BL O/1224/24

IN THE MATTER OF THE TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK3838015 BY VARGAS MARCAS E PARTICIPAÇÕES LTDA

FOR THE TRADE MARK

IN CLASSES 3 AND 35

AND THE OPPOSITION THERETO UNDER NO. 438698

BY NORWEX HOLDING AS

AND IN THE MATTER OF AN APPEAL FROM THE DECISION OF L FAYTER (O/0841/24) DATED 30 AUGUST 2024.

DECISION

Introduction

1. This is an appeal by VARGAS MARCAS E PARTICIPAÇÕES LTDA ("**Appellant**") from decision O/0841/24 of Ms Leanne Fayter ("**Decision**") concerning the opposition by Norwex Holdings AS ("**Respondent**") to the Appellant's application for the mark shown below ("**Application**").

2. The Application was filed on 11 October 2022 and published on 21 October 2022 in respect of the following goods and services:

> **Class 3:** *Hair products, namely, shampoos, conditioners, styling gels, hair sprays, hair lacquers, hair bleaching preparations, hair colouring preparations, depilatory preparations; deodorants for personal use; cosmetics, namely, lipstick, foundation, blush, eye shadow, mascara, eyeliner, lipstick liner; skin care products, namely, cleansers, toners, moisturizers, eye creams, makeup remover, beauty masks; fragrance products, namely, cologne, eau de toilette, perfume; shaving products, namely, after shave, shaving cream, shaving gel, shaving lotion.*
>
> **Class 35**: *Marketing, importation and exportation of cosmetics.*

3. The Respondent opposed the Applications on the basis of section 5(2)(b) of the Trade Marks Act 1994. The Respondent relied upon the following marks ("**Earlier Marks**"):

> **NORWEX**
>
> Comparable UK trade mark (EU) registration no. UK00912885109.
>
> Filing date 19 May 2014.
>
> Registration date 08 October 2014.
>
> ("**the First Earlier Mark**").
>
> **NORWEX**
>
> Comparable UK trade mark (EU) registration no. UK00912769287.
>
> Filing date 7 April 2014.
>
> Registration date 23 December 2015.
>
> ("**the Second Earlier Mark**").
>
> **NORWEX**
>
> Comparable UK trade mark (EU) registration no. UK00903607819.
>
> Filing date 12 January 2004.
>
> Registration date 26 April 2005.
>
> ("**the Third Earlier Mark**").

4. The Respondent relied upon the goods and services set out in the Annex.

5. The Appellant put each of the Earlier Marks to proof of use. A hearing was held on 5 June 2024, attended only by the Appellant. In the Decision, L. Fayter for the Registrar held that the opposition was partially successful.

6. On 30 September 2024 the Appellant filed a Notice to Appeal to the Appointed Person against the Decision under Section 76 of the Trade Marks Act 1994.

The Hearing Officer's decision

7. The Hearing Officer held as follows (in summary, and insofar as is relevant to this appeal):

    a. Genuine use was demonstrated for some of the goods in the First and Third Earlier Marks, and some of the services in the Second Earlier Mark. A fair specification for each of the Earlier Marks was:

        First Earlier Mark. Class 3: *Soaps, deodorants; preparations for the care of the skin; shampoos; conditioners*.

        Second Earlier Mark. Class 35: *Retail services connected with the sale of preparations for the care of the skin*.

        Third Earlier Mark. Class 3: *Soaps, deodorants; moisturising creams*.

    b. The average consumer would be a member of the general public, although it could also include a professional such as a hairdresser or beautician. The level of attention paid would be medium. Visual considerations would dominate the selection process, although an aural component cannot be discounted;

    c. The marks are visually similar to between a medium and high degree, aurally similar to between a medium and high degree, and conceptually neutral;

    d. The Earlier Marks are inherently distinctive to a high degree, with no enhanced distinctiveness through use;

    e. The levels of similarity of goods and services are as set out below:

Deodorants for personal use	Identical to *deodorants* in the First and Third Earlier Marks
Hair products, namely, shampoos, conditioners […]	Identical to *shampoos* and *conditioners* in the First Earlier Mark
Skin care products, namely, cleansers, toners, moisturizers, eye creams, makeup remover, beauty masks	Identical to *preparations for the care of the skin* in the First Earlier Mark
Shaving products, namely, […] shaving lotion	Similar to a medium degree to *preparations for the care of the skin* in the First Earlier Mark
Cosmetics, namely, lipstick, foundation, blush, eye shadow, mascara, eyeliner, lipstick liner	Similar to a medium degree to *preparations for the care of the skin* in the First Earlier Mark and *moisturising creams* in the Third Earlier Mark
Hair products, namely, […] styling gels, hair sprays, hair lacquers, hair bleaching preparations, hair colouring preparations, […]	Similar to a medium degree to *shampoo* and *conditioner* in the First Earlier Mark

Fragrance products, namely, cologne, eau de toilette, perfume	Similar to a low to medium degree to *preparations for the care of the skin* in the First Earlier Mark
Hair products, namely, […] depilatory preparations.	Dissimilar
Shaving products, namely, after shave, shaving cream, shaving gel, […]	Dissimilar
Marketing, importation and exportation of cosmetics	Dissimilar

f. The Hearing Officer held that there is a likelihood of direct confusion in respect of all the goods that are identical or similar to any degree.

Grounds of Appeal

8. The Appellant's Grounds of Appeal are as follows:

   a. **Ground 1**: The Hearing Officer made an error of law in deciding that the Respondent's use of a variant of the Earlier Marks constituted genuine use of the Earlier Marks.

   b. **Ground 2**: The Hearing Officer did not correctly take into account the relationship between the different companies in the Respondent's group of companies in assessing whether there was genuine use of the Earlier Marks.

   c. **Ground 3**: The Hearing Officer did not correctly apply the legal test set out in *Canon* in assessing the similarity of the goods.

   d. **Ground 4**: The Hearing Officer did not correctly apply the legal test set out in *Sabel BV v. Puma AG* in assessing the similarity of the marks.

   e. **Ground 5**: The Hearing Officer did not correctly assess the inherent distinctiveness of the Earlier Marks.

9. Neither party requested a hearing or filed any skeleton arguments in this appeal. I have accordingly carried out this review solely on the basis of the Decision, the Appellant's Grounds of Appeal and the Appellant's TM8 and skeleton argument submitted for the hearing below.

Standard of review

10. The approach to be adopted in an appeal hearing has been laid down a number of times in case law. It was summarised in *Axogen v Aviv* [2022] EWHC 95 (Ch) at §24-25:

   "Appellate Function

   24. Although I was referred to numerous cases on the subject (including *English v Emery Demibold & Struck Ltd* [2002] 1 WLR 2409, *REEF Trade Mark* [2003] RPC 5, *Fine & Country Ltd v Okotoks Ltd* [2014] FSR 11, *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5, *Shanks v Unilever Plc* [2014] RPC 29, *TT Education Ltd v Pie Corbett Consultancy* [2017] RPC 17, *Apple Inc v Arcadia Trading Limited* [2017] EWHC 440 (Ch), *Actavis Group PTC v ICOS Corporation* [2019] UKSC 1671 and *NINEPLUS* O/039/21), the approach of the appeal court to a statutory appeal under section 76(1) of the TMA is uncontroversial. I bear the following principles, relevant to the issues before me, firmly in mind:

i) The appeal is by way of a review, not a rehearing (see *TT Education Ltd v Pie Corbett Consultancy Ltd* (O/017/17) at [52(i)]);

ii) The appeal court will allow an appeal where the decision of the lower court was "wrong" (see CPR 52.11). Neither surprise at a Hearing Officer's conclusion, nor a belief that he or she has reached the wrong decision suffices to justify interference (*NINEPLUS* O/039/21 at [14]);

iii) 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. Absent 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* at [81]);

iv) The approach required by the appeal court depends on a number of variables including the nature of the evaluation in question (*REEF Trade Mark* [2003] RPC per at [26]). There is a "spectrum of appropriate respect for the Registrar's determination depending on the nature of the decision" (*TT Education* at [52(ii)]), with decisions of primary fact at one end of the spectrum and multi-factorial decisions (of the type which the parties agree were made in this case by the Hearing Officer) being further along the spectrum.

v) 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* at [52(iv)], *REEF* at [28] and *Fine & Country* at [50]-[51]).

vi) An error of principle is not confined to an error as to the law but extends to certain types of error in the application of a legal standard to the facts in an evaluation of those facts. The evaluative process is often a matter of degree upon which different judges can legitimately differ and an appellate court ought not to interfere unless it is satisfied that the judge's conclusion is outside the bounds within which reasonable disagreement is possible (*Actavis Group* at [80]).

