

O-327-15

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. 3081670 BY
BLEND IT SHAKES LTD**

TO REGISTER:



**AS A TRADE MARK
IN CLASSES 35, 39 & 43**

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 60000210 BY
SAFEENA AHMED**

BACKGROUND

1. On 15 November 2014, Blend It Shakes Ltd (“the applicant”) applied to register the trade mark shown on the cover page of this decision. The application was published for opposition purposes on 5 December 2014 for the following services:

Class 35 - Business management and administration of activities related to franchisees.

Class 39 - Pizza and milkshake delivery services. Transportation and delivery of products to catering and restaurant type retail outlets.

Class 43 - Cafe, catering, delicatessen, restaurant, food preparation services.

2. The application is opposed by Safeena Ahmed (“the opponent”) under the fast track opposition procedure. The opposition, which is directed against all of the services in the application, is based upon section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The trade mark and services relied upon by the opponent are shown below:

UK no. 2541835 for the trade mark: **Blendit**; applied for on 15 March 2010 and for which the registration procedure was completed on 9 July 2010:

Class 35 - Business management and administration of activities related to franchisees.

Class 39 - Pizza and milkshake delivery services. Transportation and delivery of products to catering and restaurant type retail outlets.

Class 43 - Services for providing food and drink, namely, fruit juices, milkshakes, sandwiches, panini, pizzas and hot drinks.

3. In her Notice of Opposition, the opponent states:

“We wish to oppose the registration of the trade mark as it contains exactly the same text, “blendit”, as the previous mark. This would clearly create a conflict and cause confusion and misrepresent the currently registered mark to consumers. There is reference to shake products in the later mark which is in direct conflict with any products that are shaken or blended such as milkshake and smoothie products that the previous mark is well known for. Hence, it would seem that the later mark would take benefit of the existing good reputation and fame built up by the previous mark. The later mark is not entitled to take such benefit of the currently registered mark. The previous mark is active in franchising and delivery and would wish to oppose any mark similar to the previous mark being registered in all three classes 35, 39 and 43.”

4. The applicant filed a counterstatement in which the ground of opposition is denied. Having put the opponent to proof of her various claims regarding the use of her trade mark, the main points emerging from the counterstatement are:

- The opponent is not the proprietor of “blendit” but of “the more distinctive BlendiT. The text is not identical”;
- The application is in “bright red and in a highly distinctive lettering”;
- There is no aural, visual or conceptual similarity between the competing trade marks. The use of the capitalisation in the opponent’s trade mark “does not make it immediately clear to consumers that the words being conveyed is “blend it”;
- “The opponent offers for sale a range of foods and beverages. The food offered for sale by the opponent includes pizza, burgers, jacket potatoes. The beverages offered for sale by the opponent includes cappuccino, latte, macchiato, Earl Grey and traditional English teas. By contract (sic), it is [the applicant’s intention] to sell only milkshakes and this is why [the application] explicitly includes “milkshakes”. [The applicant] intends to operate a milkshake bar and not a general café such as operated by the opponent”.

5. Rule 6 of the Trade Marks (Fast Track Opposition)(Amendment) Rules 2013, S.I. 2013 2235, disapplies paragraphs 1-3 of Rule 20 of the Trade Mark Rules 2008, but provides that Rule 20(4) shall continue to apply. Rule 20(4) states that:

“(4) The registrar may, at any time, give leave to either party to file evidence upon such terms as the registrar thinks fit.”

The net effect of these changes is to require parties to seek leave in order to file evidence in fast track oppositions. No leave was sought in respect of these proceedings; I will return to this point below.

6. Rule 62(5) (as amended) states that arguments in fast track proceedings shall be heard orally only if (i) the Office requests it or (ii) either party to the proceedings requests it and the registrar considers that oral proceedings are necessary to deal with the case justly and at proportionate cost; otherwise written arguments will be taken. A hearing was neither requested nor considered necessary; both parties filed written submissions which I will refer to, as necessary, below.

DECISION

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

“5 (2) A trade mark shall not be registered if because -

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.”

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

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

(a) 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.”

9. The trade mark upon which the opponent is relying qualifies as an earlier trade mark under the above provisions. As this earlier trade mark had not been registered for more than five years when the application for registration was published, it is not subject to proof of use, as per section 6A of the Act. The opponent is, as a consequence, entitled to rely upon all of the services for which her earlier trade mark is registered.

