BL O/1188/25

TRADE MARKS ACT 1994

CONSOLIDATED PROCEEDINGS

IN THE MATTER OF APPLICATION NOS:

UK3953428 & UK3948594

BY DR N ALI LTD

TO REGISTER THE FOLLOWING MARKS IN CLASSES 9, 35 & 41

Genius i

AND

Genius AI

AND

IN THE MATTER OF CONSOLIDATED OPPOSITIONS THERETO

UNDER NOS: 444894 & 445069

BY KID SYSTEME GMBH

AND

IN THE MATTER OF AN APPEAL TO THE APPOINTED PERSON

BY DR N ALI LTD

AGAINST A DECISION OF SAM CONGREVE (O/0569/25)

DATED 25 JUNE 2025

DECISION

Introduction

1. This is an appeal from a decision of Sam Congreve acting for the Registrar, dated 25 June 2025 (**"the Decision"** or **"her Decision"**) in relation to consolidated opposition proceedings brought by Kid Systeme GmbH (**"the Respondent**") against applications by Dr N Ali Ltd (**"the Appellant**") to register the two trade marks shown above in the United Kingdom in respect of various goods and services in classes 9, 35 and 41 (**"the Appellant's Marks"**).

2. The Respondent opposed the applications under s.5(2)(b) of the Trade Marks Act 1994 (**"the Act**"), directed at all the goods and services specified in the applications, relying on some of the goods and services, namely those in classes 9, 35 and 41, of its earlier registered trade mark for the word "Genius" with international registration no. 2680521 (**"the Respondent's Mark**").

3. Since the Respondent's Mark had not been protected for more than five years at the filing date of the applications, it was not subject to the proof of use requirements specified in s.6A of the Act.

4. Only the Appellant filed evidence and only the Respondent filed written submissions. Neither party requested a hearing, nor did they choose to file written submissions in lieu of a hearing, so the decision was taken following a review of the papers.

The Hearing Officer's decision

5. The Hearing Officer found some of the goods and services to be identical, while others were similar ranging between a low and high degree, but the Hearing Officer found that the Appellant's "*news reporting services, provision of news and current affairs*" services were dissimilar to the goods and services relied upon by the Respondent.

6. The average consumer was likely to be members of the general public at large and business users. Members of the general public would pay a medium degree of attention in the selection process, whereas business users would pay a higher than medium (but not high) degree of attention. The visual component would dominate the selection process, although an aural component would also play a role.

7. For the "Genius I" mark ("**the First Mark**"), the Hearing Officer found it to be visually similar to a high degree to the Respondent's Mark, aurally identical if the "I" was not articulated, or similar to at least a medium degree if it was articulated, and conceptually similar to a high degree.

8. For the "Genius AI" mark ("**the Second Mark**"), the Hearing Officer found it to be visually similar to a high degree to the Respondent's Mark, aurally similar to a medium degree, and conceptually similar to a high degree.

9. As the Respondent (while initially pleading that the Respondent's Mark had acquired distinctiveness through use) did not file any evidence of use, the Hearing Officer only considered the mark's inherent distinctiveness, which she found to be low to medium.

10. The Hearing Officer concluded that there was a likelihood of direct and indirect confusion, and therefore the oppositions succeeded in respect of all of the Appellant's goods and services with the exception of *"news reporting services, provision of news and current affairs"*.

The Appeal

11. The Appellant filed a Notice of Appeal to the Appointed Person under s.76 of the Act. The parties were content for me to decide the matter based on the papers without a hearing before me. Neither party filed written submissions.

Standard of Review

12. It is well established that, in order to interfere with the decision of the Hearing Officer, I must be satisfied that there was a distinct and material error of principle in the decision or that the Hearing Officer was wrong. The relevant principles were set out in *Axogen Corporation v Aviv Scientific Limited* [2022] EWHC 95 (Ch) at [24]. An appeal is by way of review, not a rehearing. Neither surprise at a Hearing Officer's conclusion nor a belief that she or he has reached th:e wrong decision will justify interference. The decision of the lower court will be *"wrong"* if the judge makes an error of law, which might involve asking the wrong question, failing to take account of relevant matters or taking into account irrelevant matters. In the absence of an error of law, the appellate court would be justified in concluding that the decision of the lower court was wrong if the judge's conclusion was *"outside the bounds within which reasonable disagreement is possible"* (*Actavis Group PTC v ICOS Corporation* [2019] UKSC 1671 at [80]). In the case of a multifactorial assessment or evaluation, involving the weighing of different factors