vii) Another variable to be taken into account will be "the standing and experience of the fact-finding judge or tribunal" (*REEF* at [26], *Actavis Group* at [78]). Expert tribunals are charged with applying the law in the specialised fields and their decisions should be respected unless it is quite clear that they have misdirected themselves in law. Appellate courts should not rush to find such misdirections simply because they might have reached a different conclusion on the facts (*Shanks* at [28] citing the warning given by Baroness Hale in *AH (Sudan) v Secretary of State for the Home Department* [2007] UKHL 49).

viii) The appellate court should not treat a judgment as containing an error of principle simply because of its belief that the judgment or decision could have been better expressed; "The duty to give reasons must not be turned into an intolerable burden" (see *REEF* at [29]). The reasons need not be elaborate. There is no duty on a judge, in giving her reasons, to deal with every argument presented by counsel in support of his case. It is sufficient if what she says shows the basis on which she has acted (*English* at [17], *Fage* at [115]). The issues the resolution of which were vital to the judge's conclusions should be identified and the manner in which she resolved them explained (*English* at [19]).

ix) In evaluating the evidence, the appellate court is entitled to assume, absent good reason to the contrary, that the first instance judge has taken all of the evidence into account (*TT Education* at [52(vi)]).

25. In the context of appeals relating to the likelihood of confusion, an evaluative issue described by Mr Iain Purvis QC sitting as an Appointed Person in *ROCHESTER Trade Mark* BL O/049/17 at [31] as "indeterminate and open to debate", Mr Purvis QC went on to say this at [33]:

"…the reluctance of the Appointed Person to interfere with a decision of a Hearing Officer on likelihood of confusion is quite high for at least the following reasons:

(i) The decision involves the consideration of a large number of factors, whose relative weight is not laid down by law but is a matter of judgment for the tribunal on the particular facts of each case

(ii) The legal test 'likely to cause confusion amongst the average consumer' is inherently imprecise, not least because the average consumer is not a real person

(iii) The Hearing Officer is an experienced and well-trained tribunal, who deals with far more cases on a day-to-day basis than the Appellate tribunal

(iv) The legal test involves a prediction as to how the public might react to the presence of two trade marks in ordinary use in trade. Any wise person who has practised in this field will have come to recognize that it is often very difficult to make such a prediction with confidence. Jacob J (as he then was) made this point in the passing off case *Neutrogena v Golden* [1996] RPC 473 at 482:

'It was certainly my experience in practice that my own view as to the likelihood of deception was not always reliable. As I grew more experienced I said more and more "it depends on the evidence."'

Any sensible Appellate tribunal will therefore apply a healthy degree of self-doubt to its own opinion on the result of the legal test in any particular case.

34. I shall therefore approach this appeal on the basis that in the absence of a distinct and material error of principle, I ought not to interfere with the decision of the Hearing Officer unless I consider that his view on the issue of likelihood of confusion was clearly wrong in the sense that it was outside the range of views which could have been reasonably taken on the established facts."

11. To the above should be added:

- The judgment of the Court of Appeal in *Lidl Great Britain Ltd v. Tesco Stores Ltd* [2024] EWCA Civ 262, where 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"; and

- The Supreme Court's guidance in *Lifestyle Equities CV v Amazon UK Services Ltd* [2024] UKSC 8 where it stated at §49 "…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".

12. I shall bear all the above in mind when reviewing the Decision.

Discussion

(1) Error of law in deciding that the Respondent's use of a variant of the Earlier Marks constituted genuine use of the Earlier Mark

13. The Earlier Marks are registered for the plain text NORWEX, whereas the Respondent's evidence before the Hearing Officer included instances of the following variant:

14. The Hearing Officer cited *Colloseum Holdings AG v Levi Strauss & Co.*, Case C-12/12 at §19, emphasising the following passages: "*… the 'use' of a mark, in its literal sense, generally encompasses both its independent use and its use as part of another mark taken as a whole or in conjunction with that other mark*" and "*a registered trade mark that is used only as part of a composite mark or in conjunction with another mark must continue to be perceived as indicative of the origin of the product at issue for that use to be covered by the term 'genuine use' within the meaning of Article 15(1)*".

