

O- 599-20

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. 3383105

IN THE NAME OF AMO RINGS LTD FOR THE TRADE MARK

AMO

IN CLASS 14

AND

THE OPPOSITION THERETO UNDER NUMBER OP000417455

BY AMOR GMBH

Background and pleadings

1. On 13 March 2019, AMO Rings Ltd (“the applicant”) applied to register the trade mark AMO in the UK. It was accepted and subsequently published in the Trade Marks Journal for opposition purposes on 24 May 2019. The application relates to the following goods and services:

Class 14: Jewelry

2. On 27 August 2019, the application was opposed by Amor GmbH (“the opponent”). The opposition is based upon Section 5(2)(b) of the Trade Marks Act 1994 (the Act). This is on the basis, inter alia, of its two earlier European Union Trade Marks: EU006983381 (“the first earlier mark”) and EU011954864 (“the second earlier mark”). The opposition is directed against all of the goods in the application. The goods and services relied upon in this opposition are as follows:
3. **EU006983381** – Filing date: 2 June 2008; date registration procedure completed: 4 February 2009

Amor

Class 9: Spectacles, spectacle cases, sunglasses.

Class 14: Jewellery; jewellery; clocks; paste jewellery; jewellery boxes, cufflinks, tie pins, key rings (trinkets or fobs); jewellery for the ornamentation of mobile telephones (ornaments for mobile phones).

Class 18: Leather and imitations of leather, and goods made of these materials and not included in other classes; bath bags,

wallets, shopping bags, purses, travelling bags, handbags, sling bags for carrying infants, umbrellas, trunks (travelling bags), travelling sets (leatherware), holdalls, rucksacks, key cases (leatherware), satchels, parasols, sports bags.

4. EU011954864 – Filing date: 4 July 2013; Date of entry in register 29 November 2013 Colours Claimed/Indication - Magenta: "(Pantone 7648C)"

amor

- Class 9: Spectacles, spectacle cases, sunglasses.
- Class 14: Precious metals and their alloys and goods in precious metals; Ornaments [jewellery, jewelry (Am)], In particular rings, Bracelets, Earrings, Neck chains; Jewellery; Clocks and watches; Costume jewellery; Jewellery (paste -); Jewelry cases [caskets], Cases for costume jewellery; Pearls [jewellery, jewelry (Am)]; Cuff links, Tie pins, Key rings (trinkets or fobs); Jewellery for ornamental use with mobile radiotelephones (ornaments for mobile phones); Charms [jewelry]; Pendants [jewellery], Pins; Brooches (jewellery); Lapel pins (jewellery).
- Class 18: Leather and imitations of leather, and goods made of these materials and not included in other classes; Bath bags, wallets, shopping bags, purses, travelling bags, handbags, sling bags for carrying infants, umbrellas, trunks (travelling bags), travelling sets (leatherware), holdalls, rucksacks, key cases (leatherware), satchels, parasols, sports bags.

Class 26: Hair ornaments.

Class 35: Retailing via the Internet in the fields of spectacles, Jewellery, Timepieces and leather goods and Bags; Wholesaling and retailing in the fields of spectacles, Jewellery, Timepieces and leather goods and Bags; Presentation of goods on communications media for retail purposes.

Class 42: Jewellery designs.

5. The opponent argues that “jewelry”, the sole term of the applicant’s specification in class 14, is “identical to the products covered by both of [its] EU registered trade marks”; that the marks are “either identical or highly similar” both visually and aurally; and that “there is an inevitable likelihood of confusion” between the respective marks.
6. In its amended TM8 filed on 9 December 2019, the applicant denies that the mark “AMO (A.M.O) [sic] is overly similar to that of Amor GmbH and therefore [does] not believe the goods or services provided by Amor GmbH ... will be infringed upon”.
7. The applicant filed a witness statement, clarifying the nature of its undertaking, with indications of potential use of the mark applied for.
8. The applicant also proposed an amendment to the specification at issue to narrow the class 14 specification from “jewelry” to “dating rings”. I will address this matter later on in my decision.

