

O/1032/25

TRADE MARKS ACT 1994

**IN THE MATTER OF TRADE MARK APPLICATION
NO. 4115575
BY LAURA JORDAN GONZALES
TO REGISTER THE FOLLOWING SERIES OF TRADE MARKS:**

Wild Hearts

And

Wild heart

IN CLASSES 39, 41, 43 AND 45

AND

**OPPOSITION THERETO
UNDER NO. 600003603 BY
THE WILDHEART TRUST**

Background & Pleadings

1. On 23 October 2024, Laura Jordan Gonzalez (“the applicant”), applied to register the series of trade marks shown on the front page of this decision in the United Kingdom. The application was published on 8 November 2024 in respect of the following services:

Class 39: Planning, organization, arranging, and booking of wedding venues; transportation of wedding flowers; transportation of wedding cakes; transport; travel arrangement; planning, organization, arranging, and booking of weddings and honeymoons; arranging travel as part of a wedding or celebration; packaging and storage of goods; transportation of travellers' luggage, baggage and equipment; wrapping services for luggage, baggage and equipment; travel arrangement services; travel information; travel reservation; travel and booking agency services; provision of information in the field of travel; booking reservation and transaction processing services for the aforesaid; reservation services for travel; accompanying and escorting of travellers; services for the accompanying and escorting of travellers; travel guide and travel information services; coordinating travel arrangements for individuals and for groups; providing tourist travel information, via the internet; travel information about disruptions due to adverse weather conditions; planning, arranging and booking of travel; arrangement of travel to and from accommodation, hotels and lodgings; planning, organization and arranging and booking of travel accommodation; packaging and storage of goods; transport and delivery of goods and of messages; travel arrangements; mail order processing including receiving, sorting and organising mail orders; delivery of goods by mail order; information, advisory, and consultancy services relating to all the aforesaid.

Class 41: Entertainment; education; sporting and cultural activities; all the foresaid in relation to weddings and celebrations; party planning; party planning services; wedding celebrations (organisation of entertainment for -); arrangement and provision of wedding band and singer services; video, film, and sound recording services; photography services; publication services; publication of books; digital music (not downloadable) from the Internet; information, advisory, and consultancy services in relation to the aforesaid.

Class 43: Accommodation services; Arranging of wedding receptions (food and drink); arranging and provision of wedding cakes; arranging of wedding receptions (venues); provision of temporary accommodation; catering services specialising in weddings and private events; provision of food and drink for weddings and private events; information, advisory, and consultancy services in relation to the aforesaid

Class 45: Planning and arranging of wedding ceremonies; Wedding ceremony planning and arranging consultation services ; master of ceremony services for ceremonies and dedications; celebrant services for civil, religious, humanist or same-sex marriage; wedding planning services; planning of wedding ceremonies; arranging of wedding services; wedding ceremony planning and arranging services; providing wedding officiant services; maintaining lists of wedding presents for selection by others; preparation of wedding present lists; wedding present lists (preparation of-); arrangement of wedding flowers; legal, professional, advisory and consultancy services in relation to weddings; establishment, maintenance and management of intellectual and industrial property rights; licensing of intellectual property rights; providing information, news, and assistance in the field of weddings; information, advisory, and consultancy services in relation to the aforesaid.

2. On 10 February 2025, The Wildheart Trust (“the opponent”) partially opposed (using the Fast Track provisions) the application on the basis of

section 5(2)(b) of the Trade Marks Act 1994 (“the Act”).¹ The opponent relies upon the following two earlier trade mark registrations:

(i) UK00003907640

Wildheart Animal Sanctuary (series 1 of 2)

The Wildheart Animal Sanctuary (series 2 of 2)

Filing date: 3 May 2023; registration date: 28 July 2023

Relying on its services in classes 41 and 43 set out in paragraph 28 of this decision.

(ii) UK00003907650



Filing date: 3 May 2023; registration date: 28 July 2023

Relying on its services in classes 41 and 43 set out in paragraph 28 of this decision.