against each other, the appeal court should show a real reluctance, but not the very highest degree of reluctance, to interfere in the absence of a distinct and material error of principle. Special caution is required before overturning such decisions (*TT Education v Pie Corbett Consultancy* [2017] RPC 17 at [52(iv)], *REEF Trade Mark* [2003] RPC 5 at [28] and *Fine & Country Ltd v Okotoks Ltd* [2014] FSR 11 at [50]-[51]).

13. In the judgment of the Court of Appeal in *Lidl Great Britain Ltd v. Tesco Stores Ltd* [2024] EWCA Civ 262, Arnold LJ said at [110]:

> *"It is common ground that, in so far as the appeals challenge findings of fact made by the judge, this Court is only entitled to intervene if those findings are rationally insupportable: Volpi v Volpi* [2022] EWCA Civ 464, [2022] 4 WLR 48 at [2](v) (Lewison LJ)."

14. The Supreme Court recently restated the approach to appeals of this kind in its judgment in *Iconix Luxembourg Holdings SARL v. Dream Paris Europe Inc* [2025] UKSC 25 at [94] to [95] as follows:

> *"94. It is perhaps obvious, and certainly an inevitable conclusion drawn from experience, that reasonable minds, and in particular reasonable judicially trained minds, each faithfully applying the relevant law and principles, will come to different conclusions about the answer to these multifactorial questions. While of course the decision of an appellate court trumps that of the court below, the law has imposed structured constraints designed to prevent a free for all in a higher court whenever a party (with the necessary resources) wishes to challenge the first instance decision of the trial judge. The reasons for these constraints are set out in a string of well-known authorities including, in the intellectual property context, Fage UK Ltd v Chobani UK Ltd [2014] EWCA Civ 5; [2014] FSR 29, per Lewison LJ at para 114. The reasons there set out relevantly include the following:*
>
> *(i) The trial is not a dress rehearsal. It is the first and last night of the show.*
>
> *(ii) Duplication of the trial judge's role on appeal is a disproportionate use of the limited resources of an appellate court.*
>
> *(iii) In making his decisions the trial judge will have regard to the whole of the sea of evidence presented to him, whereas an appellate court will only be island hopping.*
>
> *95. In Lifestyle Equities CV v Amazon UK Services Ltd [2024] UKSC 8; [2024] Bus LR 532 this court reviewed those constraints in a trade mark context. After citing from the Fage case this court in a joint judgment said, at paras 49- 50:*
>
> > *"49. That does not, however, mean the appeal court is powerless to intervene where the judge has fallen into error in arriving at an evaluative decision such as whether an activity was or was not targeted at a particular territory. It may be possible to establish that the judge was plainly wrong or that there has been a significant error of principle; but*

> *the circumstances in which an effective challenge may be mounted to an evaluative decision are not limited to such cases. Many of the important authorities in this area were reviewed by the Court of Appeal in In re Sprintroom Ltd [2019] 2 BCLC 617, paras 72–76. There, in a judgment to which all members of the court (McCombe, Leggatt and Rose LJJ) contributed, the court concluded, at para 76, in terms with which we agree, that on a challenge to an evaluative decision of a first instance judge, the appeal court does not carry out the balancing exercise afresh but must ask whether the decision of the judge was wrong by reason of an identifiable flaw in the judge's treatment of the question to be decided, such as a gap in logic, a lack of consistency, or a failure to take into account some material factor, which undermines the cogency of the conclusion.*
>
> *50. On the other hand, it is equally clear that, for the decision to be 'wrong' under CPR r 52.21(3), it is not enough to show, without more, that the appellate court might have arrived at a different evaluation."*

15. I have borne those principles firmly in mind.

Grounds of Appeal

16. The Appellant set out five Grounds of Appeal in its Form TM55P, which I shall deal with in turn.

Ground 1: "Overweighting of Weak Element "Genius""

17. All the Appellant stated in respect of this ground was *"Found to be of low-medium inherent distinctiveness but treated as dominant"* and then referred to three cases.

