

O/1058/22

**TRADE MARKS ACT 1994**

**IN THE MATTER OF TRADE MARK APPLICATION  
NO. 03674913 BY  
TAIMUR SHAKIR  
TO REGISTER THE TRADE MARK:**



**FOOD ON A ROLL**

IN CLASS 43

AND

**OPPOSITION THERETO  
UNDER NO. 426820  
BY  
CONAL MCPHILLIPS**

## BACKGROUND & PLEADINGS

1. Taimur Shakir (“**the applicant**”), applied to register the trade mark shown on the front page of this decision in the United Kingdom on 29 July 2021. It was accepted and published in the Trade Marks Journal on 10 September 2021 for the following services:

**Class 43:** Fast food restaurants.

2. Conal McPhillips (“**the opponent**”) opposes the application on the basis of Section 5(2)(b) of the Trade Marks Act 1994 (“**the Act**”). In conjunction with the Section 5(2)(b) ground, this opposition was also initially based on a Section 3(1)(a) ground and other earlier rights under Sections 5(4)(a) of the Act. However, in its letter dated 22 December 2021, the Tribunal informed the parties that the grounds of opposition were reduced to Section 5(2)(b) (only) for the earlier right below as the opponent had failed to pay the additional filing fee of £100. The opponent is the proprietor of the UK registration number 03458194 for the following mark:



**Class 43:** Fast food restaurants; Fast-food restaurant services; Food and drink catering; Food and drink catering for banquets; Food and drink catering for cocktail parties; Food and drink catering for institutions; Food and drink preparation services; Food preparation; Food preparation for others on an outsourcing basis; Food preparation services.

4. For the purpose of this opposition, the opponent relies on “*Fast food restaurants*” services in Class 43 from his earlier specification.
5. Under Section 6(1) of the Act, the opponent’s trade mark clearly qualifies as an earlier trade mark. Further, as the registration of the opponent’s earlier mark was completed less than five years before the application date of the contested mark, proof of use is not relevant in these proceedings as per Section 6A of the Act.
6. In his amended notice of opposition, the opponent argues that “the wording is identical and the services the same. The burger icon in the logo is similar to mine.” (sic)
7. In response, the applicant filed an amended counterstatement, claiming that:

“I deny that the mark is similar to an earlier mark. However, I do admit the service he offers is the same. Comparing both logo’s (sic) side by side is different of night and day. Our interest is to register it figuratively along with the words “FOOD ON A ROLL”. Along with the colour differences pointing out other differences such as opposing logo has a drink cup. These points make the logos completely different.

[...]

My response to all this is the attached comparison of the two logos side by side. The difference in between them is of night and day. The opposing mentioned the burger in the logo is same as mine. A burger is a burger they all look the same. Where as [sic] the logo is concerned not only does mine have the wordings "Food on A Roll" within the logo the words Burger burger are within the burger as representing meat. The oppositions logo also features a drink along with the logo making it distinguishingly different.” (sic)

8. None of the parties filed evidence or written submissions. No hearing was requested and so this decision is taken following a careful perusal of the papers.
9. In these proceedings, both the opponent and the applicant are litigants-in-person.
10. Although the UK has left the EU, Section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Trade Marks Act relied on in these proceedings are derived from an EU Directive. This is why this decision continues to make reference to trade mark case law of EU courts.

## **DECISION**

### **Section 5(2)(b)**

11. The relevant statutory provisions are as follows:

Section 5(2)(b) of the Act states:

“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.”

12. The principles, considered in this opposition, stem from decisions of the European Courts in *SABEL BV v Puma AG* (Case C-251/95), *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc* (Case C-39/97), *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel BV* (Case C-342/97),

*Marca Mode CV v Adidas AG & Adidas Benelux BV* (Case C-425/98), *Matratzen Concord GmbH v Office for Harmonisation 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-334/05 P) and *Bimbo SA v OHIM* (Case C-519/12 P):

- 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 Services

13. The competing services to be compared are shown in the following table:

<b>Opponent's Services</b>	<b>Applicant's Services</b>
<b>Class 43:</b> Fast food restaurants.	<b>Class 43:</b> Fast food restaurants.

- 14. In his amended notice of opposition, the opponent claims that the contested services are similar to the earlier ones.
- 15. The applicant, in his amended notice of defence, admits that the competing services are the same.
- 16. Given the applicant's admission, strictly speaking, there is nothing for me to decide. In any case, I should highlight that the competing "*Fast food restaurants*" services are identical as they are identically worded.