¹ The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

3. Under Section 6(1) of the Act, the opponent's marks qualify as earlier trade marks. Further, as the registrations of the opponent's marks were completed less than five years before the application date of the contested mark, proof of use is not relevant in these proceedings as per Section 6A of the Act.
4. The opponent, in its notice of opposition, claims that the applicant's services in classes 41, 43 and 45 are either identical or highly similar to the relied upon services. They also claim that the competing marks are similar, giving rise to a likelihood of confusion.
5. The applicant filed a counterstatement denying that the marks and specifications are sufficiently similar to cause a likelihood of confusion.
6. Rule 6 of the Trade Marks (Fast Track Opposition) (Amendment) Rules 2013, S.I. 2013 2235, disapplies paragraphs 1-3 of Rule 20 of the Trade Mark Rules 2008, but provides that Rule 20(4) shall continue to apply. Rule 20(4) states that: "(4) The registrar may, at any time, give leave to either party to file evidence upon such terms as the registrar thinks fit." The net effect of these changes is to require the parties to seek leave in order to file evidence in fast track oppositions. However, no leave was sought to file any evidence in respect of these proceedings.
7. Rule 62(5) (as amended) states that arguments in fast track proceedings shall be heard orally only if (i) the Office requests it or (ii) either party to the proceedings requests it and the registrar considers that oral proceedings are necessary to deal with the case justly and at proportionate cost; otherwise, written arguments will be taken.
8. The applicant is represented by Cloch Solicitors and the opponent represents itself.

9. A hearing was neither requested nor considered necessary; however, both parties filed written submissions in lieu. This decision is taken following a careful consideration of the papers.

Preliminary issues

Counterstatement and submissions in lieu

10. Within its submissions in lieu, the opponent has argued that the applicant's TM8 and counterstatement has failed address any of the fundamental issues of the case and that this contravenes the procedural requirements as set out in Tribunal Practice Notice ("TPN") 4/2000. As such, the opponent has requested that the arguments put forward in the applicant's submissions in lieu should be disregarded, and the opposition grounds treated as uncontested.²
11. TPN 4/2000 sets out its guidance in respect to filing a counterstatement as follows:
 - "19. A defence should comment on the facts set out in the statement of case and should state which of the grounds are admitted or denied and those which the applicant is unable to admit or deny but which he requires the opponent to prove.
 20. The counter-statement should set out the reasons for denying a particular allegation and if necessary the facts on which they will rely in their defence. For example, if the party filing the counter-statement wishes to refer to prior registrations in support of their application then, as above, full details of those registrations should be provided."
12. The applicant's counterstatement is as follows:

² Paragraphs 2-5 of the opponent's submissions in lieu.

The Opponent's claims are denied. The case re UK00003907650 should be summarily struck out and costs awarded.

In terms of the marks, UK00003907640 is insufficiently similar to the application mark. UK00003907640 includes clear additional matter in the form of two words: ANIMAL and SANCTUARY. Even if those words are held to play a lesser role, the role they do play is to describe goods/services unrelated to those of any concern to the applicant. As for UK00003907650, that mark is plainly dissimilar, or insufficiently visually, aurally and conceptually similar.

The services - taken as an aggregate of isolated terms - are similar to a degree. However, the registrations as a whole suggest different undertakings and markets.

It is denied that the marks and specifications are sufficiently similar in order to cause a likelihood of confusion, including a likelihood of association in terms of s. 5(2)(b) of the Act.

The Opponent's case is materially undermined by its admission of narrow field of use and territory of use - in that there was no genuine use to use its marks for the whole of the goods and services covered by the registrations. The Applicant reserves the right to raise counter invalidity proceedings.

13. I am of the view that the counterstatement above shows that the applicant has clearly denied that there would be a likelihood of confusion under section 5(2)(b) and has set out its case in respect of the similarity of the services and the similarity of the respective marks. As such, I respectfully disagree that the TM8 and counterstatement should be disregarded.
14. At this point, I also find it important to address the opponent's comments regarding the applicant's submissions in lieu. The opponent argues that they have suffered significant prejudice caused by the applicant's delay in filing substantive arguments and that these new arguments should be excluded.
15. TPN 2/2013 sets out the following guidance in relation to written submissions in fast-track proceedings:

"8. New Rule 62(5) states that arguments in fast track proceedings shall be heard orally only if 1) the Office requests it or 2) either party to the proceedings requests it and the registrar considers that oral proceedings are necessary to deal with the case justly and at proportionate cost. Otherwise, written arguments will be taken.

9. The procedure will be that once the Form TM8 is served the parties will be given one month to submit written arguments. Any request to be heard orally must be made within **14 days** of being invited to submit

written arguments and must explain why an oral hearing is a) necessary and b) proportionate to the cost to both parties and to the commercial value of the matter at stake, e.g. the applicant's mark has acquired a valuable goodwill because of the use made of it."

16. In the Registry's official letter dated 17 April 2025, both parties were set a deadline of 19 May 2025 to file written submissions in lieu of a hearing. The applicant subsequently filed its submissions on that deadline. Having reviewed the applicant's submissions, I do not consider that any late arguments have been introduced into these proceedings. The applicant has simply elaborated further on its counterstatement and addresses the claims made under section 5(2)(b). Therefore, I do not find that the opponent has suffered any prejudice as a result of the applicant's submissions. I do not consider it necessary or appropriate to dismiss the applicant's submissions in lieu.