18. It is correct that the Hearing Officer found the Respondent's Mark to have a low to medium inherent distinctive character (see paragraph 9 above).

19. However, the Hearing Officer's reference to dominance was in relation to the Appellant's Marks. With respect to the Second Mark, when considering its conceptual meaning, the Hearing Officer considered that it was likely that the average consumer would perceive the "AI" element of the mark as being the letters 'A' and 'I', as an abbreviation for "Artificial Intelligence". However, she said that some consumers may perceive the "I" element as a decorative device resembling a flower, for example, rather than the letter 'I', in which case the letter 'A' and the flower device would have no conceptual meaning. Her conclusion on conceptual similarity was that, whichever way the figurative element was perceived, *"the prevailing concept of a reference to genius remains* ***the dominant point in the mark****, and therefore, the additional elements, whether perceived as 'A-i' or as 'A' plus a decorative device element, do not take away from this shared concept."* (emphasis added).

20. Unlike in the case of the Second Mark, the Hearing Officer found that the "I" element of the First Mark would be perceived as a figurative device element rather than the letter 'I', with only an insignificant proportion of consumers perceiving it as the letter 'I'.

21. When assessing the overall impression made by each of the Appellant's Marks, whilst not using the word *"dominant"*, she did conclude that the "Genius" element played the greater role in each mark. In respect of the First Mark, she concluded *"Whilst the overall impression of the mark lies in the combination of the word and the figurative element, I find that the word 'Genius' plays the greater role due to its size and position in the mark and the fact that the eye is naturally drawn to the element of the mark that can be easily read, with the figurative element playing a slightly lesser role."*. In respect of the Second Mark, she concluded *"Whilst the overall impression of the mark lies in the combination of these elements, I find that it is the word 'Genius' which plays the greater role in the overall impression due to its size and position within the mark, with the letter 'A' and figurative 'i' element playing a slightly lesser role."*. I agree with those conclusions.

22. I have set out below the paragraphs from the Decision which set out the Hearing Officer's decision on the likelihood of confusion, as they are also relevant to the final Ground of Appeal dealt with below, and I have highlighted her reference to *"dominant"* in the two occasions where that word appears again in her Decision:

> *"96. Earlier in this decision, I found that:*
>
> *• The parties' goods and services range between identical to similar to a low degree.*
>
> *• The average consumer for the goods and services is most likely the general public as well as business users, who will pay a medium degree of attention during the purchasing process (although it may be higher in some instances).*
>
> *• The purchasing process will be predominantly visual, although I do not discount an aural component to the purchase.*
>
> *• The first application is visually and conceptually similar to the earlier mark to a high degree, and aurally identical or aurally similar to at least a medium degree, depending on how the application is perceived.*
>
> *• The second application is visually and conceptually similar to the earlier mark to a high degree, and aurally similar to at least a medium degree, or aurally similar to a medium degree, depending on how the application is perceived.*
>
> *• The earlier mark is inherently distinctive to between a low to medium degree. On this point, it is acknowledged that a weaker degree of*

distinctive character in an earlier mark does not preclude a finding of confusion.

97. The fact that the word 'Genius' is identically present in the competing marks and that the purchasing process for the goods and services at issue is predominantly visual, is an important point of coincidence. Further, the word 'Genius' in the marks is visually, aurally and conceptually identical and is independently distinctive of the letter 'A' and figurative letter 'i' element in the applications. Moreover, the marks identically share the same beginnings resulting in the earlier mark being fully encompassed in the applications, where the only difference between the marks is the letter 'A' and/or a figurative element (whether perceived as a decorative device or as a figurative letter 'i'), at the end of the applications. On this basis, I keep in mind that the beginnings of marks tend to make more of an impact than the ends.

98. As previously stated, with regards to the figurative element present in the first application, the applicant submits that this element is intended to represent a letter 'i' incorporating an atomic symbol. Whilst I acknowledge that a proportion of consumers may recognise the figurative element in this way, I am of the view that it is more likely that consumers will perceive it merely as a decorative element, and therefore will not articulate it. However, in the event that the figurative element is perceived as a letter 'i' in the first application, then this may be understood as alluding to certain characteristics of the goods and services at issue, for example, that they are intelligent or internet capable, etc. Nonetheless, whichever way the figurative element is perceived, I find that the word 'Genius' will play the greater role in the overall impression, with the figurative element playing a slightly lesser role.

