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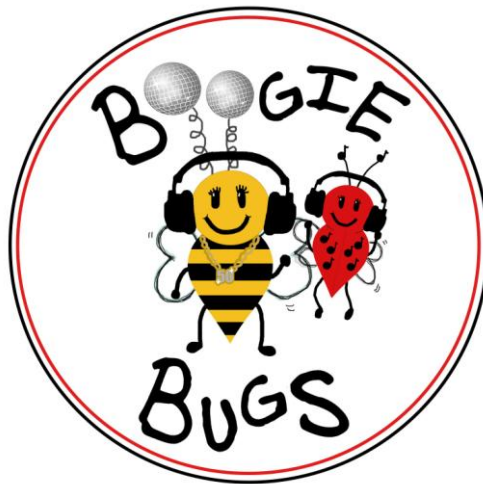
**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION NO 3044733**

**BY**

**CHRISSIE LOUISE BEADLE**

**TO REGISTER THE TRADE MARK:**



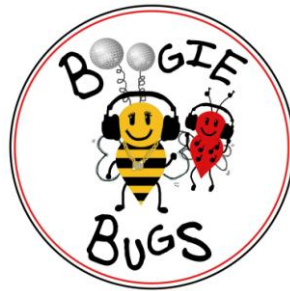
**IN CLASS 41**

**AND**

**THE OPPOSITION THERETO  
UNDER NO 402421  
BY NICOLA HENRY**

## **Background and pleadings**

1. On 2 March 2014, Chrissie Louise Beadle (“the applicant”) applied to register:



2. Following examination, the application was accepted and published for opposition purposes on 11 April 2014 in respect of the following services:

Class 41: Entertainment services

3. Nicola Henry (“the opponent”) opposed the application under Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). This is on the basis of her earlier UK Trade Mark Registration no. 2657601 for the mark Boogie Bugz (“earlier mark”). The earlier mark was applied for on 24 March 2013, and completed its registration procedure on 26 July 2013, for the following services:

Class 41: Provision of dance classes, organising of dance parties, provision of dance tuition

4. The notice of opposition states that the opponent relies upon “Children’s entertainment/Children’s parties”. These terms are not expressly contained in the earlier mark’s list of services. I shall deal with the consequence of this later in my decision. The opposition also contains a number of allegations which will be dealt with later.

5. The applicant filed a counterstatement denying the claims made. The applicant also makes various allegations with regard to the opponent’s conduct.

6. The opponent filed evidence in these proceedings. The applicant filed written submissions.

7. No hearing was requested and so this decision is taken following careful consideration of the papers.

## **Evidence**

### **Opponent’s evidence**

8. The opponent’s evidence consists of two witness statements. The first is from Emma Bateman who is co-creator/teacher of Boogie Bugz. This is a position Ms. Bateman has held since September 2012. The witness statement consists of

submissions which I shall not summarise here but I shall refer to them should it be necessary.

9. The second witness statement comes from Ms. Nicola Henry, who is the registered proprietor of the earlier mark, and the managing director of Boogie Bugz. Ms. Henry's witness statement states that she launched her business, under her registered trade mark, in 27 August 2012. Ms Henry provides the following exhibits:

- Exhibits NH1 and NH2 are Facebook screen prints which are intended to show the applicant is also known as Chrissie McClusky. It is unclear as to how this is relevant or of assistance to these proceedings.
- Exhibit NH3 is a "Whois" results page dated 28 April 2014 relating to the opponent's domain name, boogiebugz.co.uk.
- Exhibit NH4 is a Facebook "About" page which states that the opponent began advertising "Boogie Bugz" in 28 August 2012.
- Exhibit NH5 is an invoice dated 15 November 2012 which Ms Henry states is for providing dance classes services.
- Exhibit NH6 is a Facebook "About" page which Ms Henry claims to be for the applicant. It states that the business was founded on 10 December 2012.
- Exhibit NH7 is a "Whois" results page dated 28 April 2014 relating to the domain name boogiebugskidsparty.co.uk.
- Exhibit NH8 is a trade mark application filing receipt for the opponent's earlier mark.
- Exhibits NH9 and NH10 are further webpages which appear to be from Facebook. They make reference to BoogieBugz. Exhibit NH9 has the date 28 August 2012 below BoogieBugz, and NH10 is dated 4 June 2013.
- Exhibit NH11 is reference to "Chrissie's Chocolate" which Ms. Henry claims to be owned by Ms. Beadle.
- Exhibits NH12-NH24 are webpages of various "negative comments" left by "Crafty Cherub/Crafty Cherub Creations" which Ms. Henry alleges to be associates of Ms. Beadle.
- Exhibit NH25 is an undated webpage print which Ms. Henry states is the logo which she uses. She states that this differs to the logo used by Ms. Beadle which Ms. Henry has evidenced in Exhibit NH26.
- Exhibits NH27 to NH30 are copies of email exchanges between Ms. Henry and Ms. Beadle.
- Exhibits 31 and 32 are Facebook posts.

## DECISION

### *Preliminary issue*

10. Q1 of the Form TM7 (Notice of opposition) asks “Which goods or services covered by the earlier trade mark are relied upon for the opposition?” The opponent replied with “Children’s entertainment/Children’s parties”. However, the response does not correspond with the services covered by the earlier mark, namely “Provision of dance classes, organising of dance parties, provision of dance tuition”. This error would typically be addressed when the Registrar scrutinises the notice of opposition. At this stage, and for procedural economy reasons, I do not deem it necessary to request an amendment to the Form TM7 or Form TM8.

11. The earlier mark does not cover the broad term “Children’s entertainment”, and it would be inequitable for the opposition to proceed on a broader (or inaccurate) service than what it is registered for. The opponent also seeks to rely upon “Children’s parties” which, again, are not covered by the earlier mark. However, in my view, “Children’s parties” can include “organising of dance parties”. Therefore, this decision will proceed on the basis that the opponent is relying only on “organising of dance parties”.

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

12. Section 5(2)(b) of the Act is 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, or there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark”.

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

### **The principles**

(a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely

upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;

(f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

(g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;

(h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;

(i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;

(j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;

(k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

### **Average consumer and the purchasing act**

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

15. 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 at paragraph 60 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 words “average” denotes that the person is typical. The term “average” does not denote some form of numerical mean, mode or median.”

16. The applicant’s services cover entertainment, and the opponent’s services are organising of dance parties. Whilst these services are open to the general public for birthdays, weddings, etc. they are also sought buy businesses (e.g. schools, playgroups or other businesses who wish to entertain their employees or clients.

17. The services are likely to be initially chosen from an internet search, magazine advertisements or by word of mouth. Subsequently, whoever is seeking these services may search for online videos showing the entertainment provided then either meet to finalise the details or book online or via phone. Therefore, the purchasing act would be made following a visual perusal of advertisements or aural recommendations from friends, family, colleagues or associates.

18. The cost of the services will vary depending on the services sought. With regard to “organising of dance parties”, the opponent’s evidence (Exhibit NH5) shows that the hourly rate varies between £14.40 and £18. Therefore, they are a relatively inexpensive purchase. Of course, the other end of the spectrum (i.e. concerts, theatre shows, etc.) can cost significantly more. Nevertheless, I am of the opinion that the average consumer is likely to pay a higher than average (but not high) degree of care and attention.

### **Comparison of services**

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

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

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

- a) The respective users of the respective goods or services;
- b) The physical nature of the goods or acts of services
- c) The respective trade channels through which the goods or services reach the market

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

21. The respective services are shown below:

<b>Opponent services</b>	<b>Applicant services</b>
Class 41 - Organising of dance parties	Class 41 - Entertainment services

22. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T-133/05, the General Court stated in paragraph 29 that:

“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 fur 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”.

23. The services covered by the opponent’s earlier mark are “organising of dance parties” which are included in the applicant’s more general category of services, namely “entertainment services”. Therefore, the respective services are identical.

