

O/1111/25

TRADE MARKS ACT 1994

IN THE MATTER OF
UK REGISTRATION NO. 3929283
IN THE NAME OF
T15 INTERNATIONAL LIMITED
IN RESPECT OF THE FOLLOWING TRADE MARK:



POLARIS
PERSONNEL

IN CLASSES 35, 41 & 45

AND

AN APPLICATION FOR DECLARATION OF INVALIDITY
THERE TO UNDER NO. 507828
BY
NUTRIUS UK BIDCO LIMITED

Background & Pleadings

1. The trade mark (“contested mark”) shown on the front page of this decision stands registered in the name of T15 International Limited (“the registered proprietor”). The mark was applied for on 3 July 2023 in the United Kingdom and completed its registration procedure on 13 October 2023 for the services in Classes 35, 41 and 45 shown in paragraph 24 of this decision.
2. On 24 September 2023, Nutrius UK Bidco Limited (“the applicant”) filed an application to have this trade mark declared invalid under the provisions of Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”)¹, which are relevant in invalidation proceedings under Section 47 of the Act. The applicant relies upon its UK trade mark registration 3652224 for the figurative mark:



3. The mark was filed on 7 June 2021 and was registered on 31 December 2021 for Classes 9, 16, 35, 36, 41, 43, 44 and 45. For the purposes of these invalidation proceedings, the applicant relies on Classes 35, 41 and 45 which are included in paragraph 24 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.

4. In its statement of grounds, the applicant claims that the competing marks are highly similar, and the competing services are identical and similar resulting in a likelihood of confusion.
5. The registered proprietor filed a notice of defence denying the applicant's claims. It asserted that there is no sufficient similarity between the respective services and there are sufficient differences between the marks preventing confusion.
6. On 15 May 2025, the registered proprietor filed a witness statement of Andrew Dodge, who is the company secretary of the registered proprietor, accompanied by four exhibits after the conclusion of the evidence rounds. The Registry informed the registered proprietor on 29 May 2025, that the evidence was inadmissible. On 2 June 2025, the registered proprietor filed an amended witness statement removing any references to evidence. On 4 June, the Registry admitted this into the proceedings as final submissions.
7. The applicant also filed submissions in lieu of a hearing on 16 May 2025.
8. No hearing was requested and so this decision is taken following a careful perusal of the papers.
9. In these proceedings, the registered proprietor is unrepresented, and the applicant is represented by Barker Brettell LLP.

Preliminary Remarks

10. In its defence and submissions, the registered proprietor advances several arguments concerning the respective market sectors in which the parties operate, the use of the earlier mark by the applicant, as well as the applicant's failure to oppose the registration of the contested mark during the application process. I will address each of these points in turn below.

11. First, the differences between the market sectors² in which the parties operate, as well as the particular characteristics of the services at issue, are irrelevant, except to the extent that those differences are apparent from each party's specification. Since the applicant's mark is not subject to the proof of use requirement, it is entitled to protection in relation to all the services for which the earlier mark is registered. Therefore, I must consider the matter based on the terms that the parties have registered, and the assessment that I will undertake between the competing specifications is a notional and objective one rather than a subjective one.³
12. Second, the registered proprietor submits that the applicant uses a different logo and trade mark on its website. However, I should highlight that I must determine the matter based on the trade marks before me, and any comparison between other logos or trade marks that the parties use online or in their business activities is of no relevance in these proceedings.
13. Lastly, it is entirely permissible under the provisions of the Act for a party to choose not to oppose an application for registration of a mark and, instead, pursue an application for invalidation post-registration. Although I express my understanding for the registered proprietor whose co-existence proposal was left unanswered by the applicant, I do not deem this factor to be relevant to the current assessment. Therefore, this case will be decided solely on its merits.

Decision

14. Section 47 of the Act states that:

“[...]”

² For example, the registered proprietor submits that the applicant is involved in the childcare sector with no reference to the registered recruitment services.

³ See *Compass Publishing BV v Compass Logistics Ltd* [2004] RPC 41 at paragraph 22 and *Roger Maier v ASOS* [2015] EWCA Civ 220 at paragraphs 78 and 84.