Absence of actual confusion

17. Within its submission in lieu, the applicant claims that the opponent has not provided the tribunal with any instances of actual confusion.³ With regards to an absence of any evidence of actual confusion, in *The European Limited v The Economist Newspaper Ltd* [1998] FSR 283 Millett L.J. stated that:

"Absence of evidence of actual confusion is rarely significant, especially in a trade mark case where it may be due to differences extraneous to the plaintiff's registered trade mark."

18. I have no evidence before me of how (or to what extent) the parties' marks have been used in practice. Consequently, it is impossible to assess whether the absence of evidence of confusion is due to the fact that the marks at issue are not confusingly similar or due to other matters relating

³ Paragraph 14 of the applicant's submissions in lieu.

to the way in which the marks have been used (or not, as the case may be). Therefore, this line of argument does not assist the applicant.

My approach

19. For the purposes of section 5(2)(b), the opponent has relied upon two earlier marks. As previously outlined, the marks relied upon by the opponent are registered for the same services in classes 41 and 43. I consider the opponent's first earlier mark "Wildheart Animal Sanctuary" to be considerably more similar overall to the applicant's mark than the opponent's second mark relied upon. I will therefore proceed initially by considering the opponent's first mark only. However, if it becomes necessary to do so, I will return to consider the opponent's second earlier mark. For the avoidance of doubt, I shall refer to "Wildheart Animal Sanctuary" as "the earlier mark" throughout the remainder of this decision.

DECISION

Section 5(2)(b)

20. Section 5(2)(b) of the Act is as follows:

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

[...]

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

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

21. 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.”

22. The principles, considered in this opposition, stem from the decisions of the European Courts in *SABEL BV v Puma AG* (Case C-251/95), *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc* (Case C-39/97), *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel BV* (Case C-342/97), *Marca Mode CV v Adidas AG & Adidas Benelux BV* (Case C-425/98), *Matratzen Concord GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (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-334/05 P) and *Bimbo SA v OHIM* (Case C-519/12 P):

- 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 Services

23. When making the comparison, all relevant factors relating to the goods/services in the specifications should be taken into account. In *Canon Kabushiki Kaisha*, the Court of Justice of the European Union (“CJEU”) stated that:

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

24. Guidance on this issue has come from Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, where he identified the factors for assessing similarity as:

- i. The respective uses of the respective goods or services;
- ii. The respective users of the respective goods or services;
- iii. The physical nature of the goods or acts of service;
- iv. The respective trade channels through which the goods or services reach the market;
- v. 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;
- vi. 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.

25. In *YouView TV Ltd v Total Ltd*, [2012] EWHC 3158 (Ch), paragraph 12, Floyd J (as he then was) gave the following guidance on construing the words used in specifications:

“[...] 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.”

26. The General Court (“GC”) confirmed in *Gérard Meric v OHIM*, Case T-133/05, paragraph 29, that, even if goods or services are not worded identically, they can still be considered identical if one term falls within the scope of another, or vice versa:

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

27. Complementary means “there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking”.⁴ Complementarity is an autonomous criterion

⁴ *Boston Scientific Ltd v OHIM*, Case T-325/06, paragraph 82

capable of being the sole basis for the existence of similarity,⁵ and it can be clearly distinguished from ‘use in combination’ – the latter being where goods/services are merely used together, whether by choice or convenience (e.g. wine and wine glasses),⁶ this means that they are not essential for each other.

28. The competing services are as follows:

Opponent’s services	Applicant’s services
<p>Class 41: Party planning; filmed entertainment, entertainment information; film production; production of video and film recordings; presentation of live performances; orchestra services; organisation of sports competitions; video tape film production; publications of books; publication of printed matter.</p> <p>Class 43: Services for providing food and drink; temporary accommodation; hotel accommodation and reservation services; holiday accommodation services; Catering of food and drink; Preparation of food and drink; Providing food and drink; Hospitality services [food and</p>	<p>Class 41: Entertainment; sporting and cultural activities; all the foresaid in relation to weddings and celebrations; party planning; party planning services; wedding celebrations (organisation of entertainment for -); arrangement and provision of wedding [...] singer services; video, film, and sound recording services; publication services; publication of books; information, advisory, and consultancy services in relation to the aforesaid.</p> <p>Class 43: Accommodation services; Arranging of wedding receptions (food and drink); arranging and provision of wedding cakes; arranging of wedding receptions</p>

⁵ *Kurt Hesse v OHIM*, Case C-50/15 P

⁶ As Mr Daniel Alexander Q.C. noted as the Appointed Person in *Sandra Amalia Mary Elliot v LRC Holdings Limited*, BL O/255/13 - “It may well be the case that wine glasses are almost always used with wine – and are, on any normal view, complementary in that sense - but it does not follow that wine and glassware are similar goods for trade mark purposes.”

