[8] Mr Erkul does not clarify, and the evidence does not contain, figures showing the distribution volume of the catalogue in the UK.

23. The evidence also contains screenshots of some of the Opponent's cosmetic products available for purchase on some websites ('www.notino.co.uk', 'amazon.co.uk', 'makeup.co.uk' and 'houseofbeauty.co.uk')[9] as well as some zoom ins from the Amazon UK website for a few of these products.[10] Whilst the evidence clearly targets the UK market, it is all dated outside of the relevant period (i.e., 29 November 2024). Mr Erkul states, in his statement of use, that "*the use has been in the same forms during the relevant period as well*".[11] No further evidence or clarification in this regard has been provided.

24. The Opponent did not provide the volume of sales deeming this information confidential. Mr Erkul reports, in his statement of use, that the products' unit prices vary between £3 and £30.

Form of the mark

25. Before I move on to assess if the Opponent has shown genuine use, I must first consider if I find the use of the marks as shown in the evidence to be use of the marks as registered. As outlined *in Lactalis McLelland Limited v Arla Foods AMBA*, Case BL O/265/22,[12] the use of the mark in a different form may also constitute use of the mark as registered.

26. With regard to the third earlier mark, it is the figurative mark represented below for ease of reference:

[8] Exhibit III.
[9] Exhibit IV.
[10] Exhibit V.
[11] See the Holder's statement of use dated 2 December 2024.
[12] At [13 – 15]. See also Hyphen GmbH v EUIPO, Case T-146/15, at [28-32].

27. The evidence shows instances where the mark is represented in different colour variations such as, for instance, white wording on black background (Figure 2), white wording on different colour backgrounds according to the packaging (Figure 3), or black wording on different colour backgrounds according to the packaging (Figure 4).

Figure 2


GOLDEN ROSE
LIPING MY MATTE
MATTE LIQUID LIPSTICK
LIPING MY MATTE
MATTE LIQUID LIPSTICK

Figure 3

Figure 4

28. The colour variants are merely colour variations of the same elements that compose the third earlier mark (i.e., the stylised 'GR' and the words 'GOLDEN ROSE'), which do not send any other message about trade origin. I find the figurative variants show use of different colour combinations of the same mark with non-distinctive matter added. Thus, I consider them to be acceptable variant uses in accordance with the guidance in *Lactalis*.

29. I also note that there are instances in the evidence where the elements in the mark are inverted with "GOLDEN ROSE" placed above the stylised 'GR' (see, for example, Figure 5 and Figure 6).

Figure 5

Figure 6

30. The mark's distinctive character derives from the combination of both the word combination "GOLDEN ROSE" and the letters 'GR'. The arrangement of the verbal elements in the mark at Figure 5 and Figure 6 maintain the same relative size between such elements creating the same overall visual impression. Therefore, I find that the positioning of "GOLDEN ROSE" either above the stylised 'GR' or below it does not affect the mark's distinctive character. Therefore, I find that these variations of the third earlier mark also consist of acceptable variant uses.

31. Turning to the second earlier mark, in the evidence there are instances where this is used represented in plain text.[13] Whilst the mark is registered with some stylisation, the mark's distinctive character resides in the words "Golden Rose". Therefore, I consider that uses of the words "Golden Rose" in a standard format is acceptable variant use of the mark.

Assessment of evidence of use

[13] For example, see Exhibit IV, page 6.

32. I will now consider the global assessment of genuine use. The assessment is made by looking at the evidential picture as a whole, not whether each individual piece of evidence shows use by itself.[14] As indicated in the case law cited above, use does not need to be quantitively significant in order to be genuine. The assessment must take into account a number of factors in order to ascertain whether there has been real commercial exploitation of the mark which can be regarded 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".[15]

33. The case law summarised in the passage from *easygroup* and *Awareness Limited* quoted above makes it clear that real commercial exploitation of the trade mark must be shown and that the onus is on the Opponent to provide sufficiently solid evidence to show that the mark has been genuinely used within the five-year period set out in paragraph [17] above.

34. In my account of the evidence in this decision, I have identified significant shortcomings. The invoices are predominantly in a foreign language, and without further clarification from the Opponent, the relevance of the dates contained in each invoice remains unclear. I am unable to determine what the dates refer to. Moreover, all invoices are addressed to a single business in London. While I acknowledge London's status as a major UK economic hub, the geographical scope of use appears limited. Although a few internet extracts target the UK and fall within the relevant period, most are dated outside the relevant period (i.e., 29 November 2024). The Opponent did submit the 2023 international catalogue showing the marks used in connection with the goods, but Mr Erkul merely states the catalogue was "used in the UK" without elaborating on its distribution or reach. No turnover figures, sales volumes, marketing expenses, or promotional materials were provided.

35. Mr Erkul's statement of use does not explain the evidence, nor is there any supporting documentation regarding the geographical distribution of the goods to accompany the invoices, the 2023 catalogue, or the limited internet extracts.

[14] *New Yorker SHK Jeans GmbH & Co KG v OHIM*, T-415/09.
[15] *easyGroup* at [106].

36. As confirmed recently by Iain Purvis KC,[16] it is not the role of the Tribunal to fill in obvious gaps in the evidence and, in my view, that is what would be required to make a finding of genuine use in relation to any particular goods. The evidence that has been provided is inconclusive and requires too much inference and speculation. While it is possible for an accumulation of evidence to show use, even if individual items of evidence would on their own be insufficient proof, in my view, even considering that there is no *de minimis* rule, the above examples of use provided with the statement of use fall short of representing efforts to create and maintain a share of the UK market for the goods relied upon.

Outcome

37. As the Opponent must establish that it has made genuine use of its marks number WO0000000777212 and WO0000001249619 during the five-year relevant period to be able to rely upon them for the purposes of these proceedings. The opposition is unsuccessful insofar as it concerns the earlier marks WO0000000777212 and WO0000001249619. The opposition continues for the remaining earlier marks indicated above in this decision and for which evidence of use is not needed.