Preliminary Issues

9. In its amended Notice of Defence and Counterstatement filed on 9 December 2019, the applicant asserts that “Amor GmbH ... sell a wide range of jewelry and goods in Germany” and that it [the applicant] “intend[s] to sell one product to the UK market. A blue ring with A.M.O. engraved on it (AMO standing for Ask Me Out) which would not translate to the German market and therefore ... [is] not relevant as opposition/competition”; as the applicant “is not selling wholesale jewelry or infringing on Amor GmbH’s market/business in Germany”.
10. As a matter of law, under the current system, EU trade marks are protected in the UK. Article 1(2) of the EU Trade Mark Regulation (though the scope of protection is subject to change as per Article 54 of the UK Withdrawal Agreement) provides that:

An EU trade mark shall have a unitary character. It shall have equal effect throughout the Union: it shall not be registered, transferred or surrendered or be the subject of a decision revoking the rights of the proprietor or declaring it invalid, nor shall its use be prohibited, save in respect of the whole Union. This principle shall apply unless otherwise provided for in this Regulation.¹

11. There is therefore no question that the opponent’s Community trade marks are entitled to protection in the UK. For the purpose of clarification, I must likewise make clear that in my analysis I am required to have regard to the social, linguistic and cultural conditions as they pertain to the average consumer in the UK; and not to the jurisdiction from whence the earlier marks originate.

¹ Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017.

12. On the applicant's contention that the respective goods are different in scope, trading models and marketing approach, I must point out that these considerations would only be relevant if those differences are plain to see in the respective marks themselves, as they appear in the application and on the Register. I will say more on this later.

13. In support of its argument that the contested mark is capable of being registered, the applicant (in correspondence dated 6 September 2020) presents numerous examples of trade mark registrations from the UK and EU Trade Mark Registers, consisting of either AMO or AMOR and variations of same. I must therefore point out that this information bears no relevance for our present purposes; particularly in the absence of evidence demonstrating how (if actually) those marks are used in the market.

14. In the *Torremar* case, BL O/207/02, Mr G Hobbs Q.C., acting as the Appointed Person, stated that whether a consumer deems a mark to be origin specific or origin neutral:

“may be supported by evidence directed to the way in which the mode or element of expression has been used by traders and consumers more generally. In neither case can the proposition in contention be substantiated simply by evidence of entries in the register of trade marks; entries in the register do not in themselves affect the way in which marks are perceived and remembered.”

15. In *Zero Industry Srl v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-400/06, the General Court (“GC”) stated that:

“73. As regards the results of the research submitted by the applicant, according to which 93 Community trade marks are made up of or include the word ‘zero’, it should be pointed out that the Opposition Division found, in that regard, that ‘... there are no indications as to how many of such trade

marks are effectively used in the market'. The applicant did not dispute that finding before the Board of Appeal but none the less reverted to the issue of that evidence in its application lodged at the Court. It must be found that the mere fact that a number of trade marks relating to the goods at issue contain the word 'zero' is not enough to establish that the distinctive character of that element has been weakened because of its frequent use in the field concerned (see, by analogy, Case T 135/04 *GfK v OHIM – BUS(Online Bus)* [2005] ECR II 4865, paragraph 68, and Case T 29/04 *Castellblanch v OHIM – Champagne Roederer (CRISTAL CASTELLBLANCH)* [2005] ECR II 5309, paragraph 71).”

16. In *British Sugar Plc v James Robertson & Sons Ltd* [1996], RPC 281, Mr Justice Jacob said:

“Both sides invite me to have regard to the state of the register. Some traders have registered marks consisting of or incorporating the word “treat”. I do not think this assists the factual inquiry one way or the other, save perhaps to confirm that this is the sort of word in which traders would like a monopoly. In particular the state of the register does not tell you what is actually happening out in the market and in any event one has no idea what the circumstances were which led the Registrar to put the marks concerned on the register. It has long been held under the old Act that comparison with other marks on the register is on principle irrelevant when considering a particular mark tendered for registration, see eg *Madam Trade Mark* and the same must be true under the 1994 Act. I disregard the state of the register evidence.”

