

O-318-20

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. 3360681 BY WALKIN LTD
TO REGISTER:**

WalkIn

AS A TRADE MARK IN CLASSES 42 AND 43

AND

**IN THE MATTER OF OPPOSITION THERETO UNDER NO. 417174
BY HALLIE LLC**

Background & Pleadings

1. On 13 December 2018, Walkin Ltd (“the applicant”) applied to register the above trade mark for *design and development of websites, mobile applications and platforms* in Class 42 and *online restaurant reservation services* in Class 43. The application was published for opposition purposes on 3 May 2019.

2. On 1 August 2019, the application was opposed in full by Hallie LLC (“the opponent”). The opposition is based upon section 5(2)(b) of the Trade Marks Act 1994 (“the Act”), in relation to which the opponent relies upon three registrations, all for the trade mark ‘JUST WALK IN’ (“the opponent’s mark”). The services relied upon for each are laid out respectively below:

European Union Trade Mark (“EUTM”) 16966681:

Filing date: 9 November 2016

Registration date: 14 November 2017

Class 42: *Software design; software installation; maintenance of software; retail design services; design and development of computer hardware for retail stores; software installation for the use in retail stores; electronic data storage; computerised data storage; maintenance of data bases; data conversion of electronic information; development of computer systems for retail stores.*

Class 43: *Services for providing food and drink; temporary accommodation; Accommodation bureaux [hotels, boarding houses]; Bar services; Boarding house bookings; Boarding houses; Cafés; Cafeterias; Canteens; Day-nurseries [crèches]; Food and drink catering; Hotel reservations; Hotels; Motels; Rental of chairs, tables, table linen, glassware; Rental of cooking apparatus; Rental of drinking water dispensers; Rental of lighting apparatus other than for theatrical sets or television studios; Rental of meeting rooms; Rental of temporary accommodation; Rental of tents; Rental of transportable buildings; Restaurants; Self-service restaurants; Snack-bars; Temporary accommodation reservations; Restaurant services; snack bar, coffee bar and coffee house, carry out restaurant, and take out restaurant services; catering services; preparation of carry out foods and beverages; providing information online in the fields of cooking, food preparation, wine, wine and food pairings,*

ingredients and recipes; providing online information in the fields of restaurants and local food and drink.

United Kingdom Trade Mark ("UKTM") 3208798

Filing date: 28 October 2016

Registration date: 7 April 2017

Class 43: Services for providing food and drink; Bar services; Cafés; Cafeterias; Canteens; Food and drink catering; Hotel reservations; Hotels; Motels; Rental of meeting rooms; Rental of temporary accommodation; Rental of tents; Rental of transportable buildings; Restaurants; Self-service restaurants; Snack-bars; Temporary accommodation reservations; Restaurant services; snack bar, coffee bar and coffee house, carry out restaurant, and take out restaurant services; catering services; preparation of carry out foods and beverages; providing information online in the fields of cooking, food preparation, wine, wine and food pairings, ingredients and recipes; providing online information in the fields of restaurants and local food and drink.

UKTM 3193869

Filing date: 28 October 2016

Registration date: 7 April 2017

Class 42: Software design; software installation; maintenance of software; retail design services; design and development of computer hardware for retail stores; software installation for the use in retail stores; electronic data storage; computerised data storage; maintenance of data bases; data conversion of electronic information; development of computer systems for retail stores.

Class 43: Rental of chairs, tables, table linen, glassware; Rental of cooking apparatus; Rental of drinking water dispensers; Rental of lighting apparatus other than for theatrical sets or television studios.

3. In its Notice of Opposition, the opponent submits that the similarity between the competing marks coupled with a similarity (if not identity) between the competing specifications would give rise to a likelihood of confusion on the part of the relevant public.

4. In its counterstatement, the applicant denies the basis of the opposition and requests that the application proceed to registration.

5. The applicant in these proceedings is represented by Bird & Bird LLP and the opponent by Cooley (UK) LLP. Neither party filed evidence, nor did they request a hearing. Both parties did, however, elect to file written submissions during the evidence rounds and the opponent filed further submissions in lieu of a hearing. I note the reference in both submissions to previous decisions of the United Kingdom Intellectual Property Office (UKIPO) and European Union Intellectual Property Office (EUIPO) but would remind both parties that the outcomes are not binding on me. This decision is taken following a careful reading of all the papers which I will refer to, as necessary.

