

O-481-15

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION No. 3084740
BY TREND NORTH LIMITED
TO REGISTER THE TRADE MARK:**



**IN CLASS 25
AND**


**IN THE MATTER OF OPPOSITION
THERE TO UNDER No. 600000255 BY
TOMMY HILFIGER LICENSING LLC**

BACKGROUND

1) On 5 December 2014, Trend North Limited (hereinafter the applicant) applied to register the trade mark shown on the above page. The application was published for opposition purposes on 20 February 2015 in journal number 2015/008 in respect of the following goods in Class 25:

Articles of clothing; leisurewear; sportswear; headgear and footwear; swimwear; suits, trousers, jackets, coats and waistcoats; shirts and ties; underclothing; articles of clothing made from knitted material and knitted articles of clothing; bathrobes.

2) On 20 May 2015 Tommy Hilfiger Licensing LLC (hereinafter the opponent) filed a notice of opposition under the fast track opposition procedure. The opposition, which is directed against all of the goods in the application, is based upon section 5(2)(b) of the Trade Marks Act 1994 ("the Act"). The trade mark and goods relied upon by the opponent are shown below:

| Mark | Number | Date of application / registration | Class | Specification relied upon |
|--|-----------------|------------------------------------|-------|--|
|  | CTM 11267945 | 16.10.12 14.03.13 | 25 | Clothing for men, women and children and infants namely, shirts, golf shirts, t-shirts, polo shirts, knit tops, woven tops, sweatshirts, tank tops, sweaters, blouses, jerseys, turtle-necks, shorts, sweatpants, warm-up suits, blazers, sport coats, trousers, jeans, skirts, dresses, wedding dresses, suits, overalls, jumpers, vests, jackets, coats, raincoats, parkas, ponchos, swimwear, bikinis, swim trunks, overcoats, rainwear, wind resistant jackets, clothing for dancing namely leotards and ballet suits, sleepwear, pajamas, bathrobes, chasubles, underwear, lingerie, boxer shorts, ties; headgear namely, hats, wool hats, caps, visors, headbands, ear muffs; footwear, gym shoes, sneakers, socks, stockings, hosiery, shoes, boots, beach shoes, sandals, slippers; layettes [clothing]. |

- a) The opponent contends that the goods applied for are identical or highly similar to the goods for which its earlier mark is registered.
- b) The opponent also contends that:

"The earlier mark consists of the letters "T" and "H" in a Times New Roman style font, in which the taller letter "T" overlays the smaller letter "H". The letter "T" is the slightly more dominant of the two letters of the earlier mark, as it is taller than the "H". As such it is the first letter that consumers would notice or pronounce when reading the letters aloud. The distinctive elements of the earlier mark are the unusual way in which the letter "T" overlays the letter "H" and the exaggerated Times New Roman style font for the letters. The application consists of the letters "T" and "N" in a very similar Times New Roman style font to that of the earlier mark, in which the taller letter "T" overlays the smaller letter "N", in the same way that the taller letter "T" overlays the letter "H" in the earlier mark. The dominant element of the application is also the letter "T", as it is the larger of the two letters and will thus also be the first letter that most consumers would notice or pronounce when reading the letters aloud. The marks are therefore aurally similar, in that they both begin with the letter "T" and are followed by one further consonant. As with the earlier mark the distinctive elements of the application are the unusual way in which the letter "T" overlays the letter "N" and the exaggerated Times New Roman style font for the letters. As such the marks have strong visual similarities. There is no real concept

to either mark, so the marks will be compared on a visual and aural basis only. The application also consists of two square borders surrounding the letters. The average consumer would not pay much attention to the borders since they are simple geometric shapes framing the letters, commonly seen around logos. The borders are therefore non-distinctive and do not have a significant effect on the impression of the application on the average consumer.”