17. As the above caselaw establishes, the state of the register (alone) is not relevant to the assessment of the likelihood of confusion under section 5(2) of the Act. The applicant has filed no evidence to demonstrate that any of those marks are actually in use. Therefore I must disregard its submission as to the state of the

register; and focus my consideration on the potential for conflict between the earlier trade marks and the mark applied for.

Procedural Background

18. In these proceedings the opponent is represented by Taylor Wessing LLP; and the applicant is a Litigant in Person.

19. A hearing was neither requested nor considered necessary. The opponent filed written submissions in lieu of a hearing. The applicant filed a Notice of Defence and Counterstatement and a Witness Statement. Neither side filed evidence. I therefore give this decision after careful review of all the papers before me.

DECISION

Section 5(2)(b)

20. The opposition is founded upon section 5(2)(b) of the Act, which stipulates that:

“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”.

21. An earlier trade mark is defined under section 6 of the Act, the relevant parts of which state:

“(6)(1) In this Act an “earlier trade mark” means –

a registered trade mark, international trade mark (UK) or Community trade mark or international trade mark (EC) 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,

(2) References in this Act to an earlier trade mark include a trade mark in respect of which an application for registration has been made and which, if registered, would be an earlier trade mark by virtue of subsection (1)(a) or (b), subject to its being so registered.”

22. The opponent’s trade mark registrations, having been registered in 2009 and 2013 respectively, qualify as earlier trade marks under section 6 of the Act. Further, given that these marks have been registered for over five years prior to the application date of the contested mark, they are subject to the proof of use provisions contained in section 6A of the Act. The opponent has also declared in the Notice of Opposition that the marks have been used for all of the goods and services for which they are registered. However, the applicant has not required the opponent to demonstrate proof of use. Therefore the opponent is entitled to rely upon all the goods and services of its registrations without the need to evidence genuine use.

23. Having considered the earlier marks, in the interest of procedural efficiency, I will approach the assessment, at least initially, on the basis of the opponent’s first earlier mark; as this word-only mark *prima facie* presents the best prospect of success. I will only consider the opponent’s second earlier mark should it prove necessary to do so.

Section 5(2)(b) – case law

24. 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 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 goods and services

25. When making the comparison, all relevant factors relating to the goods in the specifications should be taken into account. In *Canon*, the CJEU stated at paragraph 23 of its judgment:

“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”.

26. Guidance on this issue has also come from Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, where he identified the factors for assessing similarity as:

- (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.

27. The General Court (“GC”) confirmed in *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T-133/05, that, even if goods are not worded identically, they can still be considered identical if one term falls within the scope of another (or vice versa):

“29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 *Institut für Lernsysteme v OHIM- Educational Services* (ELS) [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark”.

Similarity of goods and services – Nice Classification

28. Section 60A of the Act provides:

29. “(1) For the purpose of this Act goods and services-

are not to be regarded as being similar to each other on the ground that they appear in the same class under the Nice Classification.

are not to be regarded as being dissimilar from each other on the ground that they appear in different classes under the Nice Classification.

(2) In subsection (1), the “Nice Classification” means the system of classification under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, which was last amended on 28 September 1975.”

Goods Comparison

30. Although the opponent relies upon all of the goods and services in classes 9, 14 and 18, it is only necessary for me to comment upon its goods in class 14. The applicant seeks protection in class 14 only, consisting of the sole specification “Jewelry”. The opponent’s specification under the same class also includes the wide term “Jewellery”. Therefore these goods are self-evidently identical.

31. I will now turn to the matter of the applicant’s proposed specification limitation from “Jewelry” to “dating rings”. As can be seen, the proposed amendment includes the word “rings”, which falls within the scope of the wider term “Jewellery” in the opponent’s specification. Therefore the proposed term is identical to the opponent’s specification under the principle laid down in the case of *Meric*. For this reason, the proposed amendment does not assist the applicant’s case.

Average consumer and the purchasing act

32. 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 decide 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”.

33. For the purpose of assessing the likelihood of confusion, it must also 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.