## Average Consumer and the Purchasing Act

17. The average consumer is deemed to be reasonably well informed, observant and circumspect. For the purposes 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 and services in question: *Lloyd Schuhfabrik Meyer, Case C-342/97*. In *Hearst Holdings & Anor v A.V.E.L.A. Inc & Ors*, [2014] EWHC 439 (Ch), at paragraph 70, Birss J (as he then was) described the average consumer in these terms:

“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 word ‘average’ denotes that the person is typical. The term ‘average’ does not denote some form of numerical mean, mode or median.”

18. The average consumer of the services at issue will be a member of the general public. The selection of the services will be primarily visual, following inspection of the premises’ frontage on the high street or as a result of searches on websites or advertisements in print or online. That said, I do not discount the aural element, as word of mouth recommendations may also influence consumers’ decisions. The average consumer’s level of attention will vary depending on factors, such as the cost of the service offered and the nature of the establishment. However, even where the cost is fairly low and purchases are likely to be relatively frequent, a number of factors will be taken into consideration, such as the type of food, quality, and hygiene rating. I therefore consider that a medium degree of attention will be paid during the purchasing process.



## Comparison of Trade Marks

19. 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 (“CJEU”) stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

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

20. 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.

21. The marks to be compared are:

Opponent’s Mark	Applicants’ Mark
	



## Overall Impression

22. The contested mark is composed of a device and verbal elements. In the centre of the mark, the words “BURGER BURGER”, presented in red upper-case font and standard typeface, are combined with a stylised bun device in yellow outline resembling a burger. To my mind, the first word element, “BURGER”, is positioned in between the bun device with the intention of having it represent the patty in the bun. I note that both of these words and device elements are highly allusive to the applicant’s fast food restaurant services. At the bottom of the mark sits the slogan “FOOD ON A ROLL” in black upper-case font and standard typeface. Due to its size and positioning, the combination of the device and the unusual repetition of the word elements “BURGER BURGER” will be seen as the dominant element of the mark, making a roughly equal contribution to the overall impression. However, the slogan will play a less prominent role in the overall impression.
23. The earlier mark is a composite mark consisting of figurative and word elements. On the left side of the mark appears the unusual repetition of the words “BURGER BURGER”, with one instance presented on top of the other, in red upper-case font and standard typeface. On the left, there is a device of a simplified representation of a single burger in a bun and a drink cup, presented in red and white, with the former overlapping the latter. Both the verbal and the figurative elements are highly allusive to the registered services. It is my view that the word elements are more prominent than the device, as the relevant public is more likely to keep verbal elements in mind to identify and quote the mark instead of describing its figurative element.<sup>1</sup> Thus, the unusual repetition of the word elements “BURGER BURGER” will have the greatest relative weight in the overall impression, albeit they are highly allusive to the opponent’s

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<sup>1</sup> See for instance: *MigrosGenossenschafts-Bund v EUIPO*, T-68/17; and *Wassen International Ltd v OHIM (SELENIUM-ACE)*, Case T-312/03, paragraph 37.

services, with the figurative elements playing a lesser role in the overall impression.

#### Visual comparison

24. Visually, the competing marks share the same repetition of the same word elements, "BURGER BURGER", appearing in a similar red, upper-case font and typeface. Both marks contain devices that depict a burger in a bun. However, I note that the depictions in the marks differ. The representation of the burger in the contested mark is more abstract, with the word "BURGER" replacing the patty, in contrast to the earlier mark's burger device, which is a simplified version of a burger in a bun. Further, the presence/absence of the slogan and the drink cup device in the competing marks create an additional point of visual difference. Considering the above factors and the overall impressions, I find that the respective marks are visually similar to a medium degree.

#### Aural comparison

25. A point of aural similarity is created in the competing marks by the unusual repetition of the same single word, which the average consumer will identically articulate as "BUHR-GUH BUHR-GUH". I do not consider that the average consumer will attempt to verbalise the figurative elements in the competing marks. However, if the slogan "FOOD-ON-UH-ROHL" of the contested mark is spoken, that would result in a point of difference. Considering the above factors and the overall impressions, I find that the marks will be aurally identical (though similar to a medium degree where the slogan "FOOD ON A ROLL" is spoken).

#### Conceptual comparison

26. The marks share the same concept of a burger, which the average consumer will understand immediately, stemming primarily from the repetition of the word elements "BURGER BURGER" and the equivalent

burger/bun devices. I note that there are conceptual differences mainly arising from the slogan “FOOD ON A ROLL” in the contested mark that will be seen as a play on words and construed as someone or something experiencing a period of success and the drink cup device in the earlier mark. Despite the added concepts of these elements, which play a less prominent role in the overall impressions, I find a high degree of conceptual similarity between them, as they both contain the same unusual repetition of the word ‘burger’ of the same concept.