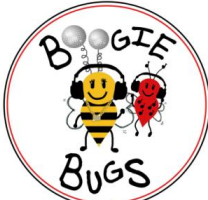
### **Comparison of marks**

24. 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.”

25. 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.

26. The respective trade marks are shown below:

Opponent's mark	Applicant's mark
Boogie Bugz	

27. The contested mark consists of words and devices. The words are BOOGIE BUGS with the “OO”s in the form of balloons. They would; however be viewed and read as “OO”s. The devices are of two figurative “bugs” with headphones. The central more prominent bug appears to be a bee with the bug in the background being a ladybird. The dominant and distinctive elements of the mark are the words BOOGIE BUGS, and the stylised bug devices.

28. The opponent's mark consists of the words Boogie Bugz. Whilst the word Bug ends with z rather than an s, it is common nowadays to use z as a plural form rather than an s. Therefore, this is common misspelling which has no bearing on the visual, aural and conceptual considerations outlined below.

#### *Aural*

29. Aurally the two marks are identical. Whether there is a z or s after bug has no impact on the pronunciation. Further, whilst the application contains stylised devices of bugs, it is the words which will be spoken rather than a description of the devices.

#### *Visual*

30. In terms of the visual similarities/differences, the respective marks share the same words – Boogie Bugs(z), but the device is absent from the earlier mark. Whilst the highly stylised devices do impact on the visual comparison, given that the respective marks contain the same distinctive words, they are visually similar to a reasonable degree.

#### *Conceptual*

31. The words of the respective marks will be given their normal meaning, i.e. boogying bugs. The devices within the application will reinforce the words. The opponent's mark has a conceptual identity and it is my view that the application shares the same concept. Therefore, the marks are conceptually identical.

#### **Distinctive character of earlier mark**

32. The degree of distinctiveness of the earlier mark must be assessed. This is because the more distinctive the earlier mark, based on either inherent qualities or because of use made, the greater the likelihood of confusion (see *Sabel BV v Puma*



AG, paragraph 24). In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 the CJEU stated in paragraphs 22 and 23 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).”

33. 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 in paragraphs 38 to 40:

“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.

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”.

34. The opponent has provided some examples of how the mark is being used, but no supporting turnover or advertising figures. Therefore, I only have the mark’s inherent nature to consider.

35. The earlier mark is not descriptive of the services at issue. Whilst the words of each mark will be given their normal and natural meaning, they are unusual and imaginative for the services provided. In view of the aforementioned, I find that the earlier mark has a high degree of inherent distinctiveness in the UK for the services at issue.

### **Contentious issues between the parties**

36. Having reviewed all of the submissions and evidence it is clear that this matter has created a great deal of animosity between the parties. I shall not get drawn into the various comments made, but it does seem necessary to address some of the issues and misapprehensions both parties have.

#### *Earlier use*

37. In the counterstatement, the applicant claims to have used the mark “for a longer period of time”. Even if the applicant has been using their mark for a longer period of time (and I am not suggesting this to be the case), it does not assist her in this opposition. A similar argument was made in *Ion Associates Ltd v Philip Stainton and Another*<sup>1</sup>, where the applicant, facing an opposition under section 5(2)(b) (as here), considered that its prior use ought to mean that it had the right to register its marks. The Appointed Person, Ms Anna Carboni said at paragraph 47:

“Even if the evidence were sufficient to establish the existence of an earlier right within a locality, of the sort recognised under article 6(2), that provision is about the owner of such a right being able to continue using it notwithstanding the registration of a national trade mark by a third party. As implemented in the Act, section 11(3) could be relied on to defend an action for infringement of a UK trade mark if, say, the defendant owned a local passing off right. I agree with the hearing officer that there is nothing in either article 6(2) (or, I would add, section 11(3)) to assist the Applicant in the second step of the argument to the effect that the owner of such a locally based right should itself be entitled to register the mark underlying its earlier right.”