<p>drink]; Catering of food and drink; Preparation of food and drink; Providing food and drink; Hospitality services [food and drink].</p>	<p>(venues); provision of temporary accommodation; catering services specialising in weddings and private events; provision of food and drink for weddings and private events; information, advisory, and consultancy services in relation to the aforesaid.</p> <p>Class 45: Planning and arranging of wedding ceremonies; Wedding ceremony planning and arranging consultation services; wedding planning services; planning of wedding ceremonies; arranging of wedding services; wedding ceremony planning and arranging services.</p>
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Class 41 services

29. The applicant's services include *party planning* and *party planning services*. These are both identical to the opponent's term *party planning*.

30. The opponent's specification includes *publications of books*. This term is self-evidently identical to the applicant's term *publication of books*. Further, the opponent's term *publications of books* would fall within the applicant's broader term *publication services*. These services are therefore identical in line with *Meric*.

31. The application includes the term *video, film [...] recording services*. To my mind, the recording of a video or a film is one of the steps involved in video/film production. As such, I find the applicant's services are

encompassed by the opponent's *production of video and film recordings*. These terms are identical in line with *Meric*.

32. I am of the view that *sound recording services* are a crucial part of *film production*. I say this because the production of a film would include the recording of dialogue, sound effects and music. I therefore find the applicant's *sound recording services* to be identical to the opponent's *film production* in line with *Meric*.
33. *Sporting and cultural activities; all the foresaid in relation to weddings and celebrations* may include the *presentation live performances* which appears in the opponent's specification and consequently they are identical on the principle outlined in *Meric*.
34. The applicant's term *Entertainment* is followed by the limitation *all the foresaid in relation to weddings and celebrations*. The opponent's specification includes *filmed entertainment* which has not been limited in any way. I therefore consider that *filmed entertainment* could include filmed entertainment in relation to weddings and celebrations. I therefore find these terms to be identical in line with *Meric*.
35. I find that the opponent's *presentation of live performances* would involve the provision and arrangement of a live show for a client. I consider that this would include the *arrangement and provision of wedding [...] singer services*. As such, I consider these terms to be identical based on the principle outlined in *Meric*.
36. I consider that the opponent's broad term *party planning* would include the organisation of entertainment for wedding parties. I therefore find this term to be identical to *wedding celebrations (organisation of entertainment for-)* based on the principle outlined in *Meric*.
37. The applicant's specification in this class also includes the term *information, advisory, and consultancy services in relation to the aforesaid*.

I consider that there may be an overlap in user and trade channels with the opponent's services in class 41. For example, a consumer may go to an undertaking for advice and consultancy in relation to party planning services when deciding which planning party services to select. However, the respective services do not overlap in nature, method of use or purpose. There is no competition between the services, however, I consider that the services are important to one another to the extent that users would believe that they are derived from the same or related undertakings. Taking the above into account, I consider that the applicant's services are similar to the opponent's services to a medium degree.

Class 43

38. I find the applicant's *provision of temporary accommodation* to be identical to the opponent's *temporary accommodation* albeit, expressed slightly differently.
39. *Accommodation services* in the applicant's specification would include *temporary accommodation* as included in the opponent's specification. These terms are identical in line with *Meric*.
40. The application includes the terms *Arranging of wedding receptions (food and drink); arranging and provision of wedding cakes; catering services specialising in weddings and private events and provision of food and drink for weddings and private events*. I consider that these terms would be encompassed by the opponent's broader term *Services for providing food and drink*. As such, they are identical in line with *Meric*.
41. I consider that the opponent's *temporary accommodation* would encompass *arranging of wedding receptions (venues)* in the applicant's specification. These terms are identical in line with *Meric*.
42. The applicant's specification in this class also includes the term *information, advisory, and consultancy services in relation to the aforesaid*.

I consider that there may be an overlap in user and trade channels with the opponent's services in class 43. For example, a consumer may go to an undertaking for advice and consultancy in relation to wedding venues when deciding which wedding venue to select. However, the respective services do not overlap in nature, method of use or purpose. There is no competition between the services, however, I consider that the services are important to one another to the extent that users would believe that they are derived from the same or related undertakings. Taking the above into account, I consider that the applicant's services are similar to the opponent's services to a medium degree.