(2) Subject to subsections (2A) and (2G), the registration of a trade mark may be declared invalid on the ground-

(a) that there is an earlier trade mark in relation to which the conditions set out in section 5(1), (2) or (3) obtain, or

(b) that there is an earlier right in relation to which the condition set out in section 5(4) is satisfied,

unless the proprietor of that earlier trade mark or other earlier right has consented to the registration.

[...]

(2A) The registration of a trade mark may not be declared invalid on the ground that there is an earlier trade mark unless –

(a) the registration procedure for the earlier trade mark was completed within the period of five years ending with the date of the application for the declaration,

(b) the registration procedure for the earlier trade mark was not completed before that date, or

(c) the use conditions are met.

[...]

(5) Where the grounds of invalidity exist in respect of only some of the goods or services for which the trade mark is registered, the trade mark shall be declared invalid as regards those goods or services only.

(5A) An application for a declaration of invalidity may be filed on the basis of one or more earlier trade marks or other earlier rights provided they all belong to the same proprietor.

(6) Where the registration of a trade mark is declared invalid to any extent, the registration shall to that extent be deemed never to have been made: Provided that this shall not affect transactions past and closed.”

15. The invalidation application is based specifically on Section 5(2)(b) of the Act which states that:

“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. Under Section 6(1) of the Act, the applicant’s trade mark clearly qualifies as an earlier trade mark. Further, as protection of the earlier mark was completed less than five years before the registration date of the contested mark, proof of use is not relevant in these proceedings as per Section 6A of the Act.

17. The principles considered in this application for invalidity 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 the Services

18. When making the comparison, all relevant factors relating to the goods or 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.”

19. Guidance on this issue was also given by Jacob J (as he then was) in *British Sugar Plc v James Robertson & Sons Limited (“Treat”)* [1996] RPC 281. At [296], he identified the following relevant factors:

- “(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.”

20. 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.”

21. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU held that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods or services. The GC clarified the meaning of “complementary” goods or services in *Boston Scientific Ltd v OHIM*, Case T-325/06, at paragraph 82:

“[...] 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.”

22. 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.”

23. In *Avnet Incorporated v Isoact Limited*, [1998] F.S.R. 16, Jacob J. (as he then was) stated that:

“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.”

24. The competing services to be compared are shown in the following table:

| Registered Proprietor’s Services |
|--|
| <p>Class 35: Recruitment of personnel; Personnel recruitment; Staff recruitment; Recruitment services; Personnel recruitment advertising; Personnel recruitment consultancy; Personnel placement and recruitment; Recruitment and placement services; Personnel recruitment services; Executive recruitment services; Recruitment consultancy services; Recruitment of temporary personnel; Staff recruitment services; Employment recruiting consultancy; Consultancy relating to personnel recruitment; Permanent staff recruitment; Business recruitment consultancy; Employment recruiting consultation; Recruitment of executive staff; Staff recruitment consultancy services; Personnel recruitment agency services; Recruitment and personnel management services; Professional recruitment services; Personnel recruitment services and employment agencies; Employment recruiting services; Advertising services relating to the recruitment of personnel; Assistance relating to recruitment and placement of staff; Consultancy and advisory services relating to personnel recruitment; Executive recruiting services;</p> |

Office support staff recruitment services; Provision of advice relating to the recruitment of graduates; Providing information relating to employment recruitment; Provision of information relating to recruitment; Providing information relating to personnel recruitment; Recruiting of office support staff; Personnel management and employment consultancy; Employment staffing consultation services; Personnel placement consultancy; Headhunting services; Employment consultancy; Job placement consultancy; Job and personnel placement; Consultancy relating to the selection of personnel; Employment counselling and consultancy services; Employment consultancy services; Employment agency services for personnel in general office positions; Consultancy and advisory services relating to personnel placement; Employment counselling services; Employment agency services; Temporary personnel employment services; Selection of executive personnel; Personnel consultancy; Personnel management consultancy; Executive search and selection services; Personnel placement services; Employment agencies; Employment recruitment; Temporary employment agencies; Employment agency services for temporary work assignments; Temporary placement of employees (Services for the -); Job agency services; Job matching services; Job placement; Interviewing services [for personnel recruitment]; Recruitment of high-level management personnel; Selection of personnel; Preparation of résumés for others; Management advice relating to the recruitment of staff; Employment counselling; Personnel placement; Placement of staff; Placement of temporary personnel; Placement of permanent personnel; Executive placement services; Staff placement services; Temporary personnel placement services; Executive search and placement services; Recruitment advertising; Business administration; Sales administration; Business management and administration; Business administration services; Business administration for others; Business assistance, management and administrative services.

