

O-270-17

**TRADE MARKS ACT 1994
IN THE MATTER OF
TRADE MARK APPLICATION NO 3143040
BY ASMAR GHAFOR
TO REGISTER**

DBXGEAR

**AS A TRADEMARK
IN CLASS 25
AND OPPOSITION THERETO (UNDER NO. 406435)
BY
ASTON MARTIN LAGONDA LIMITED**

BACKGROUND AND PLEADINGS

1. On 5 January 2016 Asmar Ghafoor ('the applicant') applied to register the following mark in class 25:

<p style="text-align: center;">DBXGEAR</p>	<p>Class 25 - Cycling shoes; Cycling pants; Cycling shorts; Karate suits; sportswear; Motorcycle jackets; Motorcycle riding suits; Motorcycle gloves; Athletics footwear; Athletics hose; Athletics shoes; Athletics vests; Athletics wear; Body warmers [clothing]; Body warmers; Vests; Children's footwear; Children's headwear; Christening gowns; Christening robes; Climbing boots; Climbing boots [mountaineering boots]; Clothes for sports; Clothing, footwear, headgear; Clothing for cycling; Clothing for cyclists; Clothing for gymnastics; Clothing for martial arts; Clothing for skiing; Clothing for wear in judo practices; Clothing for wear in wrestling games; Clothing made of leather; Clothing of imitations of leather; Clothing of leather; Combative sports uniforms; Cycling pants; Cycling shoes; Cycling shorts; Footwear for sport; Footwear for sports; Girdles; Gloves; Gloves as clothing; Gloves [clothing]; Gloves for apparel; Gloves for cyclists; Golf caps; Golf footwear; Golf pants, shirts and skirts; Golf shirts; Golf</p>
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	shoes; Golf trousers; Gym boots; Gym shorts; Gymnastic shoes; Gymshoes; Gymwear; Hats; Head bands; Head scarves; Head sweatbands; Head wear; Headbands; Headbands against sweating; Headgear for wear; Heavy jackets; Jumper suits; Karate suits; Kendo outfits; Motorcycle gloves; Motorcycle jackets; Motorcycle riding suits; Motorcyclist boots; Motorcyclists' clothing of leather; Motorists' clothing; Rugby boots; Rugby shirts; Rugby shoes; Rugby shorts; Rugby tops; Running shoes; Running Suits; Running vests; Sailing wet weather clothing; Ski boots; Ski gloves; Ski hats; Ski jackets; Ski pants; Ski suits; Ski suits for competition; Ski trousers; Ski wear; Skiing shoes; Snowboarding suits; Snow boots; Snowboard boots; Snowboard jackets; Snowboard shoes; Sport shirts; Sport stockings; Sports (Boots for -) ;Sports caps and hats; Sports jackets; Sports jerseys; Sports jerseys and breeches for sports; Sports pants; Sports shirts; Sports socks; Sports vests; Sportswear; Sweat bottoms; Sweat pants; Sweat jackets; Sweatpants; Swimming caps; Swimming caps [bathing caps];Swimming costumes; Swimming suits; Swimming trunks; Swimsuits; Swimwear; Taekwondo suits; Tennis
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	dresses; Tennis pullovers; Tennis shirts; Tennis shoes; Tennis shorts; Tennis skirts; Tennis socks; Tennis sweatbands; Tennis wear; Thermal underwear; Thermally insulated clothing; Underclothing (Anti-sweat -);Waist belts; Water polo caps; Wet suits for surfing; Wet suits for water- skiing; Wet suits for water-skiing and sub-aqua; Wet suits for windsurfing; Windbreakers; Windbreakers [clothing];Windproof jackets; Wind- resistant vests; Wristbands
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2. The trade mark was published on 15 January 2016 and opposed by Aston Martin Lagonda Limited ('the opponent') under sections 5(2)(b) and 5(3) of the Trade Marks Act 1994 ('the Act') on the basis of a number of earlier UK and EU Trade Marks. For reasons which will become apparent, I intend to set out the details of only one of the earlier marks:

UK Trade Mark No. 3116395 DBX Filing date: 6 July 2015 Registration date: 9 October 2015	Class 35 - retail services connected with the sale of clothing, sporting goods, leather and imitations of leather, and goods made of these materials and not included in other classes, animal skins, hides, bags, trunks and travelling bags, sports bags, hunting, fishing and shooting bags and packs, luggage, handbags, cases, briefcases, bags and cases for photographic goods, cases for tripods, wallets, wallet holders, rucksacks,
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	umbrellas, parasols and walking sticks, whips, harness and saddlery covers and containers for skis, snowboards, wakeboards, surfboards, ski bobs, toboggans and ski poles, bow cases, bow racks, bow slings, parts and fittings for the aforesaid goods.
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3. The applicant filed a counterstatement denying the grounds of opposition.