Class 45

43. As regards the services in class 45, the opponent submits the following:

“Class 45 services directly complement class 41 services (entertainment, events) particularly where the charity also operates events for the public e.g., animal experiences, public education, private hire). The applicant offers wedding-related experiences, venues, and photography which are reasonably connected to the charity's own offerings including hospitality, celebrations and wildlife based events.”⁷

44. The applicant submits that the services in this class are not sufficiently similar to those relied upon in classes 41 and 43.⁸

45. The explanatory note for class 45 services in the Nice Classification Guide states that class 45 services include mainly legal and security services, as well as certain personal and social services rendered by others to meet the needs of individuals.⁹ In view of this, I consider the applicant's services

⁷ Paragraph 11 of the opponent's submissions in lieu

⁸ Paragraph 7 of the applicant's submissions in lieu

⁹https://nclpub.wipo.int/enfr/?basic_numbers=show&class_number=45&explanatory_notes=show&gors=&lang=en&menulang=en&mode=flat¬ion=&pagination=no&version=20230101

in class 45 would entail the legal aspects of arranging a wedding ceremony such as providing notification to a local registry office and obtaining legal documentation. The nature and purpose of the applicant's services are therefore different to the opponent's *party planning* services and there would be no competition between the same. However, I consider that users and trade channels would overlap. This is because *party planning* services would include the planning of wedding parties/receptions and users of the applicant's services in class 45 would be likely to seek out *party planning* services when planning a wedding party/reception. The respective services would also be advertised in the same wedding magazines, websites and at wedding fayres. The legal services in class 45 may be arranged by a business offering wedding planning services. I find these services to be similar to a medium degree.

Average Consumer and the Purchasing Act

46. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purposes of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods and services in question: *Lloyd Schuhfabrik Meyer, Case C-342/97*. In *Hearst Holdings & Anor v A.V.E.L.A. Inc & Ors*, [2014] EWHC 439 (Ch), at paragraph 70, Birss J (as he then was) described the average consumer in these terms:

“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.”

47. The applicant's position regarding the average consumer and level of attention paid is as follows:

"...it is crucial to consider that the services are not, say, fast moving consumer goods; they are highly personal services. The likely consumer of the services will be individuals at a special and thoughtful time of life e.g., weddings, vacations etc. It is common for such consumers to obsess over every detail of such services. Therefore, the attention of the average consumer will be very high."¹⁰

48. The opponent submits the following:

"While consumers may pay more attention to wedding services than to everyday goods, the Charity's educational and entertainment services also involve significant consumer consideration...Moreover, the Applicant's characterization of the relevant services as "highly personal" ignores the fact that the Charity's services, including educational visits, animal experiences and entertainment events are also personally significant to consumers and often involve families planning special occasions."¹¹

49. I take from these submissions that the parties both consider that a high level of attention would be paid during the purchasing process.

50. The average consumer would comprise members of the general public. The services at issue involve highly personalised services that would be selected or purchased fairly infrequently and would be fairly expensive. Therefore, I agree with the parties that consumers would pay a high degree of attention.

¹⁰ Paragraph 9 of the applicant's submissions in lieu.

¹¹ Paragraphs 16 and 17 of the opponent's submissions in lieu.

51. The services would be available via brochures, magazines and websites. While the selection process will be mainly visual, I do not discount an aural aspect of the purchase following detailed discussions with sales advisors or word-of-mouth recommendations.

Comparison of Trade Marks

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

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

53. It would be wrong, therefore, to artificially dissect the trade marks, although, it is necessary to take into account the distinctive and dominant components of the marks and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.
54. The marks to be compared are:

Earlier Mark	Contested Mark
Wildheart Animal Sanctuary	<p>Wild Hearts (series 1 of 2)</p> <p>Wild heart (series 2 of 2)</p>

Overall Impression

55. The earlier mark consists of three words, “Wildheart Animal Sanctuary”. I find the word “Wildheart” to be the dominant and distinctive element of the mark. This is because the words “Animal Sanctuary” would merely be perceived as the type of undertaking that is responsible for the provision of the services. Therefore, these words will play a smaller role in the overall impression.
56. The first mark in the series of contested marks comprises two words “Wild” and “Hearts”. In my view, the overall impression resides in these two words combined. The second mark in the series is comprises the words “Wild” and “Heart”. Again, I find the overall impression resides in both words combined.

Visual comparison

57. The respective marks overlap in their first nine letters, and I note that the beginning of marks are generally considered to have more impact.¹² I do not consider the spacing between “Wild” and “Heart/Hearts” in the contested marks creates a significant difference nor do I find the presence of the letter “s” at the end of the first mark in the series of contested marks to be a significant point of difference given its placement. The words “Animal Sanctuary” create a point of difference because they are not present in either contested mark. However, I remind myself that I have

¹² *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

found those words to play a lesser role in the overall impression. On balance, I find there is a medium level of similarity between the earlier mark and both contested marks in the series.