Section 5(2)(b)

38. Sections 5(2)(b) and 5A of the Act state:

> "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.

[16] Sitting as the Appointed Person in BL O/0725/25. See [37]. I note this decision was published after the commencing of these proceedings; however, the message is the same as that communicated in *Awareness Limited v Plymouth City Council*, cited earlier in my decision.

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."

Relevant Law

39. The following principles are gleaned from the decisions of the Court of Justice of the European Union ("CJEU") in *Sabel BV v Puma AG,* Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc,* Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV,* Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH,* Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM,* Case C-334/05P and *Bimbo SA v OHIM,* Case C-591/12P.

<u>The principles</u>

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

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

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

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

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

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

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

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

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

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

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

Comparison of goods and services

40. Section 60A of the Act provides:

"(1) For the purpose of this Act goods and services-

(a) are not to be regarded as being similar to each other on the ground that they appear in the same class under the Nice Classification.

(b) are not to be regarded as being dissimilar from each other on the ground that they appear in different classes under the Nice Classification.

(2) In subsection (1), the "Nice Classification" means the system of classification under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, which was last amended on 28 September 1975."

41. In comparing the respective specifications, all relevant factors should be considered, as per *Canon*, where the CJEU stated at paragraph 23 of its judgment:

"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."

42. The relevant factors identified by Jacob J. (as he then was) in the *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.

43. In *Boston Scientific Ltd v OHIM*,[17] the General Court ("GC") stated that "complementary" means:

> "[…] there is close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking."

44. In *YouView TV Ltd v Total Ltd* [2012] EWHC 3158 (Ch), Floyd J. (as he then was) stated that:

> "[…] Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR) [2012] ETMR 42 at [47]- [49]. Nevertheless the principle should not be taken too far. *Treat* was decided the way it was because the ordinary and natural, or core, meaning of 'dessert sauce' did not include jam, or because the ordinary and natural description of jam was not 'a dessert sauce'. Each involved a straining of the relevant language, which is incorrect. Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question."

45. In *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1)* [2024] UKSC 36, Lord Kitchin set out the proper approach to considering terms in specifications:

> "365. […] The correct approach, as a matter of principle, in considering a specification of services which is defined by terms which are not clear or precise, is to confine the terms used to the substance or core of their possible meanings: see, for example, Reed Executive plc v Reed Business Information Ltd [2004] EWCA Civ 159; [2004] RPC 40, at para 43. So too, if a specification of goods is defined by terms which are ambiguous, then it should be confined to those goods which are clearly covered. These principles are consistent with

[17] Case T-325/06

first, the requirement that the specifications of goods and services must be clear and precise so that others know what they can and cannot do; and secondly, general fairness because any ambiguity is the responsibility of the owner of the mark. If despite this, the words used are still unclear so that they cannot be interpreted, then it is permissible to disregard them. But, in my opinion, that will rarely be the case."

46. In *Avnet Incorporated v Isoact Limited* [1998] FSR 16, Jacob J (as he then was) said at [19]:

> "[…] definitions of services … are inherently less precise than specifications of goods. […] In my view, specifications for services should be scrutinised carefully and they should not be given a wide construction covering a vast range of activities. They should be confined to the substance, as it were, the core of the possible meanings attributable to the rather general phrase."

47. In *Beautimatic International Ltd v Mitchell International Pharmaceuticals Ltd and Another*, [2000] F.S.R. 267 (HC), Neuberger J. (as he then was) stated that:

> "I should add that I see no reason to give the word "cosmetics" […] anything other than their natural meaning, subject, of course, to the normal and necessary principle that the words must be construed by reference to their context."

48. I bear in mind that it is permissible to group goods together for the purposes of assessment: *Separode Trade Mark*:[18]

> "The determination must be made with reference to each of the different species of goods listed in the opposed application for registration; if and to the extent that the list includes goods which are sufficiently comparable to be assessable for registration in essentially the same way for essentially the same reasons, the decision taker may address them collectively in his or her decision."

[18] BL O/399/10

49. The goods and services to be compared are shown in the table below:

The Opponent's goods/services	The Holder's goods/services
("*the first earlier mark*") Class 35: Provision of an online marketplace for buyers and sellers of goods and services; the bringing together, for the benefit of others, of a variety of goods, namely, […] perfumery, cosmetics (except medicated cosmetics), fragrances, deodorants for personal use and animals, soaps (except medicated soap), dental care preparations, dentifrices, denture polishes, tooth whitening preparations, mouth washes, not for medical purposes, […] enabling customers to conveniently view and purchase those goods, such services may be provided by retail stores, wholesale outlets, by means of electronic media or through mail order catalogues.	Class 5: Dermatological preparations; gels, creams and solutions for dermatological use; antibacterial gels. Class 35: Retail sale service for cosmetics and cosmetic preparations for the face and body, dermo-cosmetic products, cosmetic creams, cosmetic oils, cosmetic masks, cosmetic soaps, skin care preparations, namely, creams, milks, serums, lotions, gels and powders for the face and body, serum for hair care, make-up products, make-up removing milk, gel and oil, dermatological preparations, gels,

("*the fourth earlier mark*") <u>Class 3</u>: Perfumery; fragrances; deodorants for personal use and animals; soaps (except medicated soap); dental care preparations, dentifrices, denture polishes, tooth whitening preparations, mouth washes, not for medical purposes; cosmetics and cosmetic preparations, make-up preparations; cosmetics and cosmetic preparations; rose oil for cosmetic purposes; nail varnish for cosmetic purposes; nail polish remover; lipsticks; eyeliner pencils; mascaras.	creams and solutions for dermatological use, antibacterial gels.
("*the fifth earlier mark*") <u>Class 3</u>: Perfumery; cosmetics (except medicated cosmetics); fragrances; deodorants for personal use and animals; soaps (except medicated soap); dental care preparations, dentifrices […]; […] hair colorants, hair coloring preparations, coloring preparations for cosmetic purposes.	

