

O/1217/25

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00004103866

BY MIND AGENTIC LIMITED

TO REGISTER:

human \cap AI

AS A TRADE MARK IN CLASS 41

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. OP000450108

BY APLICACIONES HUMANAS CON INTELIGENCIA ARTIFICIAL S.L

BACKGROUND AND PLEADINGS

1. On 24 September 2024, Mind Agentic Limited (“the applicant”) applied to register the trade mark on the cover page of this decision in the UK. The application was published for opposition purposes on 4 October 2024. The applicant seeks registration for *Online education services; Training courses and Conducting of educational courses* in class 41.
2. On 10 October 2024, the application was opposed by Aplicaciones Humanas con Inteligencia Artificial S.L. (“the opponent”). The opposition is brought under section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opponent relies on the following International Registration (“IR”):



Human AI

IR No. 1680087

International registration date: 27 May 2022

Designation date: 27 May 2022

Protection conferred date: 26 January 2023

Relying on:¹ *Training and education; education services; research relating to education; consultancy in the field of education; education; education information; secondary education and teaching services; education and*

¹ On the Form TM7, the opponent ticked both boxes indicating that it was seeking to rely on “all” and “some” of its earlier goods and services. The opponent then listed its services in class 41 only. On 19 November 2024, the Registry notified the parties that it would proceed on the basis that the opponent was relying on its services in class 41 only.

instruction; teaching and educational services and training relating to employment opportunities in class 41.

3. The IR upon which the opponent relies qualifies as an earlier trade mark pursuant to section 6 of the Act. As the earlier mark had not completed its registration process more than 5 years before the filing date of the application in issue, it is not subject to the use provisions in section 6A of the Act. The opponent can, therefore, rely upon all of the services identified.
4. The opponent claims that the marks are highly similar and that the respective services are identical or highly similar, with the result that there is a likelihood of confusion.
5. The applicant filed a counterstatement denying the claims made.
6. The applicant is unrepresented, and the opponent is represented by Marks & Us Lawyers Marcas y Patentes.
7. Neither party filed evidence. No hearing was requested and neither party filed written submissions in lieu of the same. This decision is taken after careful consideration of the papers.
8. 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.

PRELIMINARY ISSUE

9. In its statement of grounds at paragraph [5], the opponent asserts that the marks to be compared are as follows:

Earlier mark	New application
HUMAN AI	HUMAN Ω AI

10. This is not accurate as the register shows the opponent's mark is a figurative mark as shown in paragraph [2] of this decision. For the avoidance of doubt, the comparison I shall undertake will be based upon the figurative mark depicted in paragraph [2] of this decision.

DECISION

Section 5(2)(b)

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

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

[...]

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

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

12. Section 5A of the Act states as follows:

“Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only.”

Section 5(2) case law

13. The following principles are gleaned from the decisions of the Court of Justice of the European Union (“CJEU”) in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v Office for Harmonization 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-334/05P and *Bimbo SA v OHIM*, Case C-591/12P.

- (a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;
- (b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;
- (c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;
- (d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is

permissible to make the comparison solely on the basis of the dominant elements;

- (e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;
- (f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;
- (g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;
- (h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;
- (i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;
- (j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;
- (k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

Comparison of services

14. The services to be compared are as follows:

Opponent's services	Applicant's services
Class 41: Training and education; education services; research relating to education; consultancy in the field of education; education; education information; secondary education and teaching services; education and instruction; teaching and educational services; training relating to employment opportunities.	Class 41: Online education services; Training courses; Conducting of educational courses.

15. In *Gérard Meric v OHIM*,² (“*Meric*”), the General Court (“GC”) held to the effect that goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by the trade mark application and vice versa (this principle equally applies to services).

16. The opponent’s term *Training and education* is broad and has not been limited in any way. I consider that this term would include training courses and educational services including those that are conducted online. Accordingly, I find the opponent’s *training and education* to be identical to all of the applicant’s services based on the principle outlined in *Meric*.