Section 5(2)(b) – case law

10. 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 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

11. The competing services are as follows:

Opponent's services	Applicant's services
Class 35 - Business management and administration of activities related to franchisees.	Class 35 - Business management and administration of activities related to franchisees.
Class 39 - Pizza and milkshake delivery services. Transportation and delivery of products to catering and restaurant type retail outlets.	Class 39 - Pizza and milkshake delivery services. Transportation and delivery of products to catering and restaurant type retail outlets.
Class 43 - Services for providing food and drink, namely, fruit juices, milkshakes, sandwiches, panini, pizzas and hot drinks.	Class 43 - Cafe, catering, delicatessen, restaurant, food preparation services.

The correct approach to the comparison of services

12. Although in their various submissions the parties refer to the services upon which it appears the competing trade marks are either used or upon which they will be used, that is not the correct approach. As the opponent's earlier trade mark is not subject to the proof of use provisions, what I must do is make a notional comparison of the opponent's services with the services specified in the application. Approaching the comparison on that basis, it is clear that the competing specifications in classes 35 and 39 are absolutely identical. As to the services in class 43, the opponent's specification in this class includes the word "namely". The word "namely" must be approached, as indicated in the Trade Marks Registry's classification guidance on the basis shown below:

"Note that specifications including "namely" should be interpreted as only covering the named Goods, that is, the specification is limited to those goods. Thus, in the above "dairy products namely cheese and butter" would only be interpreted as meaning "cheese and butter" and not "dairy products" at large. This is consistent with the definitions provided in Collins English Dictionary which states "namely" to mean "that is to say" and the Cambridge International Dictionary of English which states "which is or are".

13. On the basis of the above guidance, the opponent's specification in class 43 must be interpreted thus:

Services for providing fruit juices, milkshakes, sandwiches, panini, pizza and hot drinks.

14. In *Gérard Meric v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* case T-133/05, the General Court ("GC") stated:

"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 the trade mark application (Case T-388/00 Institut für Lernsysteme v OHIM – Educational Services (ELS) [2002] ECR II-4301, paragraph 53) or when the goods designated by the trade mark application are included in a more general category designated by the earlier mark (Case T-104/01 Oberhauser v OHIM – Petit Liberto (Fifties) [2002] ECR II-4359, paragraphs 32 and 33; Case T-110/01 Vedial v OHIM – France Distribution (HUBERT) [2002] ECR II-5275, paragraphs 43 and 44; and Case T- 10/03 Koubi v OHIM – Flabesa (CONFORFLEX) [2004] ECR II-719, paragraphs 41 and 42)."

15. As the services in the opponent's specification in class 43 would all be encompassed by one or more the applicant's services in the same class, the competing services are to be regarded as identical on the principles outlined in *Merici*.

The average consumer and the nature of the purchasing act

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

“60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The words “average” denotes that the person is typical. The term “average” does not denote some form of numerical mean, mode or median.”

17. While the average consumer of all of the services in class 35 and of “transportation and delivery of products to catering and restaurant type retail outlets” in class 39 will be a business user, the average consumer of the remaining services in class 39 i.e. “pizza and milkshake delivery services” and all of the services in class 43 will be a member of the general public. I must now determine how these services are selected. In relation to those I have concluded will be directed at the general public, my own experience tells me that as such services are most likely to be selected from signage on the high street, from promotional literature (in either loose leaf form or in magazines) or from the pages of a website, visual considerations are likely to have an important part to play. As such services are, in my experience, also the subject of oral recommendations, aural considerations will be a not insignificant, albeit, in my view, a somewhat less important part of the selection process. Although the cost of, for example, restaurant services can vary widely, as the selection of the majority of the services at issue are likely to constitute fairly inexpensive routine choices, I would not expect the average consumer to pay anything more than a low to average degree of attention to their selection. As the cost or importance of the selection increases (the selection of a restaurant to mark an important occasion or a caterer for a wedding for example), so will the degree of attention paid to the selection.

18. That leaves those services I have concluded will be directed to a business user i.e. “business management and administration of activities related to franchisees” in class 35 and “transportation and delivery of products to catering and restaurant type retail outlets” in class 39 to be considered. Given the nature of these services, their obvious importance to the efficient operation and success of any commercial undertaking and the sums of money likely to be at stake during the selection process, I would expect the average consumer to, for example, inspect relevant trade publications and websites and to seek views from other business users prior to making a selection. While the above suggests that, once again, the selection process is likely to consist of a mixture of visual and aural considerations, here again, I think, visual considerations are likely to play the dominant role with, for the


reasons I have indicated above, the average consumer paying an above average degree of attention to their selection.