50. For the sake of clarity, I note that on 15 September 2025 the Tribunal informed the parties that the Holder had limited the IR's specification removing class 3 and leaving classes 5 and 35 as originally contained in the IR's specification.

Class 5

51. The Opponent argues that the Holder's goods in class 5 are highly similar to the Opponent's goods in class 3 as both medicated and non-medicated skincare products share the same nature and intended purpose (beauty care products intended for the beautification, maintenance, and enhancing the appearance of face and skin), are complementary (e.g., a nonmedicated moisturiser can complement a medicated acne treatment), overlap in trade channels (the respective goods are sold in brick and mortar pharmacies/health-related retail channels or in chain "beauty&cosmetic" shops. Also, medicated and non-medicated products are retailed online under the general term "skincare" and have the same method of use.[19]

52. The Holder denies that its goods in class 5 are similar to any of the Opponent's goods or services. The Holder contends that "*in relation to the goods and services applied for and opposed, there is no similarity when these goods/services have been limited, for example the Opponent's goods and services expressly excluded any rights to the retail of medicated/medical goods. This results in the goods/services having a different intended purpose, nature, as well as differing trade channels*".[20] I acknowledge the Holder's submissions and note that the first earlier mark's services in class 35 and some of the earlier marks' goods in class 3 have been limited to exclude their medicated nature.

53. In approaching my comparison, I appreciate the parties' submissions and arguments regarding the similarity (or lack thereof) between medicated and non-medicated cosmetics and skincare products.

- "*Dermatological preparations; gels, creams and solutions for dermatological use*"

54. The Holder's goods above are dermatological preparations for medical purposes. Class 3 of the Opponent's fourth earlier mark features "*cosmetics and cosmetic preparations […]*".

55. The respective goods are both products that can be applied to the skin. Cosmetics are applied to improve or enhance one's appearance, and dermatological preparations (including ointments, creams, lotions, gels) are used to treat a variety

[19] See the Opponent's written submissions dated 2 December 2024 at [8] and [9].
[20] See the Holder's submissions in lieu dated 10 March 2025 at [21] and [24].

of skin problems to restore it its original appearance as well as maintain its health. Therefore, although the goods may share the same method of use (i.e., being a cream, oil or gel application applied directly to the skin) they are intrinsically different in nature insofar as the Opponent's goods are not medicated whilst the Holder's goods are medicated. The goods also differ in their core intended purpose; one is for the purpose of treating a specific skin condition, whilst the other is for enhancing the appearance of the skin. Nevertheless, I accept that there may be a general degree of overlap to the extent that they both improve the condition of the skin. The trade channels will differ. The Opponent's goods, given their medicated nature, are more likely to be offered for sale in pharmacies or specialised stores, whereas cosmetics can be purchased in general retail outlets. In case the respective goods are both retailed in specialised stores (e.g., Boots), they will be found in different areas, i.e. the Opponent's goods will be positioned on cosmetic shelves, whereas the medicated goods will be located in the stores' skincare section. I do not find the goods are in competition; although consumers may use medicated skin products to enhance the appearance to their skin, I find it unlikely that consumers will purchase cosmetics goods to treat skin problems and vice versa. Similarly, I do not believe the respective goods are complementary with each other especially given the non-medicated nature of cosmetics goods. Accordingly, the goods likely target different users. I conclude that these goods share a low level of similarity.

- "*antibacterial gels*"

56. The above term can encompass facial antibacterial gels and cleansers to treat one's face when formulated specifically for the facial skin. The fourth earlier mark's "*cosmetics and cosmetic preparations […]*" can include facial gels that are applied to the skin (e.g., moisturisers, serums or masks). As such, the goods' nature could overlap, and the method of use will be the same as they will both be rubbed onto the skin. However, the intended purpose differs, one is intended to treat medical conditions whilst the other is primarily intended to improve the complexion. Although the goods may be sold in the same pharmaceutical and health and beauty stores, or supermarkets, they will likely be found in different aisles depending on the type of gel, i.e. either the medical or cosmetics aisle. Although generally the

goods will not be in competition, I do not exclude that there may be some degree of competition, for example, where someone has eczema, they may use a medical gel or a hypoallergenic cosmetic gel to treat or prevent this condition. I do not consider there to be any complementarity between the competing goods as cosmetic gels are not required for the use of dermatological or medical/therapeutic ones and vice versa. Users may also overlap albeit to a limited extent. Overall, I consider the goods are similar to a low degree.

Class 35

57. The Holder concedes that "*it is agreed that the Opponents retail services are similar to the Applicants retail services for the Class 3 goods*",[21] but the Holder denies any degree of similarity between the Opponent's class 35 services and its class 5 goods as the Opponent excluded any rights to the retail of medicated/medical goods.[22] The Opponent merely submits that Opponent's services are highly similar to the Holder's goods in class 5,[23] but the Opponent did not articulate further on the similarity between its services in class 35 and the Holder's goods in class 5. I will carry out my assessment of the respective goods and services bearing in mind the parties' submissions.

- "*Retail sale service for cosmetics and cosmetic preparations for the face and body, dermo-cosmetic products, cosmetic creams, cosmetic oils, cosmetic masks, cosmetic soaps, […] make-up products, make-up removing milk, gel and oil, […]*"

58. The Holder's services above consist of retail services of cosmetics and make-up products which are proper to class 3. Given the Holder's admission, I find there is at least a low level of similarity between the services at hand. The Opponent's class 35 features the term "*the bringing together, for the benefit of others, of a variety of goods, namely, […] cosmetics (except medicated cosmetics) […] enabling customers to conveniently view and purchase those goods, such services may be provided by retail stores, wholesale outlets, by means of electronic media or*

[21] See the Holder's defence and counterstatement dated 25 September 2024 at [4].
[22] See the Holder's defence and counterstatement dated 25 September 2024 at [5] and the Holder's submissions in lieu dated 10 March 2025 at [24].
[23] See the Opponent's written submissions dated 2 December 2024 at [4].