The average consumer and the purchasing act

17. The case law, as set out earlier, requires that I determine who the average consumer is for the respective parties’ goods and services. I must then decide the manner in which these goods and services are likely to be selected by the average consumer in the course of trade. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

² Case T- 133/05

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

18. The average consumer for the services at issue may be the general public, businesses, or educational establishments. This may include schools, colleges or larger overseeing bodies such as local education authorities. The purchasing process will be predominantly visual as services may be browsed and selected from brochures, catalogues and other sales literature as well as their online equivalents. I do not discount an aural aspect to purchase though as ordering may be done via the telephone or advice sought from sales staff.

19. I consider the costs will vary from mid-range to possibly fairly high and that the services will be purchased fairly infrequently but perhaps on a recurring basis. The average consumer will likely consider cost, suitability and the level of interest. I therefore find that overall, they will pay a medium degree of attention.

Comparison of the marks


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

21. 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.”

22. 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.

23. The respective trade marks are shown below:

The opponent's IR	The applicant's mark
	human \cap AI

24. The opponent's IR is a figurative mark that consists of several elements. The figurative element depicts a left-facing human head silhouette rendered in varying shades of blue. The silhouette is fragmented into multiple rounded, fluid-like shapes that progressively disperse toward the back of the head. Beneath the device is the wording "Human AI" displayed in a standard blue typeface. I remind myself that the GC held in *Wassen International Ltd v OHIM (SELENIUM-ACE)*, Case T-312/03, that verbal elements should in principle be held to be more distinctive than figurative elements of a mark, as the average consumer will more easily refer to the origin of the (goods and) services by the words than by describing a device: see paragraph 37. It is therefore my view that the wording

“Human AI” makes the greatest contribution to the overall impression of the mark, with the device playing a smaller role.

25. The applicant’s mark consists of the wording “human” and “AI”. In between the two words is an algebraic \cap symbol. I find that the overall impression is dominated by the wording “Human AI”. For reasons that I shall come to discuss in the conceptual comparison, I find the \cap symbol plays a slightly smaller role.

26. Visually, the marks overlap through use of the wording “Human” and “AI”. The marks differ by way of the figurative device element in the IR and the use of the \cap symbol in the applicant’s mark. On balance, I consider the marks to be visually similar to a medium degree.

27. The wording “Human AI” will be pronounced identically in both marks. I find it unlikely that the \cap symbol in the applicant’s mark will be articulated by a significant proportion of consumers. However, if the symbol is perceived as a letter “N” and it is articulated by some consumers, the marks will be aurally similar to a high degree.

28. In its counterstatement, the applicant states the following:

“The trade mark “Human \cap AI” is distinct in both design and meaning. The use of the mathematical/algebraic symbol \cap which represents ‘intersection’ creates a unique and recognisable identity that is absent from the opponent’s logo and word mark.

‘Human \cap AI’ visually and conceptually stands apart, emphasising the philosophical idea of the intersection between human creativity and artificial intelligence.”

29. I remind myself that for a conceptual message to be relevant it must be capable of immediate grasp by the average consumer.³ I am of the view that most consumers will understand “human” as relating to or concerning people. I also consider that “AI” will be understood as an acronym for “Artificial Intelligence”. I do not consider that a significant proportion of consumers would understand the “∩” symbol as meaning “intersection”. Instead, I find that, whilst some consumers may recognise it as a mathematical or algebraic symbol, they may not be aware of its actual meaning. I also consider that some consumers may view the symbol as a lower-case “n”.

30. As regards the IR, I consider that consumers will, again, understand “human” as relating to or concerning people; and that the device element, being a human head, will reinforce this concept. The wording “AI” will be understood as an acronym for “Artificial Intelligence”.

31. Both marks share the concept of something that is in relation to people and artificial intelligence services. The “∩” symbol, whichever way it is perceived, nevertheless creates a point of conceptual difference. Consequently, I find there is a high degree of conceptual similarity.

Distinctive character of the earlier mark

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

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-

³ This is highlighted in numerous judgments of the GC and the CJEU including *Ruiz Picasso v OHIM* [2006] ECR I-643; [2006] E.T.M.R 29.