Class 41: Consultancy services relating to the education and training of management and of personnel; Training relating to employment opportunities; Sales personnel training services; Training relating to employment skills; Management training consultancy services; Consultancy services relating to the training of employees; Education and training consultancy; Education; Vocational education and training services; Adult education services; Further education; Career counselling relating to education and training; Career counseling [education]; Career and vocational counselling; Career advisory services (education or training advice); Employment training; Education, teaching and training; Educational and training services; Vocational guidance; Vocational guidance [education or training advice]; Teaching.

Class 45: Vetting services; Pre-employment background screening.

Applicant's Services

Class 35: Employment placement services; recruitment services; recruitment of foster carers; database services; employment services; provision of statistical information; audit services, none relating to financial auditing, insolvency, taxation, accountancy, financial services and financial investments; information, consultancy and advisory services relating to all of the aforesaid services.

Class 41: Training for parents in parenting skills; training for parents in the

organisation of parent support groups; entertainment services provided for children; educational services provided for children; organisation of recreational activities; organisation of group recreational activities; educational services relating to harmful sexual behaviour; mental health support; mental health education; conducting educational support programmes for carers; arranging teaching programmes; arranging support group programmes; provision of childrens' educational services through play groups; providing information about the law on special educational needs and disability; social club services for entertainment purposes; social club services for support purposes; Provision of training, teaching, academic, education, instruction, examination, testing and assessment services; provision of training, teaching, academic, education, instruction, examination, testing and assessment services electronically, by means of telecommunications networks, by online delivery, by way of the Internet or world wide web; provision and publication of instruction, teaching, training, examination, testing and assessment material; publishing services; publication of texts, books, textbooks, brochures, magazines, journals and newspapers; electronic publishing; online publication of electronic texts, books, textbooks, brochures, magazines, journals and newspapers; publication of electronic texts, books, textbooks, brochures, magazines, journals and newspapers, all being downloadable from an on-line database or from a global computer network; assessment services; distance learning; organisation and provision of courses, assessment, teaching and training; educational research services; production and distribution of educational films, television programmes and video recordings; provision of correspondence courses; arranging, organising and conducting courses, seminars, symposiums, conferences, congress and exhibitions; provision of examination papers; careers counselling; education liaison services; foster care training and development services; parenting skills training; publication of electronic texts, books, textbooks, brochures, syllabi, magazines, journals and newspapers, all being downloadable from an on-line database or from a global computer network, all the aforesaid relating to charitable services, social care services, recruitment services, education services, training services, fostering services, child care services, social work services, therapy services, counselling services, psychotherapy services, adoption services, adult care services, care services for elderly people, services for people with learning or physical disabilities, services for homeless people, services for people with alcohol/drug dependency, services for people with special needs, services committed to the planning and delivery of quality care and support services for individuals and groups with identified needs, information, advisory and consultancy services relating to all of the aforesaid services; none relating to financial auditing, insolvency, taxation, accountancy, financial services and financial investments; information, consultancy and advisory services relating to all of the aforesaid services.

Class 45: assessment services relating to foster carers, carrying out checks and compiling reports on foster carers; employment screening services; employment screening services.

25. With its submissions in lieu, the applicant has provided a comparison table together with reasons for finding for identity/similarity of the competing services. Whilst I have considered the submissions and the accompanying table, I do not propose to reproduce them here. I will only refer to them wherever this is necessary to do so.

26. The registered proprietor submitted that:

15. The Applicant recognises the duplicate services between the two marks and potential similarity between the services such as recruitment, training and background screening processes, but would submit that the services business administration is too general to be considered as similar to the auditing services claimed under the Opponents mark.