through mail order catalogues". The Opponent's services consist of assembling a variety of non-medicated cosmetics to allow consumers (i.e., services provided by retail stores directly to end consumers via electronic media or mail order catalogues) or third-party businesses (e.g., wholesale outlets) to purchase them. For the purposes of these proceedings, I will consider the Opponent's offer for sale services provided by retail stores directly to end consumers, i.e., "*the bringing together, for the benefit of others, of a variety of goods, namely, […] cosmetics (except medicated cosmetics) […] enabling customers to conveniently view and purchase those goods, such services may be provided by retail stores […] by means of electronic media or through mail order catalogues*". The respective services are similar in nature (i.e., retail services) and purpose as they are both designed to enable the transfer of cosmetics goods to buyers. The services overlap in users as they are provided directly to end consumers who intend to purchase non-medicated cosmetics. The services partially overlap in their method of use since consumers will access both services to purchase goods; however, the Opponent's services may offer a wider selection affecting the consumers' purchasing experience. The services share the same trade channels and are in competition with each other since consumers could elect to purchase the products from a retail platform rather than looking for a specific retailer (or vice versa). The services are not complementary in that they are not important for each other's use. Overall, the services are similar to a medium degree.

- "*Retail sale service for […]; skin care preparations, namely, creams, milks, serums, lotions, gels and powders for the face and body, serum for hair care, […] dermatological preparations, gels, creams and solutions for dermatological use, antibacterial gels"*

59. The retail services above concern a series of skin-care products that can fall within either class 3 or class 5 according to their medicated or non-medicated nature. As the Holder did not clarify the retail of which products in class 3 similarity was conceded, for the avoidance of doubt, I will carry out a separate similarity assessment for the retail of these goods which can fall in class 5. The Opponent's specification in class 35 of the first earlier mark is the offering of a service, the acts of which are the bringing together and making available directly to consumers (i.e.,

provided by retail stores) of a variety of non-medicated products for personal hygiene (e.g., deodorants, soaps dental care preparations, mouth washes), cosmetics and perfumery. As indicated above, the services share the same nature. However, I find the respective services partially differ in their method of use since consumers will seek for a more general "health&beauty" retail outlet for non-medicated goods (e.g., Boots) whereas they will look for more specialised retailers for medicated goods such as pharmacies. Although I appreciate that the services may overlap in their intended purpose (i.e., provision of goods to the end consumer), I find there is a difference insofar as the Holder's services concern the provision of medicated skin products whereas the Opponent's services concern the distribution of non-medicated products for personal hygiene, cosmetics and perfumery. Accordingly, the users are unlikely to overlap, and the services are neither complementary nor in competition with each other. Overall, the services have a low degree of similarity.

The average consumer and the purchasing act

60. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties' goods and services. I must then determine the manner in which the goods and services are likely to be selected by the average consumer. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited,* [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

> "60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The word "average" denotes that the person is typical. The term "average" does not denote some form of numerical mean, mode or median."

61. The average consumer for the non-medicated cosmetics in class 3 will primarily comprise members of the general public and professionals in the field of beauty.

The goods themselves are all items that may be purchased fairly frequently, often at a relatively low cost. Whilst I note that some items will sit at a higher price point, for example where they are made out of particularly expensive or sought after ingredients, this does not raise the level of attention paid in respect of the category of the goods as a whole. The general public will consider factors such as, for example, ingredients, benefits, and quality of the goods, in addition to suitability of the goods for use with their skin type such as, for example, the colour of the products for different skin tones. Although some consumers may pay an above-medium level of attention on the basis of having particular skin conditions or allergies, for the most part, a medium degree of attention will be paid by the general public in respect of the goods in class 3. The degree of attention paid by the professional consumers will be higher than that of the general public due to the increased liability of purchasing these goods to use on others in a professional capacity. The level of attention paid by these professionals will likely be above medium as the choice of goods may directly impact their ability to do their job, their reputation and ultimately their business. However, the likelihood of confusion must be assessed from the perspective of the former (the general public) since they are the group who will pay the lower degree of attention.[24]

62. The average consumer for the medicated dermatological goods in class 5 will be both medical professionals and members of the general public. I consider that the goods may either be obtained via a prescription or could be sold over the counter. The cost of the goods is likely to vary, however, on balance it is likely to be relatively low. Most of the goods will be purchased relatively frequently. Furthermore, as the goods are in relation to the user's health, as highlighted above, both sets of consumers would pay a high degree of attention during the purchasing process.

63. The goods will likely be primarily purchased visually, either from online or physical retail stores or pharmacies. However, the goods may be subject to verbal recommendations (e.g., by beauticians, dermatologists, or peers) and verbal assistance from retail staff may be sought. I therefore cannot completely disregard the aural comparison.

[24] Case T-356/14, [25] – [26].

64. Turning to the retail services of non-medicated cosmetics in class 35, these services focus on the actual sale of goods to end-users. Thus, the services will mainly be directed at the general public. The consumers are likely to be exposed to the mark through shop frontages, advertising, catalogues and websites. The selection process will be mainly visual though I do not discount an oral component. The users from the general public of such services will pay a medium degree of attention when selecting the retailer for non-medicated cosmetics since such goods are purchased fairly frequently, they are not too expensive and they can be found in ordinary retail outlets (e.g., supermarkets or other "health&beauty" shops).

65. Regarding retail services of medicated dermatological products in class 5, these services will cater to the general public. The general public will purchase these goods off the shelves, over the counter or they may be available on prescription. Visual considerations will dominate but there is some scope for oral exposure to the mark, for example, in the course of discussion with doctors about suitable/nearby pharmacies, which I will bear in mind. The choice of retailer will include considerations such as whether there is a pharmacist/expert available and will be made with a medium degree of attention.

Comparison of trade marks

66. It is clear form *Sabel* 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 states at paragraph [34] of its judgment in *Bimbo*, 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 relevant 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."