99. As for the second application, contrary to my findings with regards to the first application, I am of the view that as the figurative element directly follows the letter 'A', these elements will be considered in combination, and therefore, consumers are more likely to perceive the figurative element as the applicant suggests, that is, as a figurative letter 'i', rather than as a figurative/decorative device element. Whilst I acknowledge that a proportion of consumers may perceive it as a figurative device element, when considered as a whole, I find it more likely that it will be perceived as 'Genius Ai', rather than as 'Genius A' plus a figurative device. As such, bearing in mind the nature of the applicant's goods and services, the average consumer will likely perceive 'Ai' as an abbreviation for 'artificial intelligence' and therefore, when perceived as a whole, the mark 'Genius Ai' will likely be perceived as alluding to certain characteristics of the goods and services, namely that they possess a level of intelligence that is genius, for example. Nonetheless, whether perceived as 'Ai' or as 'A' plus a decorative device element, I am of the view that the word 'Genius' remains ***the dominant point*** *in the mark.*

100. Accordingly, given the stated similarities between the marks, I am of the view that the average consumer is likely to remember the marks as 'Genius' marks, with the additional figurative element in the first application, and the letters 'Ai' in the second application going unnoticed, being overlooked, or forgotten. Even in the case that 'Ai' gives the second mark a unitary meaning referring to a Genius level of AI, it does not take away from consumers misremembering 'Ai' and focusing their recollection on 'Genius'. On this point, I remind myself that consumers are rarely able to compare marks side by side

> *and, as such, are likely to forget which marks had the letter 'A' and/or figurative letter 'i' or device element, and which ones did not. Instead, the average consumer will simply seek to remember the marks by* ***recalling the shared dominant and distinctive verbal element****, being 'Genius'.*
>
> *101. Therefore, given the level of similarity across the marks at issue and the similarity or identity between the goods and services, I am of the view that the average consumer is unlikely to recall the differences between the marks resulting in a likelihood of direct confusion. This is so even bearing in mind the earlier mark's low to medium level of inherent distinctive character. In reaching this conclusion I note that a degree of caution is required before finding a likelihood of confusion on the basis of common elements which are either descriptive or are low in distinctive character, nevertheless, I maintain that there is a likelihood of direct confusion.".*

23. If the Appellant's criticism of the Hearing Officer was her finding that the word "Genius" formed *"the dominant point"* or *"the shared dominant and distinctive verbal element"* of the marks, then I reject that. It was a conclusion which a reasonable tribunal could have reached, and the Appellant has not identified any error of principle or law made by the Hearing Officer.

24. The Appellant cited *Whyte & Mackay Ltd v Origin Wine* UK Ltd [2015] EWHC 1271. I assume they did so in reliance on the statement by Arnold J (as he then was) that *"if the only similarity between the respective marks is a common element which has low distinctiveness, that points against there being a likelihood of confusion."* The Appellant also cited *Nicoventures Holding Limited v The London Vape Company Ltd* [2017] EWHC 3393 (Ch). Birss J (as he then was) agreed with the statement of principle from *Whyte & Mackay* set out in the previous paragraph but also stated that a finding that the marks have a common element with low distinctiveness *"does not preclude a finding of likelihood of confusion"*. The third case relied on was the *Lloyd Schuhfabrik* case referred to in paragraph 32 below on the basis that *"weak marks warrant narrow protection"*.

25. The Hearing Officer expressly reminded herself of the principle from *Whyte & MacKay* in the final sentence of paragraph 101 of her Decision, but where she had found the inherent distinctiveness of the Respondent's Mark to be *"low to medium"* her overall conclusion was one she was entitled to reach.