34. I do not have submissions from either party regarding the average consumer of the goods at issue. The applicant exhibits pages of its website (www.askmeoutrings.com) to clarify its target market: people who are interested in “good old fashioned heart thumping, cheek blushing flirting!”; who have “struggled to find love online”; people who want to know whether someone they meet “is single and looking for that ‘special someone’ too”. However, the assessment must be made on the basis of notional and fair use across the breath of the term jewellery (and/or dating rings).

35. I have previously established that the respective goods specifications are identical. These goods are directed at the general public, who are likely to choose jewellery from a physical or online outlet through self-selection, or following an advertisement or recommendation/s. Jewellery consists of many different items and may be made from a wide variety of materials; and so, can range from ordinary, relatively inexpensive items of everyday wear, to luxurious, expensive pieces, which may be purchased more infrequently. At the higher end of the spectrum, where the goods are expensive and less frequently purchased, the average consumer is likely to exercise a greater degree of care in the purchasing process. The purchasing process is therefore likely to be visual rather than aural, though I do not disregard the latter considerations; especially given the possibility of a sales representative assisting in the process (particularly at this end of the spectrum). For this class of jewellery therefore the average consumer will be highly observant and aware. I also consider that the purchasing process may be undertaken by commercial consumers who trade at

this end of the scale and/or purchase jewellery in bulk. They may therefore pay an even higher degree of care in their selection process.

36. The position must also be considered from the perspective of jewellery at the lower end of the scale; less expensive items, for which purchases may be more spontaneous or impulsive and frequent. Nevertheless, the average consumer at this end of the spectrum is still likely to exercise a reasonable level of care in the purchasing process; as this category of consumer would likely retain certain considerations in their selection process, including: the style of the piece, the size (particularly relevant in relation to rings), or for social reasons. The latter may include gift-giving and; using the applicant's goods as an example, to make a particular statement. On this basis therefore, I consider that the average consumer would take a reasonable to high level of care in the purchasing process which would be primarily visual although I do not discount aural considerations.

Comparison of the marks

37. 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.”

38. 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

39. The respective trade marks are shown below:

Amor amor	 AMO
Earlier trade mark	Contested trade mark

Overall Impression

40. As I have previously indicated, I will make the first earlier mark the focus of my comparison on the basis that the second earlier mark offers no advantage over the former. I will, of course, revisit the position should it become necessary to do so.

41. In comparing the marks there is no difference between the variation in the casing; because a word trade mark registration protects the word itself, irrespective of the font capitalisation or otherwise. Therefore, a trade mark in capital letters covers notional use in lower case and vice versa.²

² *Bentley Motors Limited v Bentley 1962 Limited* BL O/159/17

42. The applicant's mark consists of the word AMO. I consider that a significant proportion of the general public will read the text in the way in which it is normally read in English, left to right. There are no other elements to contribute to the overall impression, which lies in the word itself.

43. The opponent's earlier mark consists of the word Amor. There are no other elements in the mark to contribute to its overall impression, which lies in the word itself.

Visual Comparison

44. The opponent submits that: "Visually the marks amor and Amor on the one hand and AMO on the other are highly similar. All of the mark the subject of the Application is included in the Opponent's marks. The same three letters appear in the same order. It is well-established trade mark law that the relevant public read from left to right and therefore unlikely to notice that the mark the subject of the Application does not include r." I could not agree with the latter proposition of this submission. I take note that as a general rule, beginnings of words tend to have more visual and aural impact than the endings. However, this does not apply in all cases. I consider that this is one such case; where the overall impression resides in the marks alone; which are relatively short, single-word marks that are uncomplicated to read, with the addition of a single letter at the end of one of the marks only. In the present case, the relevant public is likely to perceive the marks as wholes and notice the difference in the respective marks' endings. I therefore conclude that the marks share a medium to high degree of visual similarity.

Aural Comparison

45. Aurally, the matter is different. The absence or presence of the letter "R" at the respective endings, presents a clear distinction with respect to the articulation of the marks. I consider that a significant proportion of the average consumer group will pronounce the earlier mark as A-MORE (a short A and longer MORE).