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

68. The marks to be compared are as follows:

The Opponent's Earlier Marks	The Holder's IR
("*the first earlier mark*") GOLDEN ROSE	
("*the fourth earlier mark*")	
("*the fifth earlier mark*") GOLDEN ROSE PRESTIGE *Intense*	

Overall impression

69. The Opponent submits that the "*overall impression of the marks is highly similar since the Applicant's mark, GR GOLDEN ROSE, is the shuffled version of the main letters and main words of the Opponent's mark*".[25] The Holder contends that "*in the Applicant's mark the letters RG are clearly dominant and distinctive*".[26]

[25] Statement of grounds dated 24 June 2024 at [16].
[26] Counterstatement dated 25 September 2024.

70. I note the parties' arguments. The IR consists of the stylised capital letters 'R' and 'G', arranged vertically with the 'R' positioned above the 'G' and partially overlapping with it. The letters are presented in thick, bold black and with flat terminals. Beneath these letters, the word "ROSEGOLD" appears all in uppercase, thin characters and smooth curves. While 'RG' occupies a prominent position, "ROSEGOLD" is also clearly visible in the mark. The overall impression of the mark stems from the combined presentation of 'RG' and "ROSEGOLD". The first earlier mark features the words "GOLDEN ROSE" placed above the stylised letters 'G' and 'R'. Although 'GR' holds a dominant position for its size and placement, "GOLDEN ROSE" remains clearly perceptible. The overall impression of this mark is derived from its entirety. The overall impression of the fourth earlier mark resides in the stylised letters 'GR' of which it is composed. The fifth earlier mark comprises the words "GOLDEN ROSE", "PRESTIGE" and "Intense" arranged in three stacked lines. "PRESTIGE" and "Intense" have more of a positive/descriptive meaning of the goods. The relevant consumers will perceive "GOLDEN ROSE" as the more distinctive element in the mark. However, given the central position of "PRESTIGE" in the mark and the stylization of "Intense", these elements will not be disregarded and contribute, in part, to the mark's overall impression.

"The first earlier mark"

Visual similarity

71. The Opponent contends that "*the contested mark consists of "RG ROSE GOLD" word, with the RG letters positioned at the same order of R letter is on the upper left and G letter is on the lower right side, where the letters are overlapping at halfway. The Opponent's marks are just the shuffling of the RG letters and ROSE GOLD word, to GR and GOLD(EN)ROSE wordings. […] The trademarks are visually highly similar, since shuffling and creating a new version of the same words/letters do not add distinctiveness to the mark. Even the positioning of two letters are exactly the same*".[27]

72. The Holder argues that the respective marks are visually different. It submits that "*in the Opponents marks is not even clear that the letters claimed are GR because*

[27] Statement of grounds dated 24 June 2024 at [13] and [17].

of the stylisation. It is denied that the positioning of two letters are exactly the same. The applicants letters R&G are clearly overlapping and appear at the top of the mark. In the Opponents mark 1 ["the first earlier mark"] they are the dominant feature but are at the bottom of the mark […]".[28]

73. I acknowledge the parties' arguments. The letters 'RG' and 'GR' in the respective marks are both capitalised but present some difference in stylisation. In the Holder's mark these letters are in thick bold and partially overlap. The letter 'R' is thinner at the top and centre and its tail terminates in a wavy flat style. The letter 'G' is also thick bold and gets thinner towards the end of the letter to then end in a flat finishing. The 'R''s tail overlaps with the top section of the letter 'G'.

74. The first earlier mark shows the large stylised uppercase letters 'G' and 'R' arranged diagonally, with the 'G' positioned toward the upper left and the 'R' toward the lower right. Both letters are rendered in a bold, black typeface and rounded curves. The letter 'G' features an open circular form with a prominent gap on the right side, while the 'R' has a strong vertical stem and a diagonal leg extending downward. A distinct diagonal division runs between the two letters, created by the negative space resulting from the letters' parallel arrangement. Above the 'GR' letter combination the words "GOLDEN ROSE" are placed in a black, thin and rounded typeface and are smaller in size compared to the 'GR' device.

75. Consumers read from left to right (and from top to bottom), therefore, they will perceive first the letters 'RG' in the IR and the words 'GOLDEN ROSE' in the Opponent's mark.[29] The same can be said for the words "ROSEGOLD" and "GOLDEN ROSE" in the respective marks. Although "ROSEGOLD" and "GOLDEN ROSE" overlap in "ROSE" and "GOLD", the words' order is inverted leading the marks to differ in their beginnings. In *El Corte Inglés,* the GC noted that the beginnings of words tend to have more visual and aural impact than the ends and I find that to be the case here. The Opponent's mark contains two additional letters ("-EN") that increase the marks' visual dissimilarity. Furthermore, in the IR the words are conjoined whereas in the Opponent's mark they are separated; this

[28] Counterstatement dated 25 September 2024 at [10].
[29] *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02.

further detracts from the marks' visual similarity. Overall, I find the marks have a below-medium visual similarity.

Aural similarity

76. The Opponent submits that the marks are aurally very similar, but it does not articulate further on this point.[30] The Holder contends that the marks are not phonetically similar, and it argues that "*it is beyond any reasonable doubt that there are phonetic differences between the respective marks. The Subject Mark would be pronounced RG ROSE GOLD and not GR GOLDEN ROSE with the Subject Mark's prefix RG being emphasized more on the first letter R when spoken as opposed to the first letter G in the opponents marks*".[31]

77. The IR comprises the letters 'R' and 'G' and the word "ROSEGOLD". Given the arrangement of 'R' and 'G' in the mark, consumers are likely to read them separately as single alphabet letters. Even in the eventuality consumers would perceive these letters as the initialism 'RG', they would still pronounce each letter independently. Turning to "ROSEGOLD", albeit I appreciate that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details,[32] they will nevertheless, perceiving a verbal sign, break it down into verbal elements which, for them, suggest a concrete meaning or which resemble words known to them.[33] Therefore, I find that the relevant consumers will read "ROSEGOLD" as the union of 'ROSE' and 'GOLD' and voice them accordingly being these two ordinary English dictionary terms. The same considerations apply to the Opponent's mark where the consumers will read 'G' and 'R' separately as individual alphabetical letters and voice 'GOLDEN' and 'ROSE' according to their English dictionary pronunciation. The respective marks share the letters 'R' and 'G' as well as the words 'ROSE' and 'GOLD-' although inverted in their order. The Opponent's mark presents the further aural difference in the word 'GOLDEN' given by the additional '-EN' leading the consumers to a different pronunciation between