4. The opponent's above mentioned trademark is an earlier mark, in accordance with Section 6 of the Act but is not subject to proof of use requirements as it has not been registered for five years or more before the publication date of the applicant's mark, as per section 6A of the Act.

5. Only the opponent filed evidence. Neither party requested to be heard. I now make this decision based on the papers before me.

OPPONENT'S EVIDENCE

6. The opponent's evidence consists of a witness statement from Iram Zaidi of Lewis Silkin, the opponent's representative, and two exhibits.

7. The first exhibit, referenced IZ1, comprises two undated screen shots from the opponent's website. The first screen shot is a photograph of a child modelling a t-shirt identified as a 'DB9 t-shirt'. The second screen shot is of male and female models. The male model is wearing a garment which has DB9 adorned along the sleeve length.

8. The second exhibit, referenced IZ2, comprises undated screenshots from the applicant's Instagram® pages. These screenshots show cycling clothing, namely

headbands, skull caps, compression shirts, leggings and shorts. Each garment is adorned with the letters DBX.

9. Having considered this evidence, I do not consider it to be of assistance to me as the exhibits are undated, the use shown by the opponent in IZ2 is of the mark 'DB9' rather than 'DBX' and no explanation is given as to the relevance of exhibit IZ2.

DECISION

10. I shall deal first with the opposition based on Section 5(2)(b) of the Act which states:

"5(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.

11. The leading authorities which guide me are from the Court of Justice of the European Union ('CJEU'): *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.

The principles

(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.

COMPARISON OF GOODS AND SERVICES

12. The goods and services to be compared are:

Opponent's services	Applicant's goods
<p>Class 35 - retail services connected with the sale of clothing, sporting goods, leather and imitations of leather, and goods made of these materials and not included in other classes, animal skins, hides, bags, trunks and travelling bags, sports bags, hunting, fishing and shooting bags and packs, luggage, handbags, cases, briefcases, bags and cases for photographic goods, cases for tripods, wallets, wallet holders, rucksacks, umbrellas, parasols and walking sticks, whips, harness and saddlery covers and containers for skis, snowboards, wakeboards, surfboards, ski bobs, toboggans and ski poles, bow cases, bow racks, bow slings, parts and fittings for the aforesaid goods.</p>	<p>Class 25 - Cycling shoes; Cycling pants; Cycling shorts; Karate suits; sportswear; Motorcycle jackets; Motorcycle riding suits; Motorcycle gloves; Athletics footwear; Athletics hose; Athletics shoes; Athletics vests; Athletics wear; Body warmers [clothing];Body warmers; Vests; Children's footwear; Children's headwear; Christening gowns; Christening robes; Climbing boots; Climbing boots [mountaineering boots];Clothes for sports; Clothing, footwear, headgear; Clothing for cycling; Clothing for cyclists; Clothing for gymnastics; Clothing for martial arts; Clothing for skiing; Clothing for wear in judo practices; Clothing for wear in wrestling games; Clothing made of leather; Clothing of imitations of leather; Clothing of leather; Combative sports uniforms; Cycling pants; Cycling shoes;</p>

	<p>Cycling shorts; Footwear for sport; Footwear for sports; Girdles; Gloves; Gloves as clothing; Gloves [clothing];Gloves for apparel; Gloves for cyclists; Golf caps; Golf footwear; Golf pants, shirts and skirts; Golf shirts; Golf shoes; Golf trousers; Gym boots; Gym shorts; Gymnastic shoes; Gymshoes; Gymwear; Hats; Head bands; Head scarves; Head sweatbands; Head wear; Headbands; Headbands against sweating; Headgear for wear; Heavy jackets; Jumper suits; Karate suits; Kendo outfits; Motorcycle gloves; Motorcycle jackets; Motorcycle riding suits; Motorcyclist boots; Motorcyclists' clothing of leather; Motorists' clothing; Rugby boots; Rugby shirts; Rugby shoes; Rugby shorts; Rugby tops; Running shoes; Running Suits; Running vests; Sailing wet weather clothing; Ski boots; Ski gloves; Ski hats; Ski jackets; Ski pants; Ski suits; Ski suits for competition; Ski trousers; Ski wear; Skiing shoes; Snowboarding suits; Snow boots; Snowboard boots; Snowboard jackets; Snowboard shoes; Sport shirts; Sport stockings; Sports (Boots for -) ;Sports caps and hats; Sports jackets; Sports jerseys; Sports jerseys and breeches for sports; Sports pants; Sports shirts; Sports socks; Sports vests; Sportswear; Sweat</p>
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	bottoms; Sweat pants; Sweat jackets; Sweatpants; Swimming caps; Swimming caps [bathing caps];Swimming costumes; Swimming suits; Swimming trunks; Swimsuits; Swimwear; Taekwondo suits; Tennis dresses; Tennis pullovers; Tennis shirts; Tennis shoes; Tennis shorts; Tennis skirts; Tennis socks; Tennis sweatbands; Tennis wear; Thermal underwear; Thermally insulated clothing; Underclothing (Anti-sweat -);Waist belts; Water polo caps; Wet suits for surfing; Wet suits for water- skiing; Wet suits for water-skiing and sub-aqua; Wet suits for windsurfing; Windbreakers; Windbreakers [clothing];Windproof jackets; Wind- resistant vests; Wristbands
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13. With regard to the comparison of services, in the judgment of the Court of Justice of the European Union 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”.