16. The Applicant would suggest that, to the public, there would be an expectation of a childcare agency and a recruitment consultancy; providing work to temporary workers, being engaged in business administration, office functions and indeed any form of payroll processing and pay services as an industry standard. It would therefore follow that the provision of such services is not industry specific, or indeed company specific to be eligible for cancellation.

17. The Applicant therefore submits that there is not sufficient similarity between the goods and services claimed between the marks to fall foul of s.5(2)(b) of the Act.

27. I reiterate here that the assessment I shall make is based on a notional and fair use of the terms as registered against all the potential or intended uses of the services and not necessarily the ones in which a party actually trades.

28. For the purpose of considering the issue of similarity of services, it is permissible to consider groups of terms collectively where they are

sufficiently comparable to be assessed in essentially the same way for the same reasons.⁴

29. Lastly, I note that some terms appear more than once in the contested specification, and thus I will refer to those terms once wherever this is possible.

Class 35

Employment placement services; recruitment services; Employment recruitment

30. The contested terms either appear identically in the earlier specification or they are ostensibly the same. Thus, they are self-explicitly identical.

Recruitment of personnel; Personnel recruitment; Staff recruitment; Recruitment services; Personnel placement and recruitment; Recruitment and placement services; Personnel recruitment services; Executive recruitment services; Executive recruiting services; Recruitment of temporary personnel; Staff recruitment services; Permanent staff recruitment; Business recruitment consultancy; Recruitment of executive staff; Personnel recruitment agency services; Personnel recruitment services and employment agencies; Professional recruitment services; Employment recruiting services; Recruiting of office support staff; Recruitment of high-level management personnel; Executive search and placement services; Executive search and selection services; Headhunting services; Temporary personnel employment services; Executive placement services; Job and personnel placement; Job placement; Personnel placement; Personnel placement services; Placement of permanent personnel; Placement of staff; Placement of temporary personnel; Staff placement services; Temporary personnel placement services; Temporary placement of employees (Services for the

⁴ *Separode Trade Mark* BL O-399-10 and *BVBA Management, Training en Consultancy v BeneluxMerkenbureau* [2007] ETMR 35 at paragraphs 30 to 38.

-); Job matching services; Interviewing services [for personnel recruitment]; Office support staff recruitment services; Job agency services; Employment agencies; Employment agency services; Employment agency services for personnel in general office positions; Employment agency services for temporary work assignments; Temporary employment agencies; Selection of executive personnel; Selection of personnel; Recruitment and personnel management services; Assistance relating to recruitment and placement of staff

31. The earlier terms “*recruitment services; employment placement services; employment services*” are very broad terms, and it is my view that they will readily encompass the contested terms. Therefore, I find them to be identical based on the guidance in *Meric*.

Consultancy and advisory services relating to personnel recruitment; Consultancy and advisory services relating to personnel placement; Consultancy relating to personnel recruitment; Consultancy relating to the selection of personnel; Provision of advice relating to the recruitment of graduates; Providing information relating to employment recruitment; Provision of information relating to recruitment; Management advice relating to the recruitment of staff; Employment recruiting consultancy; Employment recruiting consultation; Employment consultancy; Employment consultancy services; Employment staffing consultation services; Personnel recruitment consultancy; Providing information relating to personnel recruitment; Job placement consultancy; [...] employment consultancy; Personnel placement consultancy; Personnel management consultancy; Personnel consultancy; Recruitment consultancy services; Staff recruitment consultancy services; Employment counselling; Employment counselling and consultancy services; Employment counselling services

32. I consider that the applicant’s earlier term “*information, consultancy and advisory services relating to all of the aforesaid services*”, which relates to “*recruitment services*” and “*employment placement services*” will be broad

enough to encapsulate the contested terms. Therefore, the competing terms are *Meric* identical.

Preparation of résumés for others

33. I consider that the contested services will be similar to the earlier terms “*recruitment services*” and “*employment services*”. These services may be provided by the same undertakings and through the same channels of trade sharing a broadly similar purpose, namely facilitating employment. There is also an overlap in users for the respective services. Therefore, these services are similar to a medium degree.