Decision

6. The opposition is based upon section 5(2)(b) of the Act which reads as follows:

“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.”

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

“5A Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only.”

8. Under the provisions of section 6 of the Act, given their respective filing dates, the opponent's marks all qualify as earlier trade marks. In accordance with section 6A of the Act, as none had completed its registration procedure more than five years prior to the filing date of the applicant's mark, none are subject to the proof of use provisions. Consequently, the opponent is entitled to rely upon all marks and services identified in its Notice of Opposition (paragraph 2 refers) without providing evidence of use.

Section 5(2)(b) - Case law

9. The following principles are gleaned from the decisions of the courts of the European Union in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v Office for Harmonization in the Internal Market (Trade Marks and Designs) ("OHIM")*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P.

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 greater 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 services

10. The competing services are laid out at paragraphs 1 and 2 of this decision. When comparing the respective services, I am guided by the judgment of the Court of Justice

of the European Union (“CJEU”) in *Canon*, Case C-39/97, where the Court stated at paragraph 23:

“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”.

11. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v OHIM*, Case T-325/06, the General Court (“GC”) 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”.

12. 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 uses of the respective goods or services;
- (b) The respective users of the respective goods or services;
- (c) The physical nature of the goods or acts of service;
- (d) The respective trade channels through which the goods or services reach the market;
- (e) 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;

(f) 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.

13. In *YouView TV Ltd v Total Ltd*, [2012] EWHC 3158 (Ch), Floyd J. (as he then was) stated:

"... Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless the principle should not be taken too far. *Treat* was decided the way it was because the ordinary and natural, or core, meaning of 'dessert sauce' did not include jam, or because the ordinary and natural description of jam was not 'a dessert sauce'. Each involved a straining of the relevant language, which is incorrect. Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question."

14. In *Avnet Incorporated v Isoact Limited*, [1998] F.S.R. 16, Jacob J. (as he then was) stated that:

"In my view, specifications for services should be scrutinised carefully and they should not be given a wide construction covering a vast range of activities. They should be confined to the substance, as it were, the core of the possible meanings attributable to the rather general phrase."

15. I have submissions from both parties on the matter of the services' similarity. The opponent argues that all of the applied for services are either similar or identical to those for which its earlier marks are registered. In its written submissions, the applicant concedes that its class 42 services, namely the *design and development of websites, mobile applications and platforms*, are similar to the opponent's *software design*,

proper to the same class, but it maintains that the competing class 43 services are dissimilar. I will continue my comparison in respect of all disputed services to determine where the level of similarity lies.

The applicant's services in class 42

Design and development of websites, mobile applications and platforms

16. As noted, the applicant has admitted that the above services are similar to the opponent's *software design*. I agree. The users are likely to be the same for both. Whilst some providers may specialise in only one of the mediums on offer, to my knowledge it would not seem unreasonable or unlikely for consumers to expect a designer of websites, mobile applications and/or platforms to also offer software design, for example, given that there is some similarity in the nature of the services themselves (generally, at least). There may also be some overlap or crossover in the trade channels the services move through and, to a degree, their intended purpose, though they are not strictly complementary or competitive. All things considered, I find the similarity to be of a medium degree.

The applicant's services in class 43

Online restaurant reservation services

17. Two of the opponent's earlier marks are registered for both *restaurant services* and *providing online information in the fields of restaurants and local food and drink*. Whilst *restaurant services* is a relatively broad term, in my opinion it does not necessarily encompass the applicant's online reservation services, though I do appreciate that some restaurants can, and do, offer their own online reservation facilities. Similarly, the provision of online information, in my view, is unlikely to extend to the reservation function and is instead more likely to be limited to general details such as opening hours and menu variety, for example. That said, there is a limited coincidence in the services' nature insofar as their online functionality and field of interest is concerned, there is an overlap in users and, though not complementary, the services certainly have the potential to be used in conjunction with one another and

consumers may expect the same entity to provide both. Consequently, I find there to be at least a medium degree of similarity.