[30] Statement of grounds dated 24 June 2024 at [18].
[31] Submissions in lieu dated 10 March 2025 at [12].
[32] *Lloyd Schuhfabrik Meyer*, paragraph 25.
[33] Case T-356/02 *Vitakraft-Werke Wührmann v OHIM – Krafft (VITAKRAFT) [2004] ECR II 3445*, paragraph 51; Case T-256/04 *Mundipharma v OHIM – Altana Pharma (RESPICUR)* [2007] ECR II 0000, paragraph 57.

the one-syllable ‘GOLD’ and the two-syllable ‘GOLDEN’ (i.e., ‘GOHLD’ vs ‘GOHL-DEN’). Overall, I find the marks have a medium level of aural similarity.

Conceptual similarity

78. It is settled case law that for a conceptual message to be relevant it must be capable of immediate grasp by the average consumer.[34] The Opponent contends that “*the trademarks are conceptually identical, as both marks have the initials of two following words which are the same, i.e., ROSE and GOLD(en), in English*”.[35] The Holder argues that “*GOLDEN ROSE and ROSEGOLD have two entirely different meanings, which will naturally change how the respective marks are perceived. Golden Rose calls to mind a Rosa Golden. Beauty a type of Floribunda Rose whereas Rose Gold is well known alloy of gold mixed with copper, which gives it red tint. The marks are completely dissimilar because the Applicants mark evokes the concept of a ‘pinkish’ colour, most commonly associated with jewellery; whereas the Opponents marks create the impression of gold coloured roses (where golden rose is part of the mark). […]. The letters RG reinforce the fact that the mark is ROSEGOLD. As such, the signs cannot be considered conceptually similar to any degree*”.[36]

79. I acknowledge the parties’ arguments. As previously established, relevant consumers are likely to interpret the letter combinations ‘RG’ and ‘GR’ as abbreviations for “ROSEGOLD” and “GOLDEN ROSE,” respectively, and are unlikely to associate them with any alternative meanings. Based on the Holder’s submissions, I accept that consumers will perceive “ROSEGOLD” in the IR as referring to a gold alloy with a pinkish hue, even though this interpretation does not have a direct semantic link to the Holder’s goods and/or services. Likewise, “GOLDEN ROSE” is likely to be understood as denoting either a specific type of rose or a rose with a golden or yellow colour. The marks convey distinctly different meanings, notwithstanding the component words in isolation evoking the concepts of “gold” (as a colour or alloy) and “rose” (as a flower or colour). Consequently, the overall conceptual similarity between the marks is low.

[34] *The Picasso Estate v OHIM*, Case C-361/04 P.
[35] Statement of grounds dated 24 June 2024 at [19].
[36] Submissions in lieu dated 10 March 2025 at [14].

"*The fourth earlier mark*"

Visual similarity

80. I have already illustrated the IR's visual impression at paragraph [73] - [75] above. The fourth earlier mark consists of the stylised letter combination 'GR' as described at paragraph [74] above. Neither party provided submissions specifically concerning the similarity with the fourth earlier mark. Taking into consideration the parties' submissions and my considerations outline above, the marks' similarity exclusively lies in the fact that both marks feature the capitalised letters 'R' and 'G' although with different stylisations and arranged in opposite order (i.e., 'RG' in the IR and 'GR' in the fourth earlier mark). Therefore, following from these considerations and bearing in mind my assessment of the marks' visual similarity above, I find the marks have a low degree of visual similarity.

Aural similarity

81. The IR's aural considerations carried out at paragraph [77] apply. Turning to the fourth earlier mark, the relevant consumers will read the single letters "G" and "R" in the mark as independent single alphabetical letters and will pronounce them accordingly. Bearing in mind the parties' submissions and my considerations expressed at paragraphs [76] and [77], I find the respective marks to have a low level of aural similarity.

Conceptual similarity

82. Following from the above considerations at paragraphs [78] and [79], the IR conveys the meaning of a gold alloy with a pinkish hue. The fourth earlier mark merely features the letters 'G' and 'R' without further specification on these letters' potential meaning. Therefore, the relevant consumers, when confronted with the fourth earlier mark, are unlikely to derive any meaning for the 'GR' letter combination. It follows that the IR communicates a meaning whereas the fourth earlier mark does not (beyond it consisting of two recognised letters of the alphabet). Thus, the marks are not able of conceptual comparison.

"*The fifth earlier mark*"

Visual similarity

83. I already provided the IR's visual description at [70]. The fifth earlier mark consists of three verbal elements arranged vertically on a white background. At the top, the words "GOLDEN ROSE" appear in uppercase letters using a thin and rounded typeface with evenly weighted strokes. Below this, the word "PRESTIGE" is prominently displayed in a bold and tall typeface. The third element, "Intense," is positioned beneath "PRESTIGE" and rendered in a cursive, italic script style with fluid, connected strokes.

84. The Holder contends that "*[…] visually the marks are different with GOLDEN ROSE PRESTIGE Intense being completely different as it does not incorporate the Applications Dominant and distinctive element and includes PRESTIGE & Intense which are not part of the Application at all*".[37] The Opponent submits the marks are visually highly similar as already reported above and it does not provide further specific submissions on the similarity of the marks at hand.

85. As noted in paragraph [75], consumers typically read from left to right and top to bottom. Accordingly, they will first encounter 'RG' in the IR and "GOLDEN ROSE" in the fifth earlier right, meaning the marks differ at their beginnings. While both marks share the elements 'ROSE' and 'GOLD', these appear in reversed order. In addition, "ROSEGOLD" in the IR is presented as a single word, whereas "GOLDEN ROSE" consists of two separate words. The fifth earlier mark also includes the additional terms "PRESTIGE" and "Intense," which are absent from the IR, further reducing the marks' visual similarity. Overall, the marks exhibit a low degree of visual similarity.