### **Distinctive Character of The Earlier Trade Mark**

27. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97, paragraph 22 and 23, the CJEU stated that:

“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).

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).”

28. Registered trade marks possess varying degrees of inherent distinctive character: perhaps lower where a mark may be suggestive or allusive of a characteristic of the goods, ranging up to those with high inherent distinctive character, such as invented words which have no allusive qualities.
29. The opponent has not shown use of his mark and, thus, it cannot benefit from any enhanced distinctiveness. In this respect, I have only the inherent distinctiveness of the earlier mark to consider. I bear in mind that only the common elements between the respective marks should be considered to evaluate the relevant (to the question of confusion) distinctiveness.<sup>2</sup> As detailed above, the earlier mark consists of the word elements “BURGER BURGER” and the figurative elements of a burger and a drink cup. I consider that the word elements coupled with the figurative elements are likely to be perceived as highly allusive to or suggestive of the opponent’s fast food restaurant services. In this regard, I note that in *Formula One Licensing BV v OHIM*, Case C-196/11P, CJEU found that:

“41. [...] it is not possible to find, with regard to a sign identical to a trade mark protected in a Member State, an absolute ground for refusal, such as the lack of distinctive character, provided by Article 7(1)(b) of Regulation No 40/94 and Article 3(1)(b) of Directives 89/104 and 2008/95. In this respect, it should be noted that the characterisation of a sign as descriptive or generic is equivalent to denying its distinctive character.

42. It is true that, as is clear from paragraph 48 of the judgment under appeal, where an opposition, based on the existence of an earlier national trade mark, is filed against the registration of a Community trade mark, OHIM and, consequently, the General Court, must verify the way in which the relevant public perceives the sign which is

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<sup>2</sup> See *Kurt Geiger v A-List Corporate Limited*, BL O-075-13.

identical to the national trade mark in the mark applied for and evaluate, if necessary, the degree of distinctiveness of that sign.

43. However, as the appellant rightly points out, their verification has limits.

44. Their verification may not culminate in a finding of the lack of distinctive character of a sign identical to a registered and protected national trade mark, since such a finding would not be compatible with the coexistence of Community trade marks and national trade marks or with Article 8(1)(b) of Regulation No 40/94, read in conjunction with Article 8(2)(a)(ii).”

30. Based on the rationale in *Formula One Licensing BV*, and given the registered status of the mark, it must be accorded a relatively low level of distinctive character. I consider that the distinctiveness of the mark lies in the unusual repetition of the same word, i.e. “BURGER BURGER”, together with the combination of the figurative elements.

### **Likelihood of Confusion**

31. In assessing the likelihood of confusion, I must adopt the global approach set out in the case law to which I have already referred above in this decision. Such a global assessment is not a mechanical exercise. I must also have regard to the interdependency principle i.e. that 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.<sup>3</sup> It is essential to keep in mind the distinctive character of the opponent’s trade mark since the more distinctive the mark, the greater the likelihood of confusion. I must also keep in mind that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon imperfect recollection.<sup>4</sup>

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<sup>3</sup> See *Canon Kabushiki Kaisha*, paragraph 17.

<sup>4</sup> See *Lloyd Schuhfabrik Meyer*, paragraph 27.

32. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other. Indirect confusion is where the consumer notices the marks are different, but concludes, due to the similarities between them, that the later mark is another brand of the owner of the earlier mark or a related undertaking (or vice versa).
33. In *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271 (Ch), Arnold J. considered the impact of the CJEU's judgment in *Bimbo*, on the court's earlier judgment in *Medion v Thomson*. He stated:

“18 The judgment in *Bimbo* confirms that the principle established in *Medion v Thomson* is not confined to the situation where the composite trade mark for which registration is sought contains an element which is identical to an earlier trade mark, but extends to the situation where the composite mark contains an element which is similar to the earlier mark. More importantly for present purposes, it also confirms three other points.

19 The first is that the assessment of likelihood of confusion must be made by considering and comparing the respective marks — visually, aurally and conceptually — as a whole. In *Medion v Thomson* and subsequent case law, the Court of Justice has recognised that there are situations in which the average consumer, while perceiving a composite mark as a whole, will also perceive that it consists of two (or more) signs one (or more) of which has a distinctive significance which is independent of the significance of the whole, and thus may be confused as a result of the identity or similarity of that sign to the earlier mark.

20 The second point is that this principle can only apply in circumstances where the average consumer would perceive the relevant part of the composite mark to have distinctive significance independently of the whole. It does not apply where the average consumer would perceive the composite mark as a unit having a different meaning to the meanings of the separate components. That

includes the situation where the meaning of one of the components is qualified by another component, as with a surname and a first name (e.g. BECKER and BARBARA BECKER).”