The average consumer and the nature of the purchasing act

18. As the case law above indicates, it is necessary for me to determine who the average consumer is for the services at issue. I must then determine the manner in which these services are likely to be selected by the average consumer in the course of trade. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

“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.”

19. Whilst the general public can, of course, engage in the selection of all of the services at issue, in my view, business users should also be considered when it comes to the class 42 services, which may be selected to meet bespoke professional requirements. As to the nature of the selection process, for all services, visual considerations are likely to play the largest role given that they are, to my knowledge, predominantly selected online either from the outset or following exposure to traditional means of advertising. I bear in mind, however, that aural considerations can also play a part, by word of mouth references or recommendations, for example. The selection of the s design and development services in class 42 is unlikely to be made carelessly, with factors such as reputation, compatibility with existing systems and, in some cases, monetary investment in play. The selection of online restaurant reservation services is likely to call for consideration of factors such as variety and reliability. Generally, I would expect the attention of the average consumer to be fairly

high when selecting the class 42 services and to be of a medium degree when selecting those in class 43.

Comparison of trade marks

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

“34. ...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.”

21. It would be wrong, therefore, to artificially 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 they create.

22. The trade marks to be compared are displayed in the table below:

Opponent's trade mark	Applicant's trade mark
JUST WALK IN	WalkIn

23. In the case of the opponent's mark, none of the individual words are likely to play a more dominant role than the others. Instead, the mark's overall impression lies in

the unit formed by the combination of the three words it comprises (presented in capital letters and comprising four letters, four letters and two letters, respectively), given that there are no additional components to rely upon.

24. The applicant's mark is presented as one word of six letters in length. The first and fifth letters only (namely W and I) are capitalised. Consequently, consumers are likely to separate the mark into two distinct and highly recognisable words; Walk and In. In my view, neither word is likely to occupy a more dominant role. Instead, the mark's overall impression rests in the unit formed by the conjoined words.

Visual comparison

25. The opponent's mark consists of three distinct words and the applicant's only one. The six letters which make up the applicant's mark (W-A-L-K-I-N) are reproduced in the same order within the opponent's mark, albeit separated by a space between K and I. The opponent's mark, however, begins with the four-letter word 'JUST', and I bear in mind that, at least generally, the beginnings of marks tend to have more of an impact on consumers than the endings¹. Little hangs on the marks' contrast in capitalisation here as notional and fair use allows the opponent to present its mark in any standard typeface or casing. On balance, I consider the marks' visual similarity to be of a low degree.

Aural comparison

26. Aurally, the opponent's marks will be articulated in three syllables, namely JUST-WALK-IN. The applicant's mark, as already intimated, is likely to be recognised as a conjoining of two ordinary English words; Walk and In. Consequently, it will be verbalised in two syllables; WALK-IN. The applicant's mark is wholly incorporated within the opponent's mark. Whilst they are separated by one syllable only (JUST), I bear in mind that this is positioned at the beginning of the opponent's marks. All things considered, I find the competing marks are aurally similar to a medium degree.

¹ El Corte Inglés, SA v OHIM, Cases T-183/02 and T-184/02

Conceptual comparison

27. For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer. This is highlighted in numerous judgments of the GC and the CJEU including *Ruiz Picasso v OHIM* [2006] e.c.r.-I-643; [2006] E.T.M.R 29. The assessment must, therefore, be made from the point of view of the average consumer.

28. In my view, the opponent's mark will be interpreted conceptually as an instructive phrase, inviting consumers to enter a given location or establishment simply by walking into it. I have already concluded that the applicant's mark is likely to be recognised as the words 'Walk' and 'In' on account of the upper case 'I', despite being presented as just one word. On that basis, conceptually, the mark is also likely to be seen as an instruction or invitation to enter by walking. Whilst the word 'JUST' in the opponent's mark could be seen to introduce an element of ease or exclusivity, to my mind, the messages conveyed by the respective marks are highly similar.

Distinctive character of the earlier trade mark

29. The distinctive character of a trade mark can be appraised only, first, by reference to the services in respect of which registration is sought and, secondly, by reference to the way it is perceived by the relevant public. 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).”