Aural Comparison

58. The “Wildheart/Wild heart” in the earlier mark and the second mark in the series of contested marks will be pronounced identically. The first mark in the series of contested marks has the addition of an ‘s’ sound at the end. However, this does not provide a notable difference in the pronunciation between ‘Wildheart’ and ‘Wild hearts’.
59. The words “Animal Sanctuary” in the earlier mark have no counterpart in the contested marks and therefore create a point of aural difference, though I remind myself that I have found these words to play a lesser role in the overall impression. The earlier mark is therefore similar to both contested marks to a medium degree.

Conceptual Comparison

60. The opponent submits that the competing marks evoke the same imagery-wildness, heart, passion and nature.¹³ The applicant submits that the earlier mark contains a conceptual hook capable of immediate grasp that is not present in the contested marks.¹⁴ However, I note that the applicant does not offer its own conceptual interpretation of the respective marks.
61. For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer.¹⁵ I consider that the “Wildheart/Wild hearts” element of the respective mark may be interpreted in several ways by the average consumer. This would include the definitions put forward

¹³ Paragraph 28 of the opponent’s statement of grounds.

¹⁴ Paragraph 11 of the applicant’s submissions in lieu.

¹⁵ This is highlighted in numerous judgments of the GC and the CJEU including *Ruiz Picasso v OHIM* [2006] ECR I-643; [2006] E.T.M.R 29.

by the opponent but also the concept of being “wild at heart” which is to be free-spirited or adventurous. I therefore consider that this element of the respective marks has an identical concept (the only difference being that “Wild hearts” would be seen as being a pluralisation of “Wildheart”).

62. The words “Animal Sanctuary” have a clear concept and create a point of conceptual difference between the marks. However, these words have limited weight in the overall impression of the mark.

Distinctive Character of the Earlier Trade Mark

63. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97, paragraph 22 and 23, the CJEU stated that:

“In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

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).”

64. Registered trade marks possess varying degrees of inherent distinctive character from the very low, because they are suggestive of, or allude to, a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities.
65. The opponent claims that the distinctiveness of its mark has been enhanced through the use made of it. However, it has not filed any evidence to support this claim. Accordingly, I have only the inherent position to consider.
66. As previously discussed in the conceptual comparison, the wording “Wildheart” may be interpreted in several ways. However, whichever way it is interpreted, it has no direct or allusive meaning in the context of the relevant services. I accept that the wording “Animal Sanctuary” is also not allusive or descriptive of the relevant services. However, it is less distinctive as it indicates the nature of the undertaking that is providing the services. On balance, I find the earlier mark has a medium degree of inherent distinctive character.

Likelihood of Confusion

67. In assessing the likelihood of confusion, I must adopt the global approach set out in the case law to which I have already referred above in this decision. Such a global assessment is not a mechanical exercise. I must also have regard to the interdependency principle, that 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.¹⁶ It is essential to keep in mind the distinctive character of the opponent’s trade mark since the more distinctive the trade mark, the greater the likelihood of confusion. I must also keep in mind that the average consumer rarely has the opportunity to

¹⁶ See *Canon Kabushiki Kaisha*, paragraph 17.

make direct comparisons between trade marks and must instead rely upon imperfect recollection.¹⁷

68. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other. Indirect confusion is where the consumer notices the differences between the marks but concludes that they originate from the same or economically connected undertakings.

69. Earlier in this decision I concluded that:

- The competing services are identical or similar to a medium degree.
- The average consumer is a member of the general public who will pay a high degree of attention during the purchasing process.
- The purchasing process will be predominantly visual, although aural considerations have not been excluded.
- The marks are visually and aurally similar to a medium degree.
- The “Wildheart/ Wild Heart” element of the marks is conceptually identical. The “Animal Sanctuary” element in the earlier mark creates a point of conceptual difference however, this concept has limited weight in the overall impression.
- The earlier mark possesses a medium degree of inherent distinctive character.

70. I am conscious not to artificially dissect the competing marks and I acknowledge that the average consumer tends to perceive trade marks as wholes. I note that the respective marks share the same (or highly similar) dominant and distinctive element (“Wildheart/Wild Hearts”) with the only

¹⁷ See *Lloyd Schuhfabrik Meyer*, paragraph 27.

difference between the marks being the presence of the wording “Animal Sanctuary” in the earlier mark. Taking all the relevant factors into account, I consider that consumers, even when paying a higher level of attention, would recall the more distinctive element in the “Wildhearts Animal Sanctuary” mark. The additional wording is indicative of the undertaking providing the services and is therefore unlikely to do the job of distinguishing the parties’ marks from one another. On that basis, I consider there to be a likelihood of direct confusion.