15. Her conclusion at §22 was that:

> "*The variant consists of the word "Norwex" presented in a blue standard font. However, I note that the letter "O" is presented in a slanted angle, with a green coloured house device presented inside of it (with the chimney being a green leaf, and the centre of the house being a green and blue leaf/teardrop device). Whilst I note that the variant consists of the house device, I consider that the word "Norwex" is clearly visible and still continues to indicate origin within the composite mark. It is therefore an acceptable variant of the First, Second and Third Earlier Marks*".

16. The Appellant contends that *Colloseum Holdings* can only be validly applied in the manner set out by the Hearing Officer so long as the distinctive character of the trade mark has not changed. It contends that in order to assess whether the distinctive character of the mark has changed, the test set out in *Lactalis McLelland Limited v Aria Foods AMBA*, BL 0/265/22 should be applied. This requires a comparison of the marks to identify elements of the mark added (or subtracted) which have led to the alteration of the mark (that is, the differences). When comparing the alterations between the mark as registered and used, the alteration or omission of a non-distinctive element does not alter the distinctive character of the mark as a whole, and where

a mark contains words and figurative elements the word element will usually be more distinctive.

17. Applying the above, the Appellant contends that the mark as used does not include the word element "NORWEX". Rather, it includes the letters "N RWEX" with a device element inserted between the N and the R. There is no alteration or omission of a non-distinctive element, however there is omission of part of the distinctive word element.

18. I do not agree with the Appellant's analysis. The Hearing Officer appropriately and accurately described the device as the letter O "*presented in a slanted angle, with a green coloured house device presented inside of it (with the chimney being a green leaf, and the centre of the house being a green and blue leaf/teardrop device)*". The Hearing Officer was entitled to identify the device as a decorated letter O – indeed, for what it is worth, I believe she was right to do so. Whereas the device element inserted between the N and the R is not a plain letter O, it is clearly a letter O to which decoration has been added. The Appellant's contention that "the water droplets, blue arc and the house of the mark as used replace the "O" of the Earlier Trade Marks" mischaracterises the variant mark – the letter O is decorated rather than replaced. The Hearing Officer was accordingly entitled to find at §22 that "*the word "Norwex" is clearly visible and still continues to indicate origin within the composite mark*".

19. I dismiss the first ground of appeal.

(2) Failure to take into account the relationship between the different companies in the Respondent's group of companies in assessing whether there was genuine use of the Earlier Marks

20. The Appellant contends that the Respondent's evidence contains an exclusive trade mark licence in respect of the Third Earlier Mark from the Respondent to one of its subsidiaries, Norwex Malta Limited. Due to the exclusive licence, this mark cannot be used by the Respondent or by the sister companies of Norwex Malta Limited, for the goods and services for which it is registered. There is no evidence to show that Norwex Malta sublicensed the mark to any sister company and there is no evidence that Norwex Malta has used the mark themselves. There cannot therefore be genuine use of the Third Earlier Mark.

21. I note that the fair specifications of the First and Third Earlier Marks differ only insofar as the Third Earlier Mark includes *moisturising creams*, as opposed to *preparations for the care of the skin; shampoos; conditioners* in the First Earlier Mark. Consequently, the only goods in the Application for which this ground could make any difference are *Cosmetics, namely, lipstick, foundation, blush, eye shadow, mascara, eyeliner, lipstick liner*. The Hearing Officer held that these are similar to a medium degree to *preparations for the care of the skin* in the First Earlier Mark and *moisturising creams* in the Third Earlier Mark.

22. Accordingly, I shall consider this second ground only if I decide (in relation to the third ground) that *preparations for the care of the skin* in the First Earlier Mark are not similar to *Cosmetics, namely, lipstick, foundation, blush, eye shadow, mascara, eyeliner, lipstick liner*.

(3) Incorrect application of the legal test set out in *Canon* in assessing the similarity of the goods

23. The Appellant challenges the following findings of similarity:

- *Shaving lotion* similar to a medium degree to *body lotions* (§51);

- *Lipstick, foundation, blush, eye shadow, mascara, eyeliner, lipstick liner* similar to a medium degree to *preparations for the care of the skin* in the First Earlier Mark and *moisturising creams* in the Third Earlier Mark (§52);

- *Cologne, eau de toilette, perfume* similar to a low to medium degree to *preparations for the care of the skin* (§54).