Aurally similarity

86. As set out in paragraph [77], I have already explained how consumers will read the IR. The parties did not provide specific submissions on the aural similarity of the marks at hand. The words "GOLDEN ROSE," "PRESTIGE," and "Intense" are ordinary English terms, and the relevant consumers will pronounce them accordingly. Both marks share the word "ROSE," which will be pronounced

[37] Counterstatement dated 25 September 2024 at [11].

identically in each, although its position differs relative to 'GOLD' and 'GOLDEN' in the respective marks. The element 'GOLD' will be voiced as 'GOHLD', while 'GOLDEN' will be pronounced as 'GOHL-DEN', adding an extra syllable and a softer ending. Taking into account the parties' submissions and my observations in paragraph [77], I conclude that the marks share a low degree of aural similarity overall.

Conceptual similarity

87. Following from the above considerations at paragraphs [78] and [79], the IR conveys the meaning of a gold alloy with a pinkish hue. With regard to the fifth earlier mark, in addition to the semantic considerations outlined above, the Holder contends that "*in the case of the comparison against IR777212 AND 801514375 [the fifth earlier mark], the conceptual comparison is even more significant noting the absence of the stylised letters GR from the earlier marks*".[38] The Opponent did not provide further submissions beyond those already set out above.

88. The marks' meanings conveyed by the terms "GOLDEN ROSE" and "ROSEGOLD" have already been discussed. The IR also includes the letters 'RG', that the relevant consumers will exclusively understand as the initials for "ROSE" and "GOLD". By contrast, the fifth earlier mark contains the extra words "PRESTIGE" and "Intense," which consumers will interpret as positive descriptors of the goods (e.g., make-up products): "prestige" likely suggests exclusivity and superior quality, while "intense" implies rich colour payoff and long-lasting wear. Although both marks evoke the concepts of "gold" (as a colour or alloy) and "rose" (as a flower or colour), the additional meanings conveyed by the fifth earlier mark significantly reduce the marks' conceptual similarity. Overall, I find the marks to be conceptually similar to a very low degree.

Distinctive character of the earlier marks

89. In *Lloyd Schuhfabrik Meyer* the CJEU stated that:

[38] Submissions in lieu dated 10 March 2025 at [17].

"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 *WindsurfingChiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

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

90. 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/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.

91. I deal first with the Earlier Marks' inherent distinctiveness.

92. The first earlier mark features the words "GOLDEN ROSE" and underneath the stylised letters 'GR' referring to the initials of the mark's verbal element. It may be argued that "golden rose" describes a specific type of scent for some of the Opponent's beauty or healthcare products (e.g., perfumery, fragrances, deodorants, soaps). However, it seems to me that "golden rose" is an excessively specific scent for these types of products which does not represent the market reality for these goods. Absent further submissions from the parties on this point, I

find that “GOLDEN ROSE” does not have any semantic correlation to the retail services of cosmetics. Taking into consideration the size, position and stylisation of ‘GR’ I find that, overall, the first earlier mark has a medium level of inherent distinctiveness.

93. The fourth earlier mark is comprised of the stylised letters ‘GR’ as described at paragraph [74] above. As I already found, the letters ‘GR’ by themselves are unlikely to be perceived as having any clear meaning. Hence, with regard to the Opponent’s beauty and healthcare goods, I find the fourth earlier mark is devoid of any semantic correlation. Neither party put forward arguments on this point. Thus, the fourth earlier mark possesses a high degree of inherent distinctiveness.

94. The fifth earlier mark features the words “GOLDEN ROSE” whose distinctiveness I already set out at paragraph [92]. The mark also contains the words “PRESTIGE” and “Intense” which I already found to convey, respectively, positive (exclusivity and superior quality) and descriptive (rich colour payoff and/or long-lasting wear) meanings in relation to the Opponent’s beauty and personal healthcare products. Thus, “PRESTIGE” and “Intense” are lowly in distinctiveness and do not imbue the fifth earlier mark with any additional inherent distinctive character than the one provided by the presence of “GOLDEN ROSE” in the mark. The fifth earlier mark has a medium degree of inherent distinctive character.

95. I turn now to consider the position in respect of the Opponent’s evidence, to see whether the use the Opponent has made of its earlier marks has enhanced their distinctive character. The Opponent has filed no evidence of the fifth earlier mark and so I only consider its inherent position. With regard to the first and fourth earlier marks, whilst the Opponent has filed evidence of use concerning the second and third earlier marks, such evidence is also relevant for the distinctiveness assessment regarding the first and fourth earlier marks since the evidence concerns the use (or lack thereof) of the words “GOLDEN ROSE” and the stylised letters ‘GR’ used either by themselves or in combination with “GOLDEN ROSE”.

96. The evidence provided by the Opponent is very limited and presents significant shortcomings. The evidence includes invoices that are mostly in a foreign language, showing unclear dates and having a limited geographical scope (i.e., all the invoices are directed to one address in London). Furthermore, the Opponent

provided a product catalogue submitting that it has been distributed in 2023 in the UK, but no further evidence on such distribution has been provided. The evidence also features a few internet extracts showing the Opponent's products available for purchase online, but most of the extracts are dated outside the relevant period. No turnover figures, sales volumes, marketing expenses, or promotional materials were provided. As outlined at paragraphs [32] – [36], I found the evidence is insufficient to show use of the second and third earlier marks. Likewise, I do not believe that the evidence provided sufficiently shows that the first and fourth earlier marks have been used to an extent to justify a finding of enhanced distinctiveness.