26. I therefore reject this ground of appeal.

Ground 2: "Failure to give Proper Weight to Stylisation & Conceptual difference"

27. The Appellant argued that the Hearing Officer wrongly dismissed the "I" (intelligence) element and "AI" (artificial intelligence) element as decorative. By including the words

"intelligence" and *"artificial intelligence"* after the elements in the Grounds of Appeal, I assume the Appellant is suggesting that the Hearing Officer should have concluded that those elements would be perceived by the average consumer as abbreviations for those words.

28. Firstly, I consider that the Hearing Officer was entitled to consider the "I" element as decorative since it has the flower or atomic symbol element as part of it.

29. Secondly, the Hearing Officer considered the position both where the "I" element was perceived as purely decorative, but also where the consumer would recognise it as the letter 'I', but concluded that whichever way the "I" element was perceived, the "Genius" element played the greater role in the marks, as discussed above.

30. Thirdly, with respect to the Second Mark, the Hearing Officer agreed with the Appellant that the mark would be perceived as 'Genius AI' rather than as 'Genius A' plus a figurative device, and that the "AI" element would be likely to be perceived as an abbreviation for *'artificial intelligence'* (paragraph 99).

31. I therefore reject this ground of appeal

Ground 3: "No Evidence to Support Acquired Distinctiveness"

32. The Appellant stated in its Grounds of Appeal that the Hearing Officer should have assessed the Respondent's Mark solely on its inherent distinctiveness (found to be low to medium), but that *"the decision treated "Genius" as carrying greater strength than justified, contrary to Lloyd Schuhfabrik (C-342/97), which confirms that weak marks warrant narrow protection."*

33. I reject any suggestion that the Hearing Officer took into account any element of enhanced distinctiveness through use made of the Respondent's Mark. As I summarised in paragraph 9 above, she expressly stated in paragraph 92 of her Decision:

> *"The distinctiveness of a mark can be enhanced through use, and on this point, I note that the opponent did initially plead that its mark had acquired distinctiveness through use. However, as they have omitted to file any evidence of use, I have only the inherent position to consider."*

34. The Hearing Officer assessed the inherent distinctiveness of the Respondent's Mark as being between low to medium. It is clear that she had this assessment firmly in mind when she reached her conclusion that there was a likelihood of direct confusion in paragraph 101 of her Decision, as she expressly stated:

> *"This is so even bearing in mind the earlier mark's low to medium level of inherent distinctive character. In reaching this conclusion I note that a degree of caution is required before finding a likelihood of confusion on the basis of common elements which are either descriptive or are low in distinctive character, nevertheless, I maintain that there is a likelihood of direct confusion."*

35. Accordingly, no error by the Hearing Officer has been identified, and so this ground of appeal fails.

Ground 4: "Over-expansive goods/services comparison"

36. The Appellant argued that the Hearing Officer wrongly *treated "AI software, lifestyle/health content, and consultancy"* as overlapping with the Respondent's *"aerospace/engineering coverage"*, failing to give the specifications their core meanings in accordance with *Skykick UK Ltd v Sky Ltd* [2024] UKSC 36.

37. I will therefore review the Hearing Officer's findings in respect of each part of the Appellant's specifications which mention *"AI software"*, *"lifestyle"*, *"health"* or *"consultancy"*.

38. The Hearing Officer compared the goods and services of the respective marks by grouping them together in as few groups as she considered to be logical, the Respondent not having provided a full comparison of the goods and services. She also reminded herself of the principles outlined in *Skykick "by comparing what I consider to be the core meaning of the goods and services, without affording them neither a too liberal, nor an artificially narrow, interpretation"* (paragraph 29).

AI software

39. *"AI software"* formed part of the class 9 specification of the Second Mark, but did not appear in the First Mark. The Hearing Officer found in paragraph 37 of her Decision that this was identical to the broad term *"software"* contained in the Respondent's Mark. In particular, I note that the Respondent's Mark included *"artificial intelligence software and machine learning software"*. The Hearing Officer was right to find these goods to be identical.