38. There is no automatic entitlement to a registration simply because a trade mark has been used. An opposition raised under Section 5(2) operates on the basis of the ‘first to file’ UK trade mark registration system. Ms Carboni’s decision was referred to in the Registrar’s Tribunal Practice Notice 4/2009:

**“The position with regard to defences based on use of the trade mark under attack which precedes the date of use or registration of the attacker’s mark**

4. The viability of such a defence was considered by Ms Anna Carboni, sitting as the appointed person, in *Ion Associates Ltd v Philip Stainton and Another*, BL O-211-09. Ms Carboni rejected the defence as being wrong in law.

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<sup>1</sup> BL O/211/09 - <https://www.ipo.gov.uk/t-challenge-decision-results/o21109.pdf>

5. Users of the Intellectual Property Office are therefore reminded that defences to section 5(1) or (2) grounds based on the applicant for registration/registered proprietor owning another mark which is earlier still compared to the attacker's mark, or having used the trade mark before the attacker used or registered its mark are wrong in law. If the owner of the mark under attack has an earlier mark or right which could be used to oppose or invalidate the trade mark relied upon by the attacker, and the applicant for registration/registered proprietor wishes to invoke that earlier mark/right, the proper course is to oppose or apply to invalidate the attacker's mark."

#### *Geographical extent of use*

39. The applicant claims that they are only using their mark in the Cambridgeshire (possibly Peterborough) area. The opponent has stated that she is "Planning a nationwide company perhaps with franchise". There does not currently appear to be any marketplace confusion. However, the applicant has filed a trade mark application which, if granted, would give them a UK monopoly over the trade mark for the services it is registered for. Therefore, it cannot assist the applicant to claim that its business is operating in one or two counties when it is seeking a national right.

#### *Scope of services*

40. In the applicant's counterstatement (TM8), they explain that they believe that the respective parties operate in different sectors. More specifically, the applicant states "her focus is dance where as my business focuses on the disco/games element with learning about bugs along the way", and then "The businesses are very different in terms of their main focus, age appeal and geographical location."

41. In paragraph 66 of *O2 Holdings Limited, O2 (UK) Limited v Hutchison 3G UK Limited* (Case C-533/06) it is stated in paragraph 66:

"Article 4(1)(b) of Directive 89/104, however, concerns the application for registration of a mark. Once a mark has been registered its proprietor has the right to use it as he sees fit so that, for the purposes of assessing whether the application for registration falls within the ground for refusal laid down in that provision, it is necessary to ascertain whether there is a likelihood of confusion with the opponent's earlier mark in all the circumstances in which the mark applied for might be used if it were to be registered."

42. In this instance, the applicant has applied for "entertainment services". Should the applicant succeed in gaining registration, I must assume that there will be notional and fair use of the mark for the services it is registered. In other words, the applicant may (and possibly will) use their mark on the entertainment services at large. Notional and fair use dictates that entertainment services would not just include the existing services of interest, i.e. "disco/games element", but it could also involve "dance". Therefore, whilst the applicant believes that a conflict does not currently exist, should registration be gained, it would be fair and notional to assume that a conflict may arise (and if the mark was sold to a third party, they could use it for what it notionally covers).

## Likelihood of confusion

43. In assessing the likelihood of confusion, I must take a number of factors into consideration. In *Bimbo SA v OHIM*, Case T-569/10, the General Court held at paragraph 96 that:

“According to the case-law, where goods or services are identical there may be a likelihood of confusion on the part of the public where the contested sign is composed by juxtaposing the company name of another party and a registered mark which has normal distinctiveness and which, without alone determining the overall impression conveyed by the composite sign, still has an independent distinctive role therein (Case C-120/04 *Medion* [2005] ECR I-8551, paragraph 37). There may also be a likelihood of confusion in a case in which the earlier mark is not reproduced identically in the later mark (see, to that effect, Joined Cases T-5/08 to T-7/08 *Nestlé v OHIM – Master Beverage Industries (Golden Eagle and Golden Eagle Deluxe)* [2010] ECR II-1177, paragraph 60).”