30. In the absence of evidence of use, I have only the inherent distinctiveness of the opponent’s mark to consider. It is widely accepted, though only a guideline, that words which are invented often possess the highest degree of distinctive character, whilst words which are suggestive or allusive of the relied upon services generally possess the lowest. The opponent’s mark comprises three standard English dictionary words, each with definitions which will be readily understood by the average consumer. Whilst the mark is, to my knowledge, neither directly descriptive nor allusive of the services at issue, it seems likely that it will be considered suggestive of a *characteristic* of the services, to the extent that consumers can readily access the services without an appointment or reservation. On balance, I find the opponent’s mark to possess a fairly low (but not the lowest) degree of distinctiveness.

Likelihood of confusion

31. 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 services and vice versa. As I mentioned above, it is also necessary for me to keep in mind the distinctive character of the opponent’s trade mark, as the more distinctive it is, the greater the likelihood of confusion.

32. 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.”

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.

33. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one trade mark for the other, while indirect confusion is where the average consumer realises the trade marks are not the same but puts the similarity that exists between the trade marks and services down to the responsible undertakings being the same or related.

34. I take note of the comments made by Mr Iain Purvis Q.C., as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, where he explained that:

“16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which

may be conscious or subconscious but, analysed in formal terms, is something along the following lines: “The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark.”

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

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

(b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as “LITE”, “EXPRESS”, “WORLDWIDE”, “MINI” etc.).

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

35. Earlier in this decision I reached the following conclusions:

- The competing services in class 42 are similar to a medium degree and those in class 43 to *at least* a medium degree;
- The average consumer is a member of the general public or business user. Visual considerations are likely to play a key role in the selection process, though aural considerations are also relevant;
- For the competing services in class 42, the average consumer is likely to pay a fairly high degree of attention and to the selection of those in class 43, a medium degree;

- There is a low degree of visual similarity between the marks, a medium degree of aural similarity and a high degree of conceptual similarity;
- The opponent's trade mark possesses a fairly low degree of inherent distinctive character.

36. To make the assessment, I must adopt the global approach advocated by the case law whilst taking account of each of the above conclusions. I also bear in mind that the average consumer rarely has the chance to make direct comparisons between trade marks and, instead, must rely upon the imperfect picture of them retained in its mind.

37. I begin by considering direct confusion. The visual similarity between the respective marks lies at a low degree and the marks' aural similarity at a medium degree. I have not found that the level of attention paid to the selection of any of the services at issue to be of a particularly low degree; in fact I have found it likely to be of at least a medium degree. Even when paying only a medium degree of attention, the differences between the marks are, in my view, unlikely to go unnoticed by the average consumer. In addition to the space (or lack thereof) between the words (or letters) W-A-L-K and I-N, there is a four-letter word at the beginning of the opponent's mark which has no equivalent in the applicant's. All things considered, I do not find the marks' visual and aural similarities sufficient to result in a likelihood of direct confusion.

38. I turn now to indirect confusion. To my mind, there is a clear common element running between the competing trade marks and that lies in their concepts. I have found the marks' respective concepts to be highly similar, though I keep in mind that I have also found the distinctiveness of the message conveyed by the earlier mark to be of a fairly low degree, when considered in the context of the services in play. Nevertheless, upon encountering the later mark, I can imagine that consumers, though consciously acknowledging the marks' differences, will equally recognise the familiar concept echoed from the earlier mark. Even where the respective services are similar to only a medium degree, in my view consumers are unlikely to dismiss the shared use of "WALK IN"/"WalkIn" as mere coincidence. Instead, it seems likely that they will

erroneously conclude that the marks must originate from the same, or at least a related, entity. In other words, indirect confusion will occur.

Conclusion

39. The opposition has been successful and, subject to any successful appeal, the application will be refused.

Costs

40. As the opponent has been successful, it is entitled to a contribution toward its costs. Awards of costs in proceedings are governed by Annex A of Tribunal Practice Notice (“TPN”) 2 of 2016. Applying the guidance in that TPN, I award costs to the opponent on the following basis:

Official fee (form TM7):	£100
Preparing a Notice of Opposition and considering the applicant’s counterstatement:	£200
Filing written submissions:	£250
Total:	£550

41. I order Walkin Ltd to pay Hallie LLC the sum of £550. This sum is to be paid within two months of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 11th day of June 2020

**Laura Stephens
For the Registrar**