Lifestyle/health content

40. The Hearing Officer grouped together and considered the following goods in class 9 of the Appellant's Marks: *"Online downloadable information, publications, e books, courses on entertainment, education, and on* ***health, lifestyle****, physical* ***health****, mental*

***health**, diet, cooking and **lifestyle**, product advice, motivation, psychology, personal interests, and general culture"*, in respect of which the Hearing Officer found as follows:

> *"38. The above contested goods all appear to relate to downloadable publications in one form or another. I find that the contested goods have a complementary relationship with the opponent's broad term publishing services and reporting and drafting of texts in Class 41, with the contested goods being the end product of those services. As the opponent's services are unlimited, there is nothing preventing them from being services relating to online publications. Accordingly, the contested goods would not exist were it not for the provision of services for their publication. The nature of the goods and services will clearly be different, however, there will be some overlap in users. Further, it is not uncommon for the same undertakings to be responsible for the provision of electronic publications, for example, and their publishing, on the basis that, in the case of electronic publication, such as ebooks, the undertakings which produce, publish and sell ebooks will be the same. Accordingly, I consider these goods and services to be similar to a medium degree."*

41. It is not at all clear why the Appellant refers to the Opponent's "*aerospace/engineering coverage"* in their Grounds of Appeal. In particular, the word *"engineering"* only appears once in the Respondent's specification, in class 9 in respect of *"software for computer-aided technical engineering [cae]"*. That part of the specification had no relevance to the Hearing Officer's conclusions in paragraph 38 of her Decision. The word *"aerospace"* does not appear at all in the Respondent's specification.

42. There is, however, mention of *"spacecraft"* in the final limitation which appears at the end of the class 41 specification of the Respondent's Mark, which reads as follows ("**the Training Limitation**"):

> *"all above-mentioned training and instructional services exclusively with respect to accessories, components or other parts for airplanes and other aircraft or spacecraft".*

43. I comment further on the Training Limitation below, but for the purposes of paragraph 38 it is of no relevance as, although the Hearing Officer stated the *"the opponent's services are unlimited"*, she was considering publishing services and the fact that the Respondent's publishing services covered both traditional and online publishing, rather than training or instructional services. I therefore do not accept the Appellant's criticism that her analysis was *"over-expansive"* or that she did not give the words their core meanings.

44. The Hearing Officer grouped together and considered the following services in class 41 of the Appellant's Marks: *"Educating and entertainment services, information and advice relating to **lifestyle**, physical **health**, diet, cooking, mental **health**, general interests",*

"*entertainment services, providing images from the Internet; provision of information relating to entertainment"* and *"providing information relating to a wide variety of topics for entertainment, education"* in class 41 (emphasis added).

45. The Hearing Officer found these to be identical to the Respondent's broad terms "*education, entertainment and sports activities"* (paragraph 58). With respect to the entertainment services, I can see no reason why the Hearing Officer was not applying the core meaning of the phrase *"entertainment activities"* when concluding that the services covered by the Appellant's Marks set out in the previous paragraph which refer to entertainment services were identical.

46. The same would apply equally to the Appellant's *"educating services"* and *"providing information relating to a wide variety of topics for education"* services when compared to the Respondent's *"education activities"*, subject to consideration of the Training Limitation

47. In paragraph 32 of her Decision, the Hearing Officer stated:

> *"For the avoidance of doubt, I do not consider the limitations to the opponent's Class 9 and 41 specifications to be relevant to my comparison of the parties' goods and services."*

48. For this reason, the Hearing Officer does not mention the Training Limitation in paragraph 58 of her Decision. However, in light of the Appellant's reference to "*aerospace coverage"* in its Grounds of Appeal, I will review the effect of the Training Limitation.

49. The words *"all above-mentioned training … services exclusively with respect to accessories, components or other parts for airplanes and other aircraft or spacecraft"* are a clear limitation to the wording which precedes them to the extent that that wording refers to *"training"*. For example, the phrase *"training activities"* appears as part of the Respondent's class 41 specification, so that the reference to *"training"* in that part of the specification must be limited solely to training activities *"with respect to accessories, components or other parts for airplanes and other aircraft or spacecraft"*. However, it is less clear what, if any, effect the Training Limitation has with respect to *"education activities"*. Furthermore, despite the use of the words *"above-mentioned … instruction services"* in the Training Limitation, the word *"instruction"* does not appear anywhere else in the specification for the Respondent's Mark. Given that education services could be said to include instruction services, and perhaps also training services, it is possible that the Appellant was submitting that the Hearing Officer should have interpreted the