14. 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.

15. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criteria capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06, the General Court stated that “complementary” means:

“...there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking”.

16. In *Oakley, Inc v OHIM*, Case T-116/06, at paragraphs 46-57, the General Court (GC) held that although retail services are different in nature, purpose and method of use to goods, retail services for particular goods may be complementary to those goods, and distributed through the same trade channels, and therefore similar to a degree.

17. In *Tony Van Gulck v Wasabi Frog Ltd*, Case BL O/391/14, Mr Geoffrey Hobbs Q.C. as the Appointed Person reviewed the law concerning retail services v goods. He said (at paragraph 9 of his judgment) that:

“9. The position with regard to the question of conflict between use of **BOO!** for handbags in Class 18 and shoes for women in Class 25 and use of **MissBoo** for the Listed Services is considerably more complex. There are four main reasons for that: (i) selling and offering to sell goods does not, in itself, amount to providing retail services in Class 35; (ii) an application for registration of a trade mark for retail services in Class 35 can validly describe the retail services for which protection is requested in general terms; (iii) for the purpose of determining whether such an application is objectionable under Section 5(2)(b), it is necessary to ascertain whether there is a likelihood of confusion with the opponent’s earlier trade mark in all the circumstances in which the trade mark applied for might be used if it were to be registered; (iv) the criteria for determining whether, when and to what degree services are ‘*similar*’ to goods are not clear cut.”

18. However, on the basis of the European courts’ judgments in *Sanco SA v OHIM*¹, and *Assembled Investments (Proprietary) Ltd v. OHIM*², upheld on appeal in *Waterford Wedgewood Plc v. Assembled Investments (Proprietary) Ltd*³, Mr Hobbs concluded that:

- i) Goods and services are not similar on the basis that they are complementary if the complementarity between them is insufficiently pronounced that, from the consumer’s point of view, they are unlikely to be offered by one and the same undertaking;

- ii) In making a comparison involving a mark registered for goods and a mark proposed to be registered for retail services (or vice versa), it is necessary to

¹ Case C-411/13P

² Case T-105/05, at paragraphs [30] to [35] of the judgment

³ Case C-398/07P

envisage the retail services normally associated with the opponent's goods and then to compare the opponent's goods with the retail services covered by the applicant's trade mark;

iii) It is not permissible to treat a mark registered for 'retail services for goods X' as though the mark was registered for goods X;

iv) The General Court's findings in *Oakley* did not mean that goods could only be regarded as similar to retail services where the retail services related to exactly the same goods as those for which the other party's trade mark was registered (or proposed to be registered).

19. Taking account of the guidance of the guidance outlined above, I note that retail services for particular goods may be considered complementary to those goods and that such goods would be distributed via the services.

20. The applicant's specification for various kinds of *clothing* is identical to the goods referred to in the opponent's *retail services connected with the sale of clothing*. I find that there is a relevant complementary relationship between the applicant's goods and the opponent's services resulting in at least a low degree of similarity between them.

AVERAGE CONSUMER AND THE PURCHASING PROCESS

21. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer, Case C-342/97*.

22. 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.”

23. With regard to clothing, in *New Look Ltd v Office for the Harmonization in the Internal Market (Trade Marks and Designs) Joined Cases T-117/03 to T-119/03 and T-171/03* the GC stated:

“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 that 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.

53. 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.”

24. The average consumer for the contested goods and services are the general public and those with an interest in sport. As stated by the GC, items of clothing vary in price and quality. Ordinarily I would expect a normal level of attention to be paid by the consumer when selecting such goods. The purchasing act will be mainly visual and will likely be based on the aesthetic appeal of a garment and potentially its suitability for sports participation. It is likely that goods will be selected after perusal of racks/shelves in retail establishments, or from photographs on Internet websites or in catalogues. However, I do not discount aural considerations which may also play a part.