Likelihood of confusion

97. There is no simple formula for determining whether there is a likelihood of confusion. The factors considered above have a degree of interdependency (*Canon* at [17]). I must make a global assessment of the competing factors (*Sabel* at [22]), considering the various factors from the perspective of the average consumer and deciding whether the average consumer is likely to be confused. In making my assessment, I must keep in mind that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them he has retained in his mind (*Lloyd Schuhfabrik* at [26]).

98. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other (*L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10).

99. I found the Opponent's goods in class 3 and the Holder's goods in class 5 to have a low level of similarity. The level of similarity for the services in class 35 is medium. The consumer is likely to pay a medium level of attention in the selection of the non-medicated goods at issue. Part of the relevant public for the goods at issue could be professionals who would pay an above-medium level of attention, but another part of the relevant public will be members of the general public who will demonstrate a medium degree of attention. I will assess the likelihood of confusion from the perspective of the general public since they are the group who will pay the lower degree of attention. The relevant public for the class 5 goods is likely to be both the general public and the professional public. Both categories of consumers

will likely pay a high level of attention during the purchasing process. The relevant public for the class 35 services (both for medicated and non-medicated goods) is the general public who will pay a medium degree of attention. The purchasing process of the contested goods and services is considered to be mainly visual but the potential for aural use also bears some relevance.

100. I will now turn to consider the likelihood of direct confusion (or lack thereof) of the IR in relation to respectively the first, fourth and fifth earlier marks.

101. In relation to the first earlier mark, I found the visual similarity between the marks to be below medium, the aural similarity to be medium, and the conceptual similarity to be low. The distinctiveness of the first earlier mark is medium. While both marks share the elements ‘ROSE’, ‘GOLD-’, and the letters ‘R’ and ‘G’, these are presented in different syntactic arrangements. Notably, the first earlier mark includes the word ‘GOLDEN’, which contributes to a divergent overall meaning. Additionally, the letters ‘R’ and ‘G’ are stylised differently and appear in reversed order across the marks as well as the words “ROSE” and “GOLD(EN)”. Given the distinct structural and conceptual features, it is unlikely that the marks will be confused or misremembered for one another. Taking into account the relevant consumer’s level of attention ranging from medium to high respectively for the services and goods at hand, particularly in the context of medicated goods, and even applying the principles of imperfect recollection and interdependency, I find that the differences are sufficient to avoid direct confusion. As a result, I find that there is no likelihood of direct confusion.

102. Turning to the fourth earlier mark, the marks have a low visual and aural similarity, and they are not able of conceptual comparison. The distinctiveness of the fourth earlier mark is high. Although both marks contain the letters ‘R’ and ‘G’, they are presented in reversed order and with differing stylisations. The IR also includes the term “ROSEGOLD”, which further distinguishes it. As with the first earlier mark, and considering the elevated attention consumers pay to medicated products, I find that even with imperfect recollection, confusion is unlikely. Therefore, I conclude that there is no likelihood of direct confusion.

103. Regarding the fifth earlier mark, I have already determined that consumers are unlikely to confuse “GOLDEN ROSE” with “ROSEGOLD”, nor misremember the

letter combinations ‘R/G’ and ‘G/R’ as being the same. This is again due especially to the high level of attention typically exercised when purchasing medicated goods. Moreover, the inclusion of the terms “PRESTIGE” and “Intense” in the fifth earlier mark introduces further differentiation, reducing the potential for confusion even more. Accordingly, I also find no likelihood of direct confusion in this case.

104. It now falls to me to consider the likelihood of indirect confusion. The concept of indirect confusion was described in the following terms by Iain Purvis Q.C. sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10:

> “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)”.

105. These three categories are not exhaustive; rather, they were intended to be illustrative of the general approach, as has been confirmed by the Court of Appeal.[39] I recognise that a finding of indirect confusion should not be made merely because the competing marks share a common element. In this connection, it is not sufficient that a mark merely calls to mind another mark: this is mere association not indirect confusion.[40] The Court of Appeal has also emphasised that, where there is no direct confusion, there must be a “proper basis” for finding indirect confusion.[41]

106. With regard to the first earlier mark, I find that the consumers noticing that the wording and letters in the competing marks had been reversed and partially changed (i.e., “GOLDEN” and “GOLD”), I see little reason for them to consider that the IR’s syntactic rearrangement of the words and letters along with the change of the mark’s meaning and stylisation would be an intentional step taken by the same undertaking, and I do not consider it would form a proper basis for a finding of indirect confusion between the marks.

107. The same reasoning applies to the fourth and fifth earlier marks. I do not see how the consumers, upon noticing the IR’s rearrangement of “ROSEGOLD” into a different syntactic structure with an almost entirely new meaning, despite a faint reference to ‘rose’ and ‘gold’, alongside the inversion of the letters ‘R/G’ and changes in stylisation, would perceive the IR as originating from the Opponent’s ‘G/R’ letter combination in the fourth earlier mark or as part of the “GOLDEN ROSE” brand. I reach this conclusion not only for the consumers for medicated products in classes 5 and the services in class 35 for these products, who would pay a higher level of attention, but also for the consumers of non-medicated products and the

[39] *Liverpool Gin Distillery and others v Sazerac Brands, LLC and others* [2021] EWCA Civ 1207.
[40] *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17.
[41] *Liverpool Gin Distillery*.

services concerning such products in class 35 who would pay a medium degree of attention.

CONCLUSION

108. The opposition fails under section 5(2)(b) of the Act.

109. The Holder has been successful. Subject to any successful appeal, the application by Monsieur LEGHBALI Kyrian for the IR designating the UK may proceed to registration.

COSTS

110. The Holder is entitled to an award of costs. The relevant scale is contained in Tribunal Practice Notice ("TPN") 1/2023. Bearing that scale in mind, I award costs to the Holder as follows:

Considering the notice of opposition and preparing the counterstatement	£250
Submissions in lieu of a hearing	£350
Total:	**£600**

111. I order ERKUL KOZMETIK SANAYI VE TICARET ANONIM SIRKETI to pay Monsieur LEGHBALI Kyrian the sum of **£600**. This sum is to be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 30th day of October 2025

Andrea Rossi

For the Registrar