21 The third point is that, even where an element of the composite mark which is identical or similar to the earlier trade mark has an independent distinctive role, it does not automatically follow that there is a likelihood of confusion. It remains necessary for the competent authority to carry out a global assessment taking into account all relevant factors.”

34. 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.”

35. In *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, Iain Purvis Q.C., sitting as the Appointed Person, 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).”

I note that the categories identified above by Mr Purvis Q.C. are not exhaustive.<sup>5</sup>

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<sup>5</sup> *Thomson Hotels LLC v TUI Travel Amber E&W LLP* BL- O-440/14 at paragraph 29.



36. In *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17, James Mellor Q.C., sitting as the Appointed Person, stressed that a finding of indirect confusion should not be made merely because the two marks share a common element. In this connection, he pointed out that it is not sufficient that a mark merely calls to mind another mark. This is mere association not indirect confusion.

37. In *Liverpool Gin Distillery Ltd and others v Sazerac Brands, LLC and others* [2021] EWCA Civ 1207, the Court of Appeal dismissed an appeal against a ruling of the High Court that trade marks for the words EAGLE RARE registered for whisky and bourbon whiskey were infringed by the launch of a bourbon whiskey under the sign "American Eagle". In his decision, Lord Justice Arnold stated that:

"13. As James Mellor QC sitting as the Appointed Person pointed out in *Cheeky Italian Ltd v Sutaria* (O/219/16) at [16] "a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion". Mr Mellor went on to say that, if there is no likelihood of direct confusion, "one needs a reasonably special set of circumstances for a finding of a likelihood of indirect confusion". I would prefer to say that there must be a proper basis for concluding that there is a likelihood of indirect confusion given that there is no likelihood of direct confusion."

38. Earlier in this decision I have concluded that:

- the services at issue are identical;
- the average consumer will be the general public for the services at issue, with the selection process conducted primarily at a visual level without dismissing aural considerations. The degree of attention will vary based on factors, such as the cost of service and the nature of the establishment, even for fairly low cost and frequent purchases. Thus, the degree of attention will be medium;

- the competing marks are visually similar to a medium degree, aurally identical (though similar to a medium degree where the slogan “FOOD ON A ROLL” is spoken), and conceptually highly similar;
- the earlier mark possesses a relatively low level of inherent distinctive character.

39. Although I have found earlier in this decision that the inherent distinctiveness of the earlier mark is of a relatively low degree, this does not prevent a likelihood of confusion.<sup>6</sup> Taking into account the above factors and case law, I am persuaded that there is a likelihood of direct confusion for identical services. I find that when the competing marks are considered as a whole, the presence of the unusual repetition of the same word element, “BURGER BURGER”, in a similar typeface and red colour in both marks would be retained in the mind of the average consumer. Further, the common concept emanating from these word elements will function as a conceptual hook for the average consumer enabling them to make a conceptual link between the marks. Notably, the average consumer may not perfectly recall the difference created by the figurative elements, and the presence/absence of the slogan may be overlooked, leading them to misremember one mark for the other. Thus, I consider it likely that the marks will be misremembered or mistakenly recalled as each other.

40. Even if the average consumer recalls that one mark contains a slogan and the other does not, I still consider that the marks would be indirectly confused for identical services. This is because both marks contain the identically shared word elements, “BURGER BURGER”, a repetition that would not go unnoticed, with the figurative elements would be imperfectly recalled and with the difference in the slogan put down to the use of a brand/sub-brand variant.

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<sup>6</sup> See *L'Oréal SA v OHIM*, Case C-235/05 P.

## **OUTCOME**

41. The opposition under Section 5(2)(b) **succeeds, and, subject to an appeal against this decision, the application will be refused.**

## **COSTS**

42. The opponent has been successful and is entitled to a contribution towards his costs. The opponent was not professionally represented and had to submit a completed cost proforma to the Tribunal, outlining the number of hours spent on these proceedings. In an official letter to the parties, dated 31 August 2022, the Tribunal stated that “if the pro-forma is not completed and returned, costs, other than official fees arising from the action (excluding extensions of time), may not be awarded.” As the opponent elected not to complete a costs pro-forma, the only costs he is entitled to is in respect of the official fee for filing his opposition.
43. I, therefore, order Taimur Shakir to pay Conal McPhillips the sum of £100. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

**Dated this 1<sup>st</sup> day of December 2022**

**Dr Stylianos Alexandridis  
For the Registrar,  
The Comptroller General**