Comparison of trade marks

19. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the trade marks must be assessed by reference to the overall impressions created by the trade 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, artificially to dissect the trade marks, although, it is necessary to take into account the distinctive and dominant components of the trade marks and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the trade marks. The trade marks to be compared are as follows:

Opponent’s trade mark	Applicant’s trade mark
BlendiT	

The correct approach to the comparison of the competing trade marks

21. Although in her submissions the opponent refers to the way in which her trade mark is actually used i.e. “Our logo is made up of the text “blendit” in large bold lowercase lettering. Where “blend” is in white lettering and “it” is in orange lettering...”, as the applicant points out in its submissions, that is not the trade mark that the opponent has registered. What I must once again do (as I mentioned in relation to the competing specifications of services), is to make a notional comparison of the opponent’s trade mark in the form in which it is registered with the trade mark the subject of the application.

22. The opponent's trade mark consists of seven letters, the first and last letter of which are in upper case with the remainder in lower case. In its counterstatement, the applicant states that the use of the capitalisation in the opponent's trade mark:

“does not make it immediately clear to consumers that the words being conveyed is “blend it”

I disagree. In my view, the average consumer will identify the fact that the first five letters form the well known English language word “Blend”. Having done so, in my view, the average consumer will, despite the unusual casing of the letters following the letter “d”, interpret the remaining letters in the trade mark i.e. “iT” as the word “it”, a word with which they will be very familiar. Although presented as one word, the opponent's trade mark consists of two elements neither of which is dominant. Rather, the overall impression the opponent's trade mark conveys and its distinctiveness, results from the unusual manner in which it is presented and its ability to convey the meaning “Blend it.”

23. As to the applicant's trade mark, this consists of four elements. These are: (i) the words “Blend” and “it” presented at an angle in an unremarkable script, (ii) a device which appears below these words and functions as an underlining, (iii) the word “Milkshakes” (also presented at an angle in the same unremarkable script), and (iv) the colours red and white in which the various elements are presented. The device element which functions as an underlining is non-distinctive, and, like the script and colours in which the trade mark is presented, has very little weight in the overall impression it conveys. Insofar as the word “Milkshakes” is concerned, this is not negligible and will contribute to the trade mark's overall impression. However, in relation to many of the services for which registration is sought (which could relate to the provision of milkshakes) this would not be a distinctive contribution. Whilst this conclusion may be considered arguable in relation to, for example, “pizza delivery services” in class 39 and “food preparation services” in class 43, in relation to those services of actual interest to the applicant (which in its counterstatement it describes as to operate “a milkshake bar”), the word “Milkshakes” is clearly descriptive of the applicant's business. In view of the above, and given their size and positioning in relation to the other elements in the applicant's trade mark, it is the words “Blend it” that are the distinctive element and which will dominate the overall impression the applicant's trade mark conveys.

24. Notwithstanding the unusual manner in which the opponent's trade mark is presented, it will, as I explained above, in my view, be unpacked by the average consumer as the words “Blend it”. As it is this combination of words which will dominate the overall impression created by the applicant's trade mark, there is, in my view, at least a reasonable degree of visual similarity between the competing trade marks. As to aural similarity, in my view, the opponent's trade mark will be pronounced as “Blend it”. As to the applicant's trade mark, this may be pronounced as either “Blend it” or “Blend it Milkshakes”. In the latter case, there is a high degree of aural similarity; in the former case, the competing trade marks are aurally identical. Finally, the presence in both trade marks of elements that will be interpreted as the words “Blend it”, results in conceptual identity. The inclusion in the applicant's trade mark of the word “Milkshakes”, does not change the conceptual meaning of the words “blend it” (if anything it reinforces it).

Distinctive character of the opponent's trade mark

25. The distinctive character of a trade mark can be appraised only, first, by reference to the services in respect of which registration is sought and, secondly, by reference to the way it is perceived by the relevant public – *Rewe Zentral AG v OHIM (LITE)* [2002] ETMR 91. 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 services for which it has been registered as coming from a particular undertaking and thus to distinguish those services from those of other undertakings - *Windsurfing Chiemsee v Huber and Attenberger* Joined Cases C-108/97 and C-109/97 [1999] ETMR 585.