71. It now falls for me to consider indirect confusion. In *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, Iain Purvis QC (as he then was), sitting as the Appointed Person, explained that:

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

17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:

(a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other

elements of the later mark are quite distinctive in their own right ('26 RED TESCO' would no doubt be such a case).

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

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

72. These examples are not exhaustive but provide helpful focus.

73. In *Kurt Geiger v A-List Corporate Limited*, BL O/075/13, Mr Iain Purvis QC (as he then was) as the Appointed Person pointed out that the level of 'distinctive character' is only likely to increase the likelihood of confusion to the extent that it resides in the element(s) of the marks that are identical or similar. He said:

"38. The Hearing Officer cited *Sabel v Puma* at paragraph 50 of her decision for the proposition that 'the more distinctive it is, either by inherent nature or by use, the greater the likelihood of confusion'. This is indeed what was said in *Sabel*. However, it is a far from complete statement which can lead to error if applied simplistically.

39. It is always important to bear in mind what it is about the earlier mark which gives it distinctive character. In particular, if distinctiveness is provided by an aspect of the mark which has no counterpart in the mark alleged to be confusingly similar, then the distinctiveness will not increase the likelihood of confusion at all. If anything it will reduce it."

74. In *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271 (Ch), Arnold J. considered the impact of the CJEU's judgment in *Bimbo*, on the court's earlier judgment in *Medion v Thomson*. He stated:

“18 The judgment in *Bimbo* confirms that the principle established in *Medion v Thomson* is not confined to the situation where the composite trade mark for which registration is sought contains an element which is identical to an earlier trade mark, but extends to the situation where the composite mark contains an element which is similar to the earlier mark. More importantly for present purposes, it also confirms three other points.

19 The first is that the assessment of likelihood of confusion must be made by considering and comparing the respective marks — visually, aurally and conceptually — as a whole. In *Medion v Thomson* and subsequent case law, the Court of Justice has recognised that there are situations in which the average consumer, while perceiving a composite mark as a whole, will also perceive that it consists of two (or more) signs one (or more) of which has a distinctive significance which is independent of the significance of the whole, and thus may be confused as a result of the identity or similarity of that sign to the earlier mark.

20 The second point is that this principle can only apply in circumstances where the average consumer would perceive the relevant part of the composite mark to have distinctive significance independently of the whole. It does not apply where the average consumer would perceive the composite mark as a unit having a different meaning to the meanings of the separate components. That includes the situation where the meaning of one of the components is qualified by another component, as with a surname and a first name (e.g. BECKER and BARBARA BECKER).”

21 The third point is that, even where an element of the composite mark which is identical or similar to the earlier trade mark has an

independent distinctive role, it does not automatically follow that there is a likelihood of confusion. It remains necessary for the competent authority to carry out a global assessment taking into account all relevant factors.”

75. 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.¹⁸
76. I am conscious not to artificially dissect the competing marks and I acknowledge that the average consumer tends to perceive trade marks as wholes. However, I have found that the wording “Wildheart/ Wild heart” plays a more dominant and distinctive role in the overall impression of the competing marks and in the case of the earlier mark, the wording “Wildheart” retains an independent distinctive role. I also remind myself that while the wording “Animal Sanctuary” is not directly descriptive or allusive of the services, it holds less weight on account of it denoting the type of undertaking that would provide the services. On that basis, it is my view that category (b) as set out in *L.A Sugar* applies here. I find that when consumers are faced with the marks, they will recognise the identical/highly similar “Wildheart/ Wild hearts” element and assume a commercial association between the parties due to this shared wording. Consequently, I consider there to be a likelihood of indirect confusion.

Final remarks

77. Given that I have found a likelihood of confusion based on the opponent's “Wildheart Animal Sanctuary” mark, I do not consider it necessary to consider the opposition based upon the remaining earlier mark in full. However, for the avoidance of doubt, I would have found no likelihood of confusion with that mark. This is because it is completely visually dissimilar to the contested marks and, whilst there may be some degree of

¹⁸ *Duebros Limited v Heirler Cenovis GmbH*, Case BL O/547/17

conceptual overlap, this would not be sufficient to result in average consumers confusing the marks, even when used on identical services. Plainly, given the visual differences, they would not be mistakenly recalled and I can see no basis for finding that they would be perceived as originating from the same or economically connected undertakings. As such, this mark would not have put the opponent in any stronger position.