Respondent's education services in class 41 as being limited to just those solely in respect of *"accessories, components or other parts for airplanes and other aircraft or spacecraft"*. Those educational services would then not be identical to education services relating to "***health, lifestyle**, physical **health**, mental **health**, diet, cooking and **lifestyle**"*, for example (emphasis added). This is purely speculation on my part, since the Grounds of Appeal give no explanation as to why the Appellant considered the Hearing Officer's treatment did not amount to giving the specification its core meaning. Nor did the Appellant request a hearing before me where they could have explained their concerns. I therefore consider that this ground of appeal fails to identify the actual error of principle on which the Appellant relies, which is essential in order that it can be understood by the Appellate tribunal and by the Respondent.

50. The Hearing Officer does not give any reasons as to why she concluded that the limitations in the Respondent's Mark were not relevant to the comparison of the goods and services. However, I consider that the Hearing Officer's conclusion that the Training Limitation had no relevance to the *"education"* services covered by class 41 of the Respondent's Mark was one a reasonable tribunal could have reached, based on the wording of the class 41 specification. This is because the specification makes separate reference to *"education", "training"* and *"teaching"* services, suggesting that *"education"* covers different and/or more services than just *"training"* and *"instruction"* services.

51. In the circumstances, I therefore reject the Appellant's assertion that the Hearing Officer's interpretation of these goods and services was not in accordance with the principles laid down in *Skykick*.

52. The Hearing Officer grouped together and considered the following services in class 41 of the Appellant's Marks: "***Health**, diet, cooking, exercise, general well being, and general interests, providing a real-time information network relating to the latest stories, ideas, opinions, news and to information of personal interest (educational, entertainment, **health**, cooking, diet and cultural services)"*[1]*, "providing information relating to a wide variety of topics for personal interests, or cultural purposes"* and *"providing blogs, non-downloadable text, video and audio files in the fields of entertainment, sports, education, **health** advice, dietary advice, culinary advice, celebrity and culture*" (emphasis added), in respect of which the Hearing Officer found as follows:

[1]

> *"59. The above contested services relate to numerous activities which broadly speaking fall within the categories of educational, entertainment, health, cooking, diet, and cultural services. I am of the view that cultural services and services relating to health, cooking and diet, etc., can be educational as well as entertaining. As such, I find that the above contested services are included in the opponent's broad terms education, entertainment and sports activities; sports and fitness services; entertainment, sport and culture; and entertainment events and the organisation of sporting events and activities. Therefore, the services are considered identical in line with the principle set out in Meric. However, if I have given too much weight to the identity of the services, then I consider there to be an overlap in users, nature, purpose and channels of trade, such that I find the services to be similar to a high degree."*

53. The drafting of the specifications is unclear since "*Health, diet, cooking, exercise, general well being, and general interests"* are not services. It is possible that the semi-colon before the first mention of the word *"Health"* was intended to have been a comma. The specification would then have read *"**publication of online information, namely, blogs featuring user-defined content in the field of social networking,** health, diet, cooking, exercise, general well being, and general interests, providing a real-time information network relating to the latest stories, ideas, opinions, news and to information of personal interest (educational, entertainment, health, cooking, diet, and cultural services);"*, since the words I have shown in bold text appear before the semi-colon in the specifications. However, if the Hearing Officer had considered this wording instead, she would have found these services to be identical as it would have fallen within her reasoning regarding publishing services in paragraph 60 of her Decision discussed below.

54. The Hearing Officer's reference in this paragraph to the Respondent's *"broad terms … entertainment, sport and culture"* suggests that that was a standalone service covered by the Respondent's class 41 specification, whereas in fact those words appear in the specification as part of the fuller term *"rental services relating to equipment and facilities for education, entertainment, sport and culture"*. This suggests that the Hearing Officer may have mistakenly interpreted the Respondent's Mark as covering "*entertainment, sport and culture"*. However, given that she found that *"cultural services and services relating to health, cooking and diet, etc., can be educational as well as entertaining"* and that the Respondent's Mark covers both educational and entertainment services under the broad term *"education, … entertainment and sports activities"*, which the Hearing Officer also expressly referred to, had this error not have been made, it would have had no effect on her conclusions in paragraph 59.