Business administration; Business administration for others; Business administration services; Business assistance, management and administrative services; Business management and administration

34. The contested services are all business management-related services which concern the managing/running of a business. I agree with the opponent and consider that the closest comparable term from the earlier specification is “*audit services, none relating to financial auditing, insolvency, taxation, accountancy, financial services and financial investments*”. The purpose of auditing services is to undertake checks of the business to ensure a level of work/quality is being adhered to. The purposes of the services will be related as both contribute to the proper and efficient running of a business, and there may be some overlap in trade channels. These services would target the same users. I therefore find these services to be similar to a medium degree.

Advertising services relating to the recruitment of personnel; Recruitment advertising; Personnel recruitment advertising

35. The contested services are designed to support the recruitment process by increasing visibility of job openings and attracting suitable candidates for employment. The closest term from the earlier specification is

“recruitment services”, which mainly involves sourcing and placing candidates for employers. The competing services differ in nature as the contested services is an advertising service, the other is the service of finding suitable job candidates for employers. However, it is my view that there could be some connection between their respective end-purposes, namely enabling and facilitating recruitment. Further, there is an overlap between the users at whom the respective services are directed. I do not think that there is a degree of complementarity in the sense used in the case law. This is because, from the viewpoint of the relevant consumers, recruitment advertising services are not indispensable or important for the use of recruitment services in such a way that customers may think that the responsibility for those services lies with the same undertaking. However, I consider that there might be a degree of competition as employers might choose either advertising agencies to promote vacancies or rely on a recruitment agency to manage the process. I find that the competing terms are similar to a low to medium degree.

Sales administration

36. The contested services concern the support and facilitation of sales operations by processing, for example, sales orders and payments. The opponent claims that the contested services are highly similar to the earlier term *“audit services, none relating to financial auditing, insolvency, taxation, accountancy, financial services and financial investments”*. However, in the absence of particular evidence, I see no obvious similarity between the aforementioned services and the applicant’s services. They differ in nature and purpose as the earlier services facilitate compliance as opposed to the contested services which concern the sales operations of a business. They do not share the same providers, and they are neither complementary nor in competition. Although there is an overlap in users, this is not a sufficient factor by itself to find similarity. Consequently, I find the competing terms to be dissimilar.

Class 41

Education; Teaching; Education, teaching and training; Educational and training services; Further education; Adult education services; Training relating to employment opportunities; Sales personnel training services; Training relating to employment skills; Vocational education and training services; Employment training

37. The above contested services relate at large to the provision of training, education, and teaching. The term “*Provision of training, teaching, academic, education, instruction, examination, testing and assessment services*” in the earlier specification is very broad and would cover the contested services. I consider that the contested terms are identical to the opponent’s broad term based on the *Meric* principle.

Consultancy services relating to the education and training of management and of personnel; Management training consultancy services; Consultancy services relating to the training of employees; Education and training consultancy; Career counselling relating to education and training; Career counseling [education]; Career and vocational counselling; Career advisory services (education or training advice); Vocational guidance; Vocational guidance [education or training advice]

38. The earlier term “*information, consultancy and advisory services relating to all of the aforesaid services*” which relates to “*Provision of training, teaching, academic, education, instruction, examination, testing and assessment services*” is a broad term and will sufficiently cover the contested services. I consider the competing services to be *Meric* identical.

Class 45

Vetting services; Pre-employment background screening.

39. I consider that the vetting services are broad enough to cover the earlier term “*employment screening services*”. However, the latter term will be broad enough to include the contested “*Pre-employment background screening*”. Therefore, I find the competing services to be identical as per *Meric*.
40. The likelihood of confusion does not arise in relation to the contested services which are dissimilar to the earlier mark’s services.⁵ **The invalidation action cannot succeed against dissimilar services and, therefore, is dismissed insofar as it concerns the following terms:**

Class 35: Sales administration.

Average Consumer and the Purchasing Act

41. 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

⁵ Case C-398/07, *Waterford Wedgwood plc v OHIM*; and *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA, para 49.

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.”