24. The Grounds of Appeal contain arguments in support of the above challenges. The difficulty for the Appellant is that, with one exception, none of its arguments in this appeal in relation to similarity of goods/services were pursued before the Hearing Officer. The Appellant's Form TM8 said:

> "*10. The Applicant denies that the following goods/services are identical or similar to the Earlier Relevant Goods/Services: hair bleaching preparations, hair colouring preparations, depilatory preparations; shaving products, namely, after shave, shaving cream, shaving gel, shaving lotion; all in class 3 and marketing, importation and exportation of cosmetics in class 35.*
>
> *11. With reference to paragraphs 4 to 8 of their Statement of Grounds, Opponent purports to assess the similarity of goods and erroneously concludes that "the goods and services have the same nature, the same purpose, the same end users, and the same trade channels". Applicant denies this. Applicant notes that there is no discussion as to why the allegedly similar goods should indeed be viewed as being similar. Furthermore, there is no reasoning whatsoever as to why the Opponent believes the class 35 services to be similar*".

25. The Appellant's skeleton argument below stated only:

> "*The following goods/services are not similar to the Earlier Relevant Goods/Services: hair bleaching preparations, hair colouring preparations, depilatory preparations; shaving products, namely, after shave, shaving cream, shaving gel, shaving lotion; all in class 3 and marketing, importation and exportation of cosmetics in class 35*".

26. The Hearing Officer therefore had to do her best to decide which, if any, of the Appellant's goods and services were similar to the Respondent's goods and services. I am of the view that her ultimate findings as to similarity were ones that were open to her on the (lack of) arguments and evidence submitted by the parties. Save for *shaving lotion*, which was raised before the Hearing Officer, it is now too late for the Appellant to raise, for the first time, detailed arguments in relation to similarity of goods.

27. With regard to *shaving lotion* vs *body lotions*, the Appellant contends that:

> "The goods do not overlap in their nature or purpose since the purpose of one is depilatory, whilst the other is moisturising. They are also not in competition with each other, as a consumer looking for shaving lotion would not consider buying a moisturiser instead, and vice versa. Furthermore, shaving lotion is usually not found near to moisturisers in supermarkets and beauty retail outlets - it is instead generally found with razors and other depilatory products. The goods exhibit, at most, a low degree of similarity".

28. Whereas the above may be correct, that was not actually the finding made by the Hearing Officer. Rather, she said at §51 that shaving lotion is "*used as part of the process to remove hair by shaving, which will be conducted as part of a personal care routine. I note that shaving lotion*

will be applied to the skin prior to, or after shaving. I also consider that the First Earlier Marks "preparations for the care of the skin" would include goods such as body lotions which are applied to the skin as part of a personal care routine and could be used for shaving. I therefore consider that the goods overlap in their nature, purpose and method of use, as well as being potentially in competition as the user could choose either to achieve the same result. I also consider that the goods will be sold in the same aisle of beauty retail outlets, pharmacies or supermarkets. Consequently, the goods are similar to at least a medium degree".

29. It is clear, therefore, that her finding was that *shaving lotion* is similar to at least a medium degree to *preparations for the care of the skin* generally, rather than to *body lotions* specifically. That was a finding she was entitled to make for the reasons she stated. I dismiss this third ground of appeal. Given that, the second ground of appeal also falls away.

(4) Incorrect application of the legal test set out in *Sabel BV v. Puma AG* in assessing the similarity of the marks

30. The Appellant makes two criticisms of the Decision under this ground. First, it contends that the Hearing Officer did not properly consider the large "X" device which is a distinctive and dominant part of the Application. Secondly, the Hearing Officer failed to take into account that there are practically no other words in the English dictionary which start "NORW" except those which relate to Norway. The other terms present in the dictionary "norward", "nor-west", "Norwich" all have a strong conceptual link to the north, as does Norway and the Respondent's mark Norwex. This is clearly a concept and is clearly different from that of the Appellant. The marks are therefore conceptually dissimilar.

31. Dealing with the first criticism, the Hearing Officer said at §70:

> "*The applicant's mark consists of the word "novex" presented in a standard black typeface, presented in front of a paint stroke "X" device. I bear in mind that the eye is naturally drawn to the element of the mark that can be read, and therefore, the word "novex" plays a greater role in the overall impression of the mark, with the "X" background device playing a lesser role*".