3) On 29 July 2015, the applicant filed a counterstatement. The applicant accepts that the goods of the two parties are identical or similar. Regarding the marks it states:

“3. The earlier mark is a figurative mark consisting solely of the letters “T” and “H” arranged in a monogram. The letter “T” is taller than the letter “H” and the letter “H” is wider than the letter “T”. Both letters are depicted in a thick black font. The particular arrangement and depiction of the two letters as aforesaid produces a mark in which neither letter is strikingly more dominant than the other. Consequently, the earlier mark could be perceived by the relevant consumer as “TH” or HT”. The opponent has not submitted any evidence on the consumer’s perception of their mark.

4. The mark applied for is a figurative mark consisting of the letters “T” and “N” arranged on a monogram and surrounded by a picture frame like double border consisting of an outer border, which is blue in colour matching the blue colour of the letters “T” and “N”, and a heavy black line inner border. The letter “T” is taller and wider than the letter “N”. They are depicted in a blue coloured font which is only thick in parts (the down stroke of the “T” and the cross-stroke of the “N”).

5. Visually the marks under comparison are similar to the extent that they both contain the letter “T”. Additionally, the two letters are in each case arranged in a similar monogram style. On the other hand, they differ in a number of ways. Firstly, they differ in the letter “H” in the earlier mark and the letter “N” in the mark applied for. The letters “H” and “N” are not in any way similar or comparable. Secondly, the mark applied for has a striking, prominent figurative element in the form of a double border framing the “T” and “N” monogram. The earlier mark is simply a monogram with no additional element, figurative or otherwise. Thirdly, the font of the earlier mark is thick, black and heavy compared to the font of the mark applied for.

6. Aurally, the earlier mark will be pronounced as either “TH” or “HT” due to the closely comparable size and thick font of the letters. The mark applied for will be pronounced “TN” due to the relative difference in the size of the two letters.

7. Conceptually, given that neither of the marks under comparison has any identifiable meaning no conceptual appreciation is possible.”

4) Rule 6 of the Trade Marks (Fast Track Opposition)(Amendment) Rules 2013, S.I. 2013 2235, disapplies paragraphs 1-3 of Rule 20 of the Trade Mark Rules 2008, but provides that Rule 20(4) shall continue to apply. Rule 20(4) states that:

“(4) The registrar may, at any time, give leave to either party to file evidence upon such terms as the registrar thinks fit.”

The net effect of these changes is to require parties to seek leave in order to file evidence in fast track oppositions. No leave was sought in respect of these proceedings.

5) Both parties seek an award of costs in their favour. Rule 62(5) (as amended) states that arguments in fast track proceedings shall be heard orally only if (i) the Office requests it or (ii) either party to the proceedings requests it and the registrar considers that oral proceedings are necessary to deal with the case justly and at proportionate cost; otherwise written arguments will be taken. A hearing was neither requested nor considered necessary; the opponent filed written submissions which I will refer to, as necessary, below.

DECISION

6) The only ground of opposition is based on section 5(2)(b) which reads:

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

(a)

(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.”

7) An “earlier trade mark” is defined in section 6, the relevant part of which states:

“6.-(1) In this Act an "earlier trade mark" means -

(a) a registered trade mark, international trade mark (UK) or Community trade mark which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks.”

8) The opponent is relying upon its trade mark shown in paragraph 2 above which is clearly an earlier trade mark. Given the interplay between the date that the opponent’s mark was registered and the date that the applicant’s mark was published, section 6A of the Trade Marks Act does not come into play.

9) When considering the issue under section 5(2)(b) I take into account the following principles which are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v 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 will wrongly believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

The average consumer and the nature of the purchasing decision

10) As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties' goods; I must then determine the manner in which these goods 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:

“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.”

11) Both parties' specifications are for, broadly speaking, clothing, footwear and headgear in class 25. The goods of both specifications can vary somewhat in their prices but neither would be considered to be complex. The items would be purchased by the average member of the public and businesses.