42. The average consumer for the services will be either businesses or professionals, for example, employers, without excluding entirely members of the general public. The consumers will select such services by looking through brochures, websites, or signs on a physical property, so the visual element will be important. However, I do not discount the aural element, as word-of-mouth recommendations may influence consumers’ decisions. The cost of the services will be relatively significant, contributing to the selection process of the service provider. Typically, for all the above services, prior consultation or research is conducted before purchase. Given the more specialist nature of some of the services in play, especially those selected by business users (e.g. business administration), I consider that the average consumer will pay a higher than medium degree of attention in choosing the service provider to ensure that the services meet their particular needs, both in terms of immediate cost and future expectations.

Comparison of Trade Marks



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

44. 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.

45. The marks to be compared are:

| Earlier Mark | Contested Mark |
|---|---|
|  |  |

Overall Impression

46. The contested mark is a composite mark comprising verbal and figurative elements. At the top of the mark, there is a device resembling a compass in black and gradient gold with the letter “N”, being the smallest element within the mark, in black, placed at the top of the device. Underneath the device is the prominent word element “POLARIS” in a standard typeface and black uppercase font. In contrast, the word “PERSONNEL”, positioned below the word “POLARIS”, is notably smaller and appears in uppercase and standard typeface as well, but in a gold font. The word elements

“POLARIS” and the compass device make a roughly equal contribution to the overall impression. While the device is slightly smaller in size, I find, in accordance with settled case law,⁶ that the word elements “POLARIS” will have more impact as the relevant public is more likely to keep verbal elements in mind to identify and quote the mark instead of describing its figurative element.⁷ The word element “PERSONNEL” will be viewed as either descriptive for certain services or allusive for others, thereby having a less significant weight in the overall impression. Lastly, the “N” letter, due to its significantly small size, will have some but even less relative weight in the overall impression of the mark.

47. The earlier mark is also a composite mark comprising verbal and figurative elements. There is the prominent word element “polaris” that appears at the centre of the mark in blue lowercase font and standard typeface. To the right of the word, and above the letters “-is”, there is a device featuring multiple colourful dots. Again, in this instance, the word element “polaris” will be more distinctive as the eye will be drawn to the verbal element of the mark for the same reasons advanced in the preceding paragraph. Therefore, the word element, which is the biggest element in the mark, has the greatest weight in the overall impression, whereas the device has some but less weight, with the stylisation playing a minimal role.

Visual comparison

48. The competing marks share the word “POLARIS/polaris”. However, they differ in the rest of the elements. The marks contain different devices, and the presence/absence of the word element “PERSONNEL” and the “N” letter will be all points of visual difference. Taking into account the above factors, including the overall impression of the competing marks, I find that the marks are visually similar to a low to medium degree.

⁶ See for instance: *MigrosGenossenschafts-Bund v EUIPO*, T-68/17; and *Wassen International Ltd v OHIM (SELENIUM-ACE)*, Case T-312/03, paragraph 37.

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

Aural comparison

49. Both the competing marks will be articulated as “PO-LAR-IS”. However, there is no phonetic counterpart for the word element “PER-SON-NEL” in the earlier mark. Further, I do not consider that the average consumer will attempt to articulate the devices in the competing marks or the “N” letter in the contested mark. I find that there is a low to medium degree of aural similarity.

Conceptual comparison

50. The competing marks share the word element “POLARIS”, which will be perceived by a significant proportion of consumers as the North Star or as a reference to a star. I note that a small group of consumers will attribute the word no meaning and will perceive it as an invented word. However, the presence/absence of the word “PERSONNEL”, the compass device, and the “N” letter, which could be seen as the Cardinal direction, will add to the conceptual difference between the marks. Although the applicant claims that the device in the earlier mark will be conceptualised as a star, in the absence of evidence, I do not consider that the average consumer will attribute such a meaning to the device. Instead, it will likely be regarded simply as a collection of dots without any attributable meaning. Taking all of this into account, I conclude that the respective marks still share a medium level of conceptual similarity based on the shared element POLARIS.

Distinctive Character of the Earlier Trade Mark

51. 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).”

52. 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.
53. The applicant has not provided evidence, so I have only the inherent distinctiveness of the applicant’s mark to consider. The applicant’s mark consists of a device and the word “polaris” which may be seen as the North Star for a significant proportion of the consumers but has no descriptive or allusive qualities to the services registered. Taking into account both elements, I consider that the mark is inherently distinctive to a medium degree.