32. The Appellant contends that the "X" device "*is merely dismissed by the Hearing Officer as "playing a lesser role in the overall impression of the mark" without any consideration as to the distinctive and dominant elements of the mark. The "X" is large in comparison to the rest of the mark and it naturally draws the eye towards it at first glance. It should be considered as equally significant as the word element in the overall impression of the mark*".

33. It was a matter for the Hearing Officer to decide what precise role each element played in the overall impression of the Earlier Mark. Other Hearing Officers may have reached a different conclusion (I personally consider that the "X" device is of at least equal significance to the word element), but that is not a basis for her decision to be overturned. She made no error of principle in her analysis, and her conclusion was not "outside the bounds within which reasonable disagreement is possible".

34. Turning now to the second criticism, it is clear from her analysis at §§73-74 that the Hearing Officer was alive to the Appellant's submissions, and she considered them carefully before dismissing them. In doing so, she made no error of principle, and her decision to reject the contention that the First and Third Earlier Marks bring to mind Norway cannot be said to be wrong.

35. I accordingly dismiss this fourth ground of appeal.

(5) The Hearing Officer did not correctly assess the inherent distinctiveness of the Earlier Marks

36. The Hearing Officer stated at §77 of the Decision:

> "*I consider that the word NORWEX will be perceived by the average consumer as an invented word with no conceptual meaning. On this basis, the marks are inherently distinctive to a high degree*".

37. The Appellant contends that this is incorrect - the Earlier Marks allude to Norway/the north, and would not be perceived by the average consumer as having no conceptual meaning. Therefore, the Earlier Marks should not inherently be characterised as highly distinctive. They enjoy an average level of inherent distinctiveness at best.

38. This raises the same point as discussed in the section above. The Hearing Officer considered carefully the Appellant's submissions as to the Earlier Marks bringing to mind Norway, and rejected them. There is no basis for me to interfere in that assessment.

39. I dismiss this fifth ground of appeal.

Conclusion

40. The appeal is dismissed. The Application is refused for the following goods:

> **Class 3**: *Hair products, namely, shampoos, conditioners, styling gels, hair sprays, hair lacquers, hair bleaching preparations, hair colouring preparations, deodorants for personal use; cosmetics, namely, lipstick, foundation, blush, eye shadow, mascara, eyeliner, lipstick liner; skin care products, namely, cleansers, toners, moisturizers, eye creams, makeup remover, beauty masks; fragrance products, namely, cologne, eau de toilette, perfume; shaving products, namely, shaving lotion*.

41. The Application shall proceed to registration in respect of the following goods and services for which the opposition was unsuccessful:

> **Class 3**: *Hair products, namely, depilatory preparations; shaving products, namely, after shave, shaving cream, shaving gel.*
>
> **Class 35**: *Marketing, importation and exportation of cosmetics.*

Costs

42. Clearly, the Respondent has been the successful party. However, as the Respondent played no part in this appeal, it has incurred no costs, and accordingly I make no order as to costs.

43. The Hearing Officer's order that the Respondent shall pay the Appellant the sum of £400 still stands. That sum is payable within 21 days of this decision.

Dr. Brian Whitehead

30 December 2024

Representation

Hoffmann Eitle for the Appellant/ Applicant

The Respondent/ Opponent did not participate in this appeal

ANNEX

The First Earlier Mark

Class 3

Soaps; perfumery; essential oils; deodorants, anti-perspirants; preparations for the care of the skin, scalp and body; preparations for use in the bath; creams, lotions, gels, serums, milks, oils, powders, foams and mousses for use on the skin, scalp and body; preparations for toning the body; shampoos, conditioners, creams, lotions, gels, serums, milks, oils, powders, foams, mousses, sprays and waxes for the care and beauty of the hair; hair waving and hair-setting preparations; medicated shampoos and hair lotions for the care and beauty of the hair; cosmetics, cosmetic kits; toilet preparations; cleaning preparations for personal use; fragrance sprays for the body.

The Second Earlier Mark

Class 35

Advertising; business management; business administration; office functions; organisation, operation and supervision of loyalty and incentive schemes; advertising services provided via the Internet; provision of business information; retail services connected with the sale of soaps, perfumery, essential oils, cosmetics, hair lotions; providing on-line ordering services in the field of cleaning products; providing technical assistance in the establishment of and/or operation of independent direct sales businesses; business information services in the nature of providing information on business opportunities related to independent direct sales businesses.

The Third Earlier Mark

Class 3

Soaps, deodorants; moisturising creams, cosmetic kits.