Whereas the contested mark is likely to be pronounced as A-MOH (with a short A and longer O); though I also consider that a proportion of the relevant public may simply enunciate the letters individually as A-M-O. In cases where the contested mark is read as a word, however, there is some similarity in articulation, despite the difference in the endings. Even so, I consider it appropriate to establish that AMOR will be pronounced in one way only; whereas, AMO would be articulated in different ways within the population of actual consumers. Therefore I find that the marks are aurally similar to no more than an average degree.

Conceptual Comparison

46. The applicant, in its Witness Statement, explained that AMO stands for “Ask Me Out”; that the “business is more to do with dating and identifying single people to one another by wearing a blue steel AMO Ring”.

47. The opponent has made no submissions as to the meaning of its mark; nor submitted evidence on what meaning the average consumer would attach to it. I earlier indicated that I am required to have regard to the social, linguistic and cultural conditions as they pertain to the average consumer in the UK. I consider that the word Amor would be evocative or suggestive of love to a significant proportion of the relevant public; as it invites comparison with, or would bring to mind, known Mediterranean words for love: *Amor* (Spain), *Amore* (Italy) and *Amour* (France). Given that these are all popular destinations for UK tourists, as well as the elementary linguistic/cultural influences of those countries in the UK, I consider that a significant section of the relevant public would have an ordinary understanding of the word Amor or at least associate it with love. In *Usinor SA v OHIM*, Case T-189/05, the General Court found that:

“62. In the third place, as regards the conceptual comparison, it must be noted that while the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details (*Lloyd Schuhfabrik Meyer*, paragraph 25), he will nevertheless, perceiving a

verbal sign, break it down into verbal elements which, for him, suggest a concrete meaning or which resemble words known to him (Case T-356/02 *Vitakraft-Werke Wührmann v OHIM – Krafft (VITAKRAFT)* [2004] ECR II-3445, paragraph 51, and Case T-256/04 *Mundipharma v OHIM – Altana Pharma (RESPICUR)* [2007] ECR II-0000, paragraph 57).

63. In the present case, the Board of Appeal correctly found that the signs at issue have a common prefix, 'galva', which evokes the technique of galvanisation, that is, the act of fixing an electrolytic layer to a metal to protect it from oxidation.

64. By contrast, the Board of Appeal incorrectly took the view that a conceptual comparison of the second part of the signs was not possible, because the suffixes 'llia' and 'lloy' were meaningless.

65. That conclusion is based on an artificial division of the signs at issue, which fails to have regard to the overall perception of those signs. As stated in paragraph 59 above, the relevant public, which is French-speaking but has knowledge of the English language, will recognise in the mark applied for the presence of the English word 'alloy', corresponding to 'alliage' in French, even if the first letter of that word ('a') has merged with the last letter of the prefix 'galva', according to the usual process of haplogy. That mark will therefore be perceived as referring to the concepts of galvanisation and alloy.

66. As far as the earlier mark is concerned, the suffix 'allia' is combined with the prefix 'galva' in the same way. The evocative force of the suffix 'allia' will enable the relevant public – on account of its knowledge and experience – to understand that that is a reference to the word 'alliage'. That process of identification is facilitated still further by the association of the idea of 'alliage' (alloy) with that of galvanisation, the suffix 'allia' being attached to the prefix 'galva'.

67. By breaking down the signs at issue, the relevant public will therefore interpret both signs as referring to the concepts of galvanisation and alloy.

68. Consequently, the conclusion to be drawn is, as the applicant correctly maintains, that the signs at issue are conceptually very similar, inasmuch as they both evoke the idea of galvanisation and of an alloy of metals, although that idea is conveyed more directly by the mark applied for than by the earlier mark”.

48. Against the backdrop of these considerations (in particular that consumers attribute meanings to words they recognise), I conclude that the relevant public will perceive the Amor mark as something to do with love, whether or not they are familiar with its actual meaning.

49. AMO on the other hand, does not appear to be a dictionary word or a word of any established meaning. Although the applicant has explained its concept, for the purpose of this comparison the mark must be considered in its registered form, without added contextual text or logos. For a conceptual message to be relevant it must be immediately grasped by the average consumer.³ The average consumer would not immediately recognise that AMO stands for *Ask Me Out*; and more significantly would not make any connection to love.