Likelihood of Confusion

54. 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.⁸ 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 make direct comparisons between trade marks and must instead rely upon imperfect recollection.⁹
55. 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 the later mark is another brand of the owner of the earlier mark or a related undertaking.
56. 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,

⁸ See *Canon Kabushiki Kaisha*, paragraph 17.

⁹ See *Lloyd Schuhfabrik Meyer*, paragraph 27.

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).”

These examples are not exhaustive. Rather, they were intended to be illustrative of the general approach.¹⁰

57. In *Liverpool Gin Distillery Ltd and others v Sazerac Brands, LLC and others* [2021] EWCA Civ 1207, the Court of Appeal dismissed an appeal against a ruling of the High Court that trade marks for the words EAGLE RARE registered for whisky and bourbon whiskey were infringed by the launch of

¹⁰ See *Liverpool Gin Distillery and others v Sazerac Brands, LLC and others* [2021] EWCA Civ 1207.

a bourbon whiskey under the sign “American Eagle”. In his decision, Lord Justice Arnold stated that:

“13. As James Mellor QC sitting as the Appointed Person pointed out in *Cheeky Italian Ltd v Sutaria* (O/219/16) at [16] "a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion". Mr Mellor went on to say that, if there is no likelihood of direct confusion, "one needs a reasonably special set of circumstances for a finding of a likelihood of indirect confusion". I would prefer to say that there must be a proper basis for concluding that there is a likelihood of indirect confusion given that there is no likelihood of direct confusion.”

58. Earlier in this decision I have concluded that:

- the services at issue range from identical to similar to varying degrees;
- the average consumer is either businesses or professionals, without excluding entirely members of the general public. The selection process is predominantly visual without discounting aural considerations. The members of the general public will pay a higher than medium degree of attention;
- the marks are visually and aurally similar to a low to medium degree, and conceptually similar to a medium degree;
- the earlier mark is inherently distinctive to a medium degree.

59. Taking into account the above factors, I am persuaded that there is no likelihood of direct confusion for those services that I have found to be identical. Notwithstanding the principle of imperfect recollection, by virtue of its position and size in the registered proprietor’s mark, the average consumer would not overlook the presence/absence of the prominent compass device and potentially the additional word element “PERSONNEL”. Therefore, the average consumer will not mistakenly recall or misremember the competing marks as one another.

60. However, even if the average consumer recalls that the marks contain different device elements and the word “PERSONNEL”, I consider that the marks would be indirectly confused for identical services. I note that the additional word element “PERSONNEL” will be seen as descriptive for some services or allusive for others, and the average consumer will not attribute any trade mark significance to it. The common use of the dominant word “POLARIS” will be viewed as the house brand, and the difference in the devices put down to the use of a brand variant or sub-brand in the marks, leading the consumers to erroneously conclude that the services are offered by the same or an economically linked undertaking to the earlier mark. Thus, given the visual, aural, and conceptual similarity of the competing marks, the contested mark could be perceived as a brand variation or sub-brand of the earlier mark, giving rise to a likelihood of indirect confusion.
61. The above findings extend to the competing services which I found to be similar at any degree.

Final Remark

62. I note that the registered proprietor argued that:

“20. The Applicant also highlights that in the 18 months since the Applicant started using its mark in the UK, and within the 12 months since it’s official registration, it has received no misdirected enquiries from consumers of either party.”

I consider this to be a reference to actual confusion by consumers. Although evidence of actual confusion may be persuasive where it exists, the absence of confusion on the marketplace is rarely significant.¹¹ Against this background, and given the outcome of the opposition, such a defence

¹¹ See *Roger Maier and Another v ASOS*, [2015] EWCA Civ 220, at paragraph 80.

would not have assisted¹² or put the applicant in any better position, and I will say no more.