Such items tend, for the most part, to be purchased in shops or online. In shops and online they will be self selected and the visual aspect will be the most important element. When purchasing in a shop or if ordering by telephone aural considerations must be considered but the initial choice will still be made visually. Retailers will also be customers but I believe that they will make their choices in a similar way, be it from the internet, a brochure or the shelves in a cash and carry. They may also order via the telephone or in person. Effectively they have the same issues as the general public and I regard them to be the same. I accept that more expensive items may be researched or discussed with a member of staff. In this respect I note that in *New Look Ltd v OHIM Cases- T-117/03 to T-119/03* and T-171/03, the General Court (GC) said this about the selection of clothing:

“50. Generally in clothes shops customers can themselves either choose the clothes they wish to buy or be assisted by the sales staff. Whilst oral communication in respect of the product and the trade mark is not excluded, the choice of the item of clothing is generally made visually. Therefore, the visual perception of the marks in question will generally take place prior to purchase. Accordingly, the visual aspect plays a greater role in the global assessment of the likelihood of confusion.”

12) In the same case the Court also commented upon the degree of care the average consumer will take when selecting clothing. It said:

“43. It should be noted in this regard that the average consumer’s level of attention may vary according to the category of goods or services in question (see, by analogy, Case C 342/97 *Lloyd Schuhfabrik Meyer* [1999] ECR I-3819, paragraph 26). As OHIM rightly pointed out, an applicant cannot simply assert that in a particular sector the consumer is particularly attentive to trade marks without supporting that claim with facts or evidence. As regards the clothing sector, the Court finds it comprises goods which vary widely in quality and price. Whilst it is possible that the consumer is more attentive to the choice of mark where he or she buys a particularly expensive item of clothing, such an approach on the part of the consumer cannot be presumed without evidence with regard to all goods in that sector. It follows that that argument must be rejected.”

13) Clearly, the average consumer’s level of attention will vary considerably depending on the cost and nature of the item at issue. However, to my mind even when selecting routine inexpensive items of clothing such as socks, the average consumer will pay attention to considerations such as size, colour, fabric and cost. **Overall the average consumer is likely to pay a reasonable degree of attention to the selection of items of clothing, footwear, and headgear.**

Comparison of goods

14) In the judgment of the Court of Justice of the European Union (CJEU) in *Canon*, Case C-39/97, the court stated at paragraph 23 of its judgment that:

“In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary”.

15) The relevant factors identified by Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, for assessing similarity were:

- a) The respective users of the respective goods or services;
- b) The physical nature of the goods or acts of services;
- c) The respective trade channels through which the goods or services reach the market;
- d) In the case of self serve consumer items, where in practice they are respectively found or likely to be found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;
- e) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

16) For ease of reference the goods of the two parties are as follows:

| Applicant's goods | Opponent's goods |
|--|--|
| Articles of clothing; leisurewear; sportswear; headgear and footwear; swimwear; suits, trousers, jackets, coats and waistcoats; shirts and ties; underclothing; articles of clothing made from knitted material and knitted articles of clothing; bathrobes. | Clothing for men, women and children and infants namely, shirts, golf shirts, t-shirts, polo shirts, knit tops, woven tops, sweatshirts, tank tops, sweaters, blouses, jerseys, turtle-necks, shorts, sweatpants, warm-up suits, blazers, sport coats, trousers, jeans, skirts, dresses, wedding dresses, suits, overalls, jumpers, vests, jackets, coats, raincoats, parkas, ponchos, swimwear, bikinis, swim trunks, overcoats, rainwear, wind resistant jackets, clothing for dancing namely leotards and ballet suits, sleepwear, pajamas, bathrobes, chasubles, underwear, lingerie, boxer shorts, ties; headgear namely, hats, wool hats, caps, visors, headbands, ear muffs; footwear, gym shoes, sneakers, socks, stockings, hosiery, shoes, boots, beach shoes, sandals, slippers; layettes [clothing]. |