Outcome

78. The opposition under Section 5(2)(b) of the Act is successful. Subject to any successful appeal, the application will be refused in respect of the opposed services outlined in paragraph 28 of this decision.
79. The application will proceed to registration for the following unopposed services:

Class 39: Planning, organization, arranging, and booking of wedding venues; transportation of wedding flowers; transportation of wedding cakes; transport; travel arrangement; planning, organization, arranging, and booking of weddings and honeymoons; arranging travel as part of a wedding or celebration; packaging and storage of goods; transportation of travellers' luggage, baggage and equipment; wrapping services for luggage, baggage and equipment; travel arrangement services; travel information; travel reservation; travel and booking agency services; provision of information in the field of travel; booking reservation and transaction processing services for the aforesaid; reservation services for travel; accompanying and escorting of travellers; services for the accompanying and escorting of travellers; travel guide and travel information services; coordinating travel arrangements for individuals and for groups; providing tourist travel information, via the internet; travel information about disruptions due to adverse weather conditions; planning, arranging and booking of travel; arrangement of travel to and from accommodation, hotels and lodgings; planning, organization and arranging and booking of travel

accommodation; packaging and storage of goods; transport and delivery of goods and of messages; travel arrangements; mail order processing including receiving, sorting and organising mail orders; delivery of goods by mail order; information, advisory, and consultancy services relating to all the aforesaid.

Class 41: Education; all the aforesaid in relation to weddings and celebrations; arrangement and provision of wedding band services; photography services; digital music (not downloadable) from the Internet; information, advisory, and consultancy services in relation to the aforesaid.

Class 45: Master of ceremony services for ceremonies and dedications; celebrant services for civil, religious, humanist or same-sex marriage; providing wedding officiant services; maintaining lists of wedding presents for selection by others; preparation of wedding present lists; wedding present lists (preparation of-); arrangement of wedding flowers; legal, professional, advisory and consultancy services in relation to weddings; establishment, maintenance and management of intellectual and industrial property rights; licensing of intellectual property rights; providing information, news, and assistance in the field of weddings; information, advisory, and consultancy services in relation to the aforesaid.

Costs

80. The opponent has been successful and is entitled to an award of costs. As the opponent had not instructed professional representatives, they were invited by the Tribunal to indicate whether they intended to make a request for an award of costs, including accurate estimates of the number of hours spent on a range of given activities relating to defending the proceedings. On 26 April 2025, the opponent submitted a pro-forma requesting 22.8 hours for the filing of the notice of opposition and 8.1 hours

for preparing written submissions and considering and commenting on the other's side submissions totalling 30.9 hours.¹⁹

81. TPN 1/2023 gives the following guidance in relation to costs awarded in fast-track oppositions:

“13. The costs awarded in trade mark fast-track opposition proceedings will be capped at £600, excluding official fees, made up of:

-£250 for filing a notice of opposition or considering a notice of opposition and filing a counterstatement

-up to £350 for filing written submissions

As with any cap, this does not mean that costs will automatically be awarded at this level. Most awards will be less. The cap does not apply where a party is found to have acted unreasonably in their conduct of the proceedings.”

82. I also take note of the TPN's guidance on how costs should be allocated to unrepresented parties such as the opponent.

83. First and foremost, I remind myself that the Tribunal awards costs on a contributory rather than a compensatory basis. It is important to note that only costs which have been incurred during, and as part of, these proceedings are relevant, such as filing official forms, evidence, written submissions etc.

84. I also take into account Mr Hobbs QC's (as he then was) comments in *Amaro*, O/257/18:

“17. [...] an award of costs is required to reflect the effort and expenditure to which it relates without inflation for the purpose of

¹⁹ The time in the proforma is reflected in 1/10th hour increments.

imposing a financial penalty by way of punishment on the paying party. The determination of a 'reasonable' amount to award must depend on the nature and circumstances of the case at hand."

85. With consideration to the above, I have set out below my assessment on the opponent's claim made. As outlined in TPN 1/2023, I will make the award of costs on the basis of £19 per hour, which is the minimum rate of compensation allowed under The Litigants in Person (Costs and Expenses) Act 1975 (as amended).

86. In accordance with paragraph 13 of that TPN, I award costs to the opponent on the following basis:

Official fee:	£100
Filing a notice of opposition (5 hours):	£95
Preparing and filing written submissions in lieu (4 hours):	£76
Total	£271

87. I therefore order Laura Jordan Gonzalez to pay The Wildheart Trust the sum of £271. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 6th day of November 2025

Catrin Williams
For the Registrar,
The Comptroller General