Outcome

63. Part of the application for invalidation has been successful. **The registered trade mark is declared invalid, subject to any successful appeal against this decision, with effect from 3 July 2023 for the following services:**

Class 35: Recruitment of personnel; Personnel recruitment; Staff recruitment; Recruitment services; Personnel recruitment advertising; Personnel recruitment consultancy; Personnel placement and recruitment; Recruitment and placement services; Personnel recruitment services; Executive recruitment services; Recruitment consultancy services; Recruitment of temporary personnel; Staff recruitment services; Employment recruiting consultancy; Consultancy relating to personnel recruitment; Permanent staff recruitment; Business recruitment consultancy; Employment recruiting consultation; Recruitment of executive staff; Staff recruitment consultancy services; Personnel recruitment agency services; Recruitment and personnel management services; Professional recruitment services; Personnel recruitment services and employment agencies; Employment recruiting services; Advertising services relating to the recruitment of personnel; Assistance relating to recruitment and placement of staff; Consultancy and advisory services relating to personnel recruitment; Executive recruiting services; Office support staff recruitment services; Provision of advice relating to the recruitment of graduates; Providing

¹² I keep in mind the recent decision BL O/0662/25 of Mr Phillip Johnson, sitting as the AP, where he stated that: “29. *To establish co-existence it is necessary for there to be evidence that both the earlier and later mark are used in the same marketplace at the same time in a way which would (in the absence of evidence) be seen as giving rise to a likelihood of confusion. 30. Accordingly, it is not possible to establish peaceful co-existence with an earlier mark which has not been used (ie where it is less than 5 years old; and so attracts no requirement to prove use). [...]*”

information relating to employment recruitment; Provision of information relating to recruitment; Providing information relating to personnel recruitment; Recruiting of office support staff; Personnel management and employment consultancy; Employment staffing consultation services; Personnel placement consultancy; Headhunting services; Employment consultancy; Job placement consultancy; Job and personnel placement; Consultancy relating to the selection of personnel; Employment counselling and consultancy services; Employment consultancy services; Employment agency services for personnel in general office positions; Consultancy and advisory services relating to personnel placement; Employment counselling services; Employment agency services; Temporary personnel employment services; Selection of executive personnel; Personnel consultancy; Personnel management consultancy; Executive search and selection services; Personnel placement services; Employment agencies; Employment recruitment; Temporary employment agencies; Employment agency services for temporary work assignments; Temporary placement of employees (Services for the -); Job agency services; Job matching services; Job placement; Interviewing services [for personnel recruitment]; Recruitment of high-level management personnel; Selection of personnel; Preparation of résumés for others; Management advice relating to the recruitment of staff; Employment counselling; Personnel placement; Placement of staff; Placement of temporary personnel; Placement of permanent personnel; Executive placement services; Staff placement services; Temporary personnel placement services; Executive search and placement services; Recruitment advertising; Business administration; Business management and administration; Business administration services; Business administration for others; Business assistance, management and administrative services.

Class 41: Consultancy services relating to the education and training of management and of personnel; Training relating to employment

opportunities; Sales personnel training services; Training relating to employment skills; Management training consultancy services; Consultancy services relating to the training of employees; Education and training consultancy; Education; Vocational education and training services; Adult education services; Further education; Career counselling relating to education and training; Career counseling [education]; Career and vocational counselling; Career advisory services (education or training advice); Employment training; Education, teaching and training; Educational and training services; Vocational guidance; Vocational guidance [education or training advice]; Teaching.

Class 45: Vetting services; Pre-employment background screening.

64. Part of the application for invalidation has been unsuccessful. **The registered trade mark will remain registered, subject to any successful appeal against this decision, for the following services:**

Class 35: Sales administration.

Costs

65. The applicant has enjoyed a greater degree of success and is entitled to a contribution towards its costs. Awards of costs are governed by Annex A of Tribunal Practice Notice (TPN) 1/2023. I award costs as follows:

| | |
|---|-------------|
| Official fee | £200 |
| Preparing a statement and considering the counterstatement | £250 |
| Preparing submissions and considering and commenting on the other side's evidence and submissions | £250 |
| Total | £700 |

66. I, therefore, order T15 International Limited to pay to Nutrius UK Bidco Limited the sum of £700. 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 27th day of November 2025

**Dr Stylianos Alexandridis
For the Registrar,
The Comptroller General**