55. The Hearing Officer's interpretation of *"educational"* in paragraph 59 suggests that she considered *"educational"* services to be broader than simply *"training"* and *"instructional"* services as discussed in respect of the Training Limitation above (more in the sense of the word *"informative"* or *"enlightening"* rather than the type of services provided by formal education establishments such as schools and colleges).

56. The Hearing Officer's conclusion in paragraph 59 was therefore one I am not minded to interfere with.

57. The Hearing Officer grouped together and considered the following services in class 41 of the Appellant's Marks: "*Publication of online information, namely, blogs featuring user-defined content in the field of social networking;", "publication of online journals, namely, blogs featuring personal information and opinions in the field of* ***health****, physical fitness, education, diet, cooking, general well being and general interest" "publishing of books, magazines, journals and texts"* and *"publication of periodicals; providing online electronic publications (not downloadable) information relating to all the aforesaid provided online from a computer database on the Internet"*[2] (emphasis added), in respect of which the Hearing Officer found as follows:

> *"60. The above services are all types of publication/publishing services. As such, I am of the view that they are identical under the principle outlined in Meric to publishing services and reporting and drafting of texts in the opponent's specification."*

58. The Hearing Officer was correct to conclude that these were all publishing services and was therefore entitled to conclude that they were identical since the Respondent's publishing services were not limited to *"aerospace"* or *"engineering"*.

59. Finally, the Appellant complained about the Hearing Officer's treatment of *"consultancy"*. However, no explanation or reasoning was provided in support of this complaint, save to suggest that the Hearing Officer had not applied the core meaning in accordance with *Skykick*. I have reviewed the references to *"consultancy"* in the

[2] The Hearing Officer inserted a semi-colon between the words *"(non downloadable)"* and *"information"* in the extract from the specifications which appeared in the body of her Decision in relation to paragraph 60, whereas no comma appears in the specifications set out in the Appendices of her Decision. However, in light of her comments in paragraph 38 of her Decision that the Respondent's publishing services covered both traditional and online publishing and reporting services, even if she had not applied the limitation "*information relating to all the aforesaid provided online from a computer database on the Internet"* to each of the services she considered in paragraph 60 of her Decision, she would still have arrived at the same conclusion she set out in paragraph 60 of her Decision.

Decision and could find no evidence that the Hearing Officer had applied any meaning to the word *"consultancy"* which could be said not to represent its core meaning.

60. The appeal therefore fails under this ground.

Ground 5: "Misapplied confusion test"

61. The Appellant asserted in its Grounds of Appeal that the Hearing Officer was wrong to find a likelihood of direct and indirect confusion despite *"medium consumer attention and weak distinctiveness of "Genius." Sabel v Puma C-251/95; LA Sugar BL O/375/10 require global assessment and caution before indirect confusion based on weak terms."*.

62. I have already dealt with the Appellant's arguments relating to the weakness of the term *Genius* under Ground 1, noting that the Hearing Officer found the Respondent's Mark to have low to medium inherent distinctiveness overall.

63. The two factors cited, namely the attention paid by the average consumer and the inherent distinctiveness of the earlier mark, are just two of the various factors which the Hearing Officer was required to consider in combination when forming her global assessment. She later correctly listed the findings she had made in respect of each of these factors in paragraph 96 of her Decision. The Hearing Officer cited in paragraph 21 of her Decision the principles laid down in *Sabel v Puma* and other cases including in particular the first principle that *"The likelihood of confusion must be appreciated globally, taking account of all relevant factors"*.

64. The Appellant has therefore not identified any error made by the Hearing Officer in this respect.

65. Since I have upheld the Hearing Officer's finding of direct confusion, there is no need for me to address her findings in respect of indirect confusion.

Conclusion

66. Since the Appellant has not identified any error of principle or law made by the Hearing Officer, and as her conclusion was not irrational, the appeal fails.

Costs

67. The Hearing Officer ordered the Appellant to pay £800 towards the Respondent's costs of the opposition proceedings. Since the Respondent took no part in the appeal, I make no

order for costs on the appeal. Accordingly, I order that the Appellant shall pay the sum of £800 to the Respondent within 21 days of the date of this decision.

Simon Clark
The Appointed Person
18 December 2025