17) It is clear that the following terms appear in each party's specification and so these are identical: Headgear; footwear; swimwear; suits; trousers; jackets; coats; shirts; ties; underclothing/ underwear and bathrobes. Equally, and in the most part for self explanatory reasons, the following terms are identical:

| Applicant's specification | Opponent's specification |
|---|---|
| Articles of clothing | Clothing for men, women and children |
| leisurewear | polo shirts, knit tops, woven tops, sweatshirts, tank tops, sweaters, blouses, jerseys, turtle-necks, |
| sportswear; | golf shirts; shorts; |
| waistcoats | Suits. (A three piece suit would include a waistcoat.) |
| articles of clothing made from knitted material | Sweatpants. (Frequently made from jersey material which is knitted. |
| knitted articles of clothing; | Sweaters; knit tops. |

18) For the above reasons the specifications of the two parties are identical.

Distinctive character of the earlier trade mark

19) 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-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).”

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

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

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

40. In other words, simply considering the level of distinctive character possessed by the earlier mark is not enough. It is important to ask ‘in what does the distinctive character of the earlier mark lie?’ Only after that has been done can a proper assessment of the likelihood of confusion be carried out”.

21) However, the independent and distinctive element does not need to be identical. In *Bimbo SA v OHIM*, Case T-569/10, the General Court held that:

“96. According to the case-law, where goods or services are identical there may be a likelihood of confusion on the part of the public where the contested sign is composed by juxtaposing the company name of another party and a registered mark which has normal distinctiveness and which, without alone determining the overall impression conveyed by the composite sign, still has an independent distinctive role therein (Case C-120/04 *Medion* [2005] ECR I-8551, paragraph 37). There may also be a likelihood of confusion in a case in which the earlier mark

is not reproduced identically in the later mark (see, to that effect, Joined Cases T-5/08 to T-7/08 *Nestlé v OHIM – Master Beverage Industries (Golden Eagle and Golden Eagle Deluxe)* [2010] ECR II-1177, paragraph 60).”



22) The opponent’s mark consists of a two letter monogram. Neither of the letters “H” or “T” have any meaning in respect of the goods involved in the instant case and neither does the combined monogram. I do not regard either of the letters to have more significance than the other as whilst the letter “T” is taller than the letter “H”, the letter “H” is wider than the letter “T”. Only once one is aware of the name of the opponent does it become apparent that the normal reference would be “TH”. **To my mind the distinctiveness of the opponent’s mark lies within its whole. Overall the opponent’s mark has an average level of inherent distinctiveness. As no evidence of use of its mark in the UK has been provided the opponent cannot benefit from enhanced distinctiveness.**

Comparison of trade marks

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

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

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

| Applicant’s trade mark | Opponents’ trade marks |
|---|--|
|  |  |

25) I note firstly that the applicant’s mark is not subject to a colour limitation and no use of the mark in suit has been provided. I take into account the comments in *Specsavers International Healthcare*

Limited & Others v Asda Stores Limited, Case C-252/12, where the Court of Justice of the European Union held that:

“2. Article 9(1)(b) and (c) of Regulation No 207/2009 must be interpreted as meaning that where a Community trade mark is not registered in colour, but the proprietor has used it extensively in a particular colour or combination of colours with the result that it has become associated in the mind of a significant portion of the public with that colour or combination of colours, the colour or colours which a third party uses in order to represent a sign alleged to infringe that trade mark are relevant in the global assessment of the likelihood of confusion or unfair advantage under that provision.

3. Article 9(1)(b) and (c) of Regulation No 207/2009 must be interpreted as meaning that the fact that the third party making use of a sign which allegedly infringes the registered trade mark is itself associated, in the mind of a significant portion of the public, with the colour or particular combination of colours which it uses for the representation of that sign is relevant to the global assessment of the likelihood of confusion and unfair advantage for the purposes of that provision.”