COMPARISON OF THE MARKS

25. The marks to be compared are:

Opponent's mark	Applicant's mark
DBX	DBXGEAR

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

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.

27. The opponent's mark consists of the three letters **DBX** in plain block capitals. The overall impression is based solely on these three letters. The applicant's mark consists of the letters **DBXGEAR** in plain block capitals. The overall impression is based solely on this combination of letters.

28. In a visual comparison of the marks, the point of similarity are the three letters **DBX** comprising the whole of the opponent's mark and the first part of the applicant's mark. I find there is a medium degree of visual similarity.

29. In an aural comparison of the marks, in both marks the letters **DBX** are likely to be vocalised as the three individual letters D, B and X. With regard to the applicant's mark **DBXGEAR**, I would expect that the **GEAR** element to be vocalised as the word 'gear', not its component letters, given that is a recognised English dictionary word. I find there is a medium degree of aural similarity.

30. In a conceptual comparison of the marks, DBX has no immediately graspable concept⁴. As outlined above GEAR is a dictionary defined albeit informal term for clothing, which is descriptive of the goods. Given that definition, then the distinctive conceptual hook for the average consumer would be clothing and the letters DBX. On that basis I find that there is no material conceptual similarity or dissimilarity between the marks.

DISTINCTIVE CHARACTER OF THE EARLIER MARK

31. The distinctive character of the earlier mark must be considered. The more distinctive it is, either inherently or through use, the greater the likelihood of

⁴ It has been highlighted in numerous judgments such as *The Picasso Estate v OHIM*, Case C-361/04 that it is only concepts capable of immediate grasp by the consumer that are relevant.

confusion (*Sabel BV v Puma AG*). 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).”

32. The opponent did not file any relevant evidence showing use of the earlier mark for the services relied on so I can only consider the inherent distinctiveness of the earlier mark.

33. Although the letters DBX do not describe or allude to the relevant services, there is nothing particularly striking or inventive about three random letters from the alphabet. On that basis, I find that there is an average level of inherent distinctiveness.

LIKELIHOOD OF CONFUSION

34. I must now draw together my earlier findings into the global assessment of the likelihood of confusion, keeping in mind the following factors:

- a) The interdependency principle, whereby a lesser degree of similarity between the goods may be offset by a greater similarity between the marks, and vice versa (*Canon Kabushiki Kaisha v Metro-Goldwyn-Meyer Inc*).
- b) The principle that the more distinctive the earlier mark is, the greater the likelihood of confusion (*Sabel BV v Puma AG*).
- c) The factor of imperfect recollection i.e. that consumers rarely have the opportunity to compare marks side by side but must rather rely on the imperfect picture that they have kept in their mind (*Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*).

35. I have found that the marks are visually and aurally similar to a medium degree and conceptually neutral. In addition I have found that there is at least a low degree of similarity that exists between the respective goods and services and a normal level of attention that will be paid by the average consumer. With regard to the distinctiveness of the marks, I have taken the view that the word GEAR is the weaker and less distinctive element given its meaning as a descriptor of clothing. So the strength of the applicant's mark lies in the letters DBX which are identical to the opponent's mark. This significantly increases the likelihood of the applicant's goods being assumed to originate from the same commercial source as the opponent's retail services. Taking these factors into account I find that there is a likelihood of confusion. Even if the consumer does not mistake one mark for the other, they are, at the very least, likely to believe that the respective goods and services come from the same or linked undertakings.

CONCLUSION

36. The opposition succeeds under section 5(2)(b) of the Act for all the goods claimed. I have not considered the opponent's other earlier marks as they do not put

the opponents in any stronger a position. Neither have I considered the grounds pleaded under section 5(3) as opposition under section 5(2) has succeeded.

COSTS

37. As the opponent has been successful, they are entitled to a contribution towards their costs incurred in the proceedings. Using the guidance in Tribunal Practice Notice 4/2007 (which was in force when the opposition was filed) I make the following award:

£200 Official fee for filing the Notice of Opposition

£200 Preparing the Notice of Opposition

£200 Preparing written submissions

38. I am not awarding costs for the preparation of evidence as it was considered irrelevant to the decision made in this case.

39. I order Asmar Ghafoor to pay Aston Martin Lagonda Limited the sum of £600. This sum is to be paid within 14 days of the expiry of the appeal period or within 14 days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 6TH day of June 2017

June Ralph

For the Registrar,

The Comptroller General