50. The average public may see AMO as an abbreviation of component words beginning with A-M-O. I also could not overlook the possibility that a significant number of the relevant average UK consumer may ascribe no meaning to the letters AMO; and for these reasons I conclude that AMO will be perceived as an invented word. Therefore, for all of the above reasons, I find that the marks are conceptually dissimilar.

³ *Ruiz Picasso v OHIM* [2006] e.c.r.I-643; [2006] E.T.M.R.29

Distinctive character of the earlier trade mark

51. The degree of distinctiveness of the earlier mark is an important factor as it directly relates to whether there is a likelihood of confusion; the more distinctive the earlier mark the greater the likelihood of confusion⁴. The distinctive character of a trade mark can be appraised only, first, by reference to the goods in respect of which registration is sought and, secondly, by reference to the way it is perceived by the relevant public – *Rewe Zentral AG v OHIM (LITE)* [2002] ETMR 91.

52. “In determining the distinctive character of a trade mark and, accordingly, in assessing whether it is highly distinctive, it is necessary to make an overall assessment of the greater or lesser capacity of the trade mark to identify the goods for which it has been registered as coming from a particular undertaking and thus to distinguish those goods from those of other undertakings” - *Windsurfing Chiemsee v Huber and Attenberger* Joined Cases C-108/97 and C-109/97 [1999] ETMR 585.

53. Trade marks possess various degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. Further, the distinctiveness of a mark can be enhanced by virtue of the use made of it. In this case, however, the opponent has not pleaded that its marks have acquired enhanced distinctiveness through use and has not filed any evidence to support such a claim. Consequently, I have only the inherent position to consider.

54. The earlier mark consists of the one word “Amor” which for most consumers evokes ‘love’. It does not have any direct meaning in relation to jewellery; however, I consider that it does possess some allusive quality. A significant proportion of the average consumer would make a connection or association

⁴ *Sabel BV v Puma AG*, Case C-251/95 [para. 24]

between love and jewellery, which can be seen as a symbol of love; or token to convey the message of love or affection. The visual presentation of the mark also lacks distinctive character; this also holds true for the second earlier mark, a stylised version of the word Amor in magenta (Pantone 7648C). For these reasons, I conclude that the level of inherent distinctive character is low to average.

Conclusions on Likelihood of Confusion

55. 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 services and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the opponent's trade mark, as the more distinctive this trade mark is, the greater the likelihood of confusion. I must also bear 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 they have retained in their mind.

56. I have found the parties' marks to be visually similar to a medium to high degree and that they are aurally similar to an average degree, with no conceptual similarity.

57. I have identified the average consumer as a member of the general public or a business user who will select the goods primarily by visual means (though I do not discount an aural component). I have concluded that the degree of attention paid will be reasonable to high for the respective groups of average consumer. I have found the parties' goods to be identical. I have found the earlier mark to have a low to average degree of inherent distinctive character.

58. Although I have found that the earlier mark has only a low to average distinctive character, that does not, of itself, preclude a finding of likelihood of confusion. In *L'Oréal SA v OHIM*, Case C-235/05 P, the CJEU found that:

“45. The applicant’s approach would have the effect of disregarding the notion of the similarity of the marks in favour of one based on the distinctive character of the earlier mark, which would then be given undue importance. The result would be that where the earlier mark is only of weak distinctive character a likelihood of confusion would exist only where there was a complete reproduction of that mark by the mark applied for, whatever the degree of similarity between the marks in question. If that were the case, it would be possible to register a complex mark, one of the elements of which was identical with or similar to those of an earlier mark with a weak distinctive character, even where the other elements of that complex mark were still less distinctive than the common element and notwithstanding a likelihood that consumers would believe that the slight difference between the signs reflected a variation in the nature of the products or stemmed from marketing considerations and not that that difference denoted goods from different traders”.