26) As the opponent’s mark is not limited in colour it could use the same colours as the applicant’s mark. I shall therefore consider the applicant’s mark in suit as black and white. I do not regard either of the fonts used in the parties’ marks as being particularly distinctive or unusual. Whilst the “borders” device element in the mark in suit cannot be overlooked completely it has a very low relative weight in the overall impression the applicant’s trade mark conveys. In my view, the overall impression of the applicant’s trade mark will be dominated by the letters of which it is made up, as it will for the opponent’s trade mark which has no other features.

27) Both parties’ positions regarding the similarity of the marks have been set out in paragraphs 2 and 3 above. However, the opponent did make the following comments in its submissions:

“It is denied that the letters “H” and “N” are dissimilar. They both comprise two parallel vertical lines of even length, connected by a third line. They differ only in the angle of the line that connect the two vertical members. Indeed, when written in capitals, as in the marks under comparison, there are no two letters that are more alike in the alphabet. As such, the monograms that comprise the dominant element of both marks could not be more similar without being, essentially, identical. Indeed it seems that the applicant is itself confused as it suggests that the letter “H” is common to both marks (see paragraph 13, line 7 of its counterstatement).”

28) Whilst I regard both of the letters in the opponent’s mark to be of equal standing in that it could be seen as “HT” or “TH” I do not believe that the same is true of the mark in suit. By contrast the mark in suit will, in my opinion, be seen as “TN” simply because of its size of the letter “T”. In height and width it dwarfs the letter “N”. Having said this, the distinctiveness again lies within its whole. Visually the marks have similarities in that they are both two letter monograms which have the letter “T” within them. They also have significant differences as the “other” letter in each of the marks is different. I do not accept the opponent’s contention that the letters “H” and “N” are similar, as despite the failings of the education system in the UK I believe that the majority of the populace can tell the difference between these two letters. In a two letter mark where the order of one of the marks is open to debate the visual differences outweigh any similarity. Aurally much the same applies. If it is, as I believe, unclear which way the opponent’s mark will be seen by the average consumer, “HT” or “TH”, then there is uncertainty as to how it will be pronounced. Even if I accept that it may be evenly split it still leaves the problem that in a two letter mark one is “TN” and the other “TH”. Again, to my mind the differences aurally outweigh any similarity. Both sides accept that conceptually the marks are neutral.

Likelihood of confusion

29) In determining whether there is a likelihood of confusion, 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 vice versa. As I mentioned above, it is also necessary for me to keep in mind the distinctive character of the opponents' trade mark as the more distinctive this trade mark is, the greater the likelihood of confusion. I must also keep in mind the average consumer for the goods, the nature of the purchasing process and 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 he has retained in his mind. Earlier in this decision, I concluded that:

- the average consumer is a member of the general public (including businesses), who will select the goods by predominantly visual means, although aural issues cannot be overlooked, and who will pay a reasonable degree of attention when doing so;
- The specifications of both parties are identical.
- In comparing the marks of the two parties I believe that the visual and aural differences outweigh any similarity. Conceptually both are neutral.
- the opponent's earlier trade mark has an average level of inherent distinctiveness but cannot benefit from an enhanced distinctiveness. The distinctiveness of the opponent's mark lies within its whole.

30) In view of the above and allowing for the concept of imperfect recollection, there is no likelihood of consumers being confused into believing that the goods provided by the applicant are those of the opponent or provided by some undertaking linked to it. **The opposition under Section 5(2) (b) therefore fails.**

CONCLUSION

30) The opposition under Sections 5(2)(b) fails.

COSTS

31) As the applicant has been successful it is entitled to a contribution towards its costs. I order Tommy Hilfiger Licensing LLC to pay Trend North Limited the sum of £300. This sum to be paid within fourteen days of the expiry of the appeal period or within fourteen days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 14th day of October 2015

**George W Salthouse
For the Registrar,
the Comptroller-General**