108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

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

33. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use that has been made of it.

34. The opponent has not pleaded that its IR has obtained an enhanced level of distinctiveness, nor has it filed any evidence to that effect. Therefore, I have only the inherent position to consider.

35. As previously discussed in the conceptual comparison, the average consumer will perceive the wording "Human" as relating to people and "AI" as being an acronym for artificial intelligence. The device element will reinforce the concept of the word "Human". I consider that the word "Human" is a recognisable dictionary defined term however, I do not find it to be descriptive or allusive in respect of the services offered by the opponent. While the "AI" element is not descriptive of the educational and training services offered, it may allude to the type of courses

offered by the opponent as being in relation to learning about AI. In light of this, I find the IR possesses a medium degree of distinctive character.

Likelihood of confusion

36. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods and services down to the responsible undertakings being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the earlier mark, the average consumer for the goods and services and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he or she has retained in their mind.

37. I have found the services to be identical. I have found that the average consumer will comprise of members of the general public, businesses and educational establishments. Those consumers will pay a medium degree of attention during the purchasing process. I found that the services would be selected primarily by visual means, although I did not discount an aural aspect to the purchasing process. I have found the marks to be visually similar to a medium degree. Depending on how the mark is articulated, I have found the marks to be either aurally identical or aurally similar to a high degree. I have found the marks to be conceptually similar to a high degree. I found the earlier mark to hold a medium degree of inherent distinctiveness.

38. Having regard to the guidance referred to above, I am of the view that the average consumer, or at least a significant proportion thereof, when encountering the

respective marks on identical services would be directly confused as they will simply mistake one mark for the other on account of the shared identity of the common “Human AI” element and may overlook the figurative device and the “∩” symbol, and will be directly confused as to the origin of the services as a result.

39. I will proceed to consider a likelihood of indirect confusion. I am reminded of the case of *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, wherein Mr Iain Purvis Q.C., as the Appointed Person, explained that:

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

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

(a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right (‘26 RED TESCO’ would no doubt be such a case).

(b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand

extension (terms such as 'LITE', 'EXPRESS', 'WORLDWIDE', 'MINI' etc.).

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

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

41. I recognise that the Court of Appeal has emphasised that, where there is no direct confusion, there must be a "proper basis" for finding indirect confusion.⁴ In this connection, it is not sufficient that a mark merely calls to mind another mark: this is mere association not indirect confusion.⁵

42. I am of the view that even if average consumer recognises the differences in the figurative elements and stylisation of the marks along with the presence of the "∩" symbol, this would likely be attributed to a brand revamp rather than denoting services from different undertakings. I consider that it is not uncommon for undertakings to undergo a brand 're-fresh' or 'brand-revamp' from time to time to accommodate changes in marketing considerations. Due to the aural identity (or in some cases, high similarity) and high conceptual similarity, I find that if the average consumer notices these stylistic differences they will not, in this case, be put down to coincidence, but they will therefore regard the applicant's mark as an alternative stylisation of the opponent's mark. Consequently, I find there is a likelihood of indirect confusion.

CONCLUSION

43. The opposition under section 5(2)(b) of the Act is successful. Subject to any appeal against this decision, the application shall be refused protection in the UK.

⁴ *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207

⁵ *Duebros Limited v Heirler Cenovis GmbH*, Case BL O/547/17

COSTS

44. The opponent has succeeded and is entitled to a contribution towards its costs. Awards of costs in proceedings commenced on or after 1 February 2023 are governed by Annex A of Tribunal Practice Notice ('TPN') 1 of 2023. Using that TPN as a guide, I award the opponent the sum of **£350** as a contribution towards the cost of the proceedings. The sum is calculated as follows:

Official fee for filing Form TM7:	£100
Preparing the Statement of Grounds and considering the Counterstatements:	£250
Total:	£350

45. I therefore order Mind Agentic Limited to pay Aplicaciones Humanas con Inteligencia Artificial S.L. the sum of £350. 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 24th day of December 2025

Catrin Williams
For the Registrar