59. The opponent submits that “[i]n light of the fact that the respective goods are identical, the marks are visually and aurally either identical or highly similar and the global interdependency test, there is an inevitable likelihood of confusion in respect of the relevant public”.

60. In approaching the question that has to be decided in this case, regard has to be given to the kind of goods in respect of which the application is being made and the type of consumers who are likely to purchase those goods. I previously concluded that even for consumers at the lower end of the spectrum of attentiveness, reasonable care would be exercised in the selection process. It would be unlikely that such consumers would confuse the marks in relation to the goods. It is of importance that what has to be identified is the likelihood of confusion; and not simply that one mark brings another to mind. At the very

highest, in my view, it might be said that there was a possibility that one mark might bring another to the mind of a small number of members of the relevant public; but I consider that it would be insufficient to find that there is a likelihood of confusion.

61. Despite the identity of the goods, I cannot ignore the cumulative effect of all of the other relevant factors. Although I have found that the marks are visually similar from a medium to high degree, this is offset against the fact that the goods at issue are purchased after some consideration (as to style and size for example); and more generally after they have been seen; coupled with the reasonable level of attention exercised by the relevant average consumer.

62. I have also considered the possibility of confusion through consumers misreading or mishearing one mark for the other. However, I consider this to be unlikely; not least because of the brevity of the marks and the articulation options evident in AMO. I do not consider that the average consumer would purchase AMO goods based on a false perception that they are goods produced by Amor; again leading me to conclude that there is no likelihood of confusion.

63. There is no conceptual similarity. I earlier found that the marks are sufficiently short to facilitate an appreciation of their differences by the average consumer; and that a significant proportion of the average public would not pronounce the marks in the same way, with the applied-for mark presenting diverse ways of articulation. I similarly found that the marks' meanings would be perceived differently; with Amor conjuring up images of love and affection and AMO likely being regarded as an invented word. I also take into account my finding that the earlier mark is of low to average distinctiveness; and for all of these reasons, consider that there is no likelihood of direct confusion.

64. The lack of the R at the end of the later mark is not a natural variation on the earlier mark, such that average consumers are likely to think that either mark is a brand extension or another mark from the same or an economically linked

undertaking.⁵ As said earlier, at the most there might be a fleeting bringing to mind; however, this is not enough for confusion, either of the direct or indirect kind.

Conclusion

65. The opposition under section 5(2)(b) fails in its entirety. Accordingly, subject to any successful appeal, the application may proceed to registration. Although the applicant submitted a fall-back specification of “dating rings”, as the opposition has failed, this amendment is unnecessary. Furthermore, I am doubtful that ‘dating rings’ is a term sufficiently clear and precise to provide third parties with legal certainty as to what goods are registered; *per The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR) [2012] ETMR 42, CJEU, Case C-307/10.*

COSTS

66. The applicant, AMO Rings Ltd has been successful and is entitled to an award of costs in its favour. The applicant is self-represented and completed the Registry’s Cost Pro Forma accordingly:

Notice of Defence	28 hours
Considering forms filed by the other party	2 hours
IPO correspondence	5 hours
Research/Evidence	5 hours
Seeking Advice	4 hours
Total	44 hours

⁵ See the comments of Mr Iain Purvis QC, sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10.

67. The time spent on preparing the defence appears to be excessive. I note that time was spent in talks with the opponent and that the applicant was required to rectify procedural errors in relation to its TM8 and evidence submissions. I have therefore revised this claim from 28 to 5 hours.

68. As a Litigant in Person the applicant is not entitled to claim for “seeking advice”, in the way a represented party would. Therefore I must disregard this head of claim.

69. Taking an overall view, therefore, I consider that a total of 17 hours reasonably reflects the recoverable time spent on defending the application. The Litigants in Person (Costs and Expenses) Act 1975 (as amended), provides that the amount which may be allowed to a litigant in person is set at the rate of £19 per hour. This therefore produces **a total recoverable sum of £323**.

70. Accordingly, I hereby order AMOR GmbH to pay to AMO Rings Ltd the sum of **£323**. This sum is to be paid within twenty-one days 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 27th day of November 2020

**Denzil Johnson,
For the Registrar**