44. In *Medion AG v Thomsonmultimedia Sales Germany & Austria GmbH*, Case 120/04 provides key guidance on how to approach issues of similarity involving composite marks, as follows (paragraphs 29 -36 refer):

“In the context of consideration of the likelihood of confusion, assessment of the similarity between two marks means more than taking just one component of a composite trade mark and comparing it with another mark. On the contrary, the comparison must be made by examining each of the marks in question as a whole, which does not mean that the overall impression conveyed to the relevant public by a composite trade mark may not, in certain circumstances, be dominated by one or more of its components (see *Matratzen Concord*, paragraph 32).

However, beyond the usual case where the average consumer perceives a mark as a whole, and notwithstanding that the overall impression may be dominated by one or more components of a composite mark, it is quite possible that in a particular case and earlier mark used by a third party in a composite sign including the name of the company of the third party still has an independent distinctive role in the composite sign, without necessarily constituting the dominant element.

In such a case the overall impression produced by the composite sign may lead the public to believe that the goods or services at issue derive, at the very least, from companies which are linked economically, in which case the likelihood of confusion must be held to be established.

The finding that there is a likelihood of confusion should not be subject to the condition that the overall impression produced by the composite sign be dominated by the part of it which is represented by the earlier mark.

If such a condition were imposed, the owner of the earlier mark would be deprived of the exclusive right conferred by Article 5(1) of the directive even

where the mark retained an independent distinctive role in the composite sign but that role was not dominant.

This would be the case where, for example, the owner of a widely-known mark makes use of a composite sign juxtaposing this mark and an earlier mark which is not itself widely known. It would also be the case if the composite sign was made up of the earlier mark and a widely-known commercial name. In fact, the overall impression would be, most often, dominated by the widely-known mark or commercial name included in the composite sign.

Thus, contrary to the intention of the Community legislator expressed in the 10th recital in the preamble to the directive, the guarantee of the earlier mark as an indication of origin would not be assured, even though it still had an independent distinctive role in the composite sign.

It must therefore be accepted that, in order to establish the likelihood of confusion, it suffices that, because the earlier mark still has an independent distinctive role, the origin of the goods or services covered by the composite sign is attributed by the public also to the owner of that mark.”

45. 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 necessary for me to keep in mind the distinctive character of the opponent’s trade mark since the more distinctive the trade marks is, 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.

46. Earlier in this decision I concluded that:

- The services will be acquired via a visual inspection of advertisements or aural referral.
- The average consumer will pay a higher than average (but not high) degree of care and attention when acquiring the services.
- The respective services are identical.
- The marks are aurally and conceptually identical. They are also reasonably visually similar.
- The earlier registration has a high degree of inherent distinctiveness in the UK for the services at issue.

47. Whilst the average consumer will recognise the “bug” devices as being different to the earlier mark, this will not override the marks being aurally and conceptually

identical. Further, since the services are identical, I find that the average consumer will believe that there is an economic link between the respective marks.

48. In view of the above, I conclude that there is a likelihood of confusion.

### **Outcome**

**49. The opposition succeeds under section 5(2)(b). The application is refused.**

### **Costs**

50. The opponent has been successful and is entitled to a contribution towards their costs, albeit a reduced award since she was not professionally represented and would not therefore have incurred legal representation costs. However, I will not make an award for the filing of evidence because it did not assist my decision and was largely irrelevant.

51. In view of the above, I award the opponent the sum of £200 from the published scale of costs on the Intellectual Property website, Tribunal Practice Notice 4/2007, as a contribution towards the cost of these proceedings. The sum is calculated as follows:

Official fee - £100

Preparing a statement and considering the other side's statement - £100

52. I therefore order Chrissie Louise Beadle to pay Nicola Henry the sum of £200. The above sum should be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

**Dated this 13th day of March 2015**

**Mark King  
For the Registrar,  
the Comptroller General**