26. These are fast track opposition proceedings in which it was not necessary for the opponent to provide evidence of the use she may have made of her earlier trade mark. As I mentioned above, in her submissions the opponent provided information regarding the form in which her trade has been used. She also provided information relating to the nature of her business, the length of time her trade mark had been used and steps she had taken to promote it. At the end of her submissions, the opponent states:

“Any evidence can be supplied on request such as logo, menu, radio advertisement and statement from customers.”

27. In the official letter of 15 May 2015, the parties were allowed a period of 14 days to request leave to file evidence. Had the opponent wished to rely upon the information contained in her submissions, she should have responded to that request. As she did not, I have only the inherent characteristics of her trade mark to consider. In her submissions, the opponent stated:

“The “blend it” phrase originates from the process used to produce a milkshake or smoothie product. When producing these products the ingredients are placed in a blender and blended in the blender hence, the phrase “blend it”.

In its submission, the applicant states:

“8.2 The opponent has described the origin of the mark with the effect that the trade mark is, as argued by the opponent incapable of performing its function as a trade mark. The opponent has made a very compelling case for its mark to be cancelled on the basis the phrase is descriptive and non-distinctive.”

28. Had the applicant considered that to be the case, the proper course was for it to seek to invalidate the opponent's earlier trade mark. As a review of the trade marks register at the time of writing this decision indicates that no such action has been taken against the opponent's trade mark, the comments of the CJEU in *Formula One Licensing BV v OHIM*, Case C-196/11P are relevant where it held 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 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).”

29. As I indicated above, while the opponent’s trade mark will, in my view, be construed by the average consumer as the words “Blend it”, that is not her trade mark; her trade mark is “BlendiT”. Whilst I accept that the opponent’s trade mark may have highly allusive qualities in relation to perhaps “milkshake delivery services” in class 39 and “provision of fruit juices and milkshakes in class 43”, that is not the case in relation to the vast majority of services for which it stands registered. However, even if the words “Blend it” were considered to be descriptive or non-distinctive in relation to all of opponent’s services (which, given the acceptance of the applicant’s trade mark in relation to identical services and in which the words “Blend it” are presented in a conventional manner does not appear to be the case), the unusual presentation of the opponent’s trade mark creates, in my view, an element of disguise and, as a consequence, a degree of distinctiveness. Regardless, as the comments in *Formula One* make clear, it is not, in any case, permissible for me to conclude that the opponent’s earlier trade mark has no distinctive character and I shall proceed on the basis that, absent use, it has at least a low degree of inherent distinctive character.

Likelihood of confusion

30. In determining whether there is a likelihood of confusion, a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective services and vice versa. As I mentioned above, it is also necessary for me to keep in mind the distinctive character of the opponent’s trade mark as the more distinctive this trade mark is, the greater the likelihood of confusion. I must also keep in mind the average consumer for the services, 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 he has retained in his mind. Earlier in this decision I concluded that:

- the competing services are identical;
- the average consumer is either a business user or a member of the general public;
- the services at issue will be selected by a mixture of visual and oral means, with the visual component likely to dominate;
- while the degree of attention paid during the selection process will vary, in the main, a member of the public will pay a low to average degree of attention, whereas a business user's level of attention will be above average;
- the overall impression created by the opponent's trade mark will be of the words "Blend it";
- the words "Blend it" are the distinctive and dominant element of the applicant's trade mark;
- the competing trade marks are visually similar to at least a reasonable degree, aurally similar to at least a high degree and conceptually identical;
- the opponent's trade mark is possessed of at least a low degree of inherent distinctive character.

31. The fact that the opponent's trade mark has only a low degree of inherent distinctive character does not preclude a 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."

32. In reaching a conclusion, I remind myself of the identity in the services, the nature of the average consumer, the varying levels of care taken during the purchasing act and the degree of similarity in the competing trade marks. Having

done so, and proceeding on the basis that the opponent's earlier trade mark has only a low degree of inherent distinctive character, there will still, in my view, be a likelihood of confusion. Even if the differences between the competing trade marks are considered sufficient to avoid direct confusion i.e. where one trade mark is mistaken for the other, there remains, in my view, a likelihood of indirect confusion i.e. where the similarities leads the average consumer to assume that the identical services at issue originate from undertakings which are economically linked. Although I am satisfied that this conclusion applies to both sets of average consumers I have identified, the likelihood of confusion is even more pronounced when considered from the perspective of an average consumer who is paying only a low to average degree of attention during the purchasing act, a degree of attention which, in turn, will make them more prone to the effects of imperfect recollection.

33. Finally, in reaching the above conclusions, I have not overlooked the fact that the applicant's trade mark is presented in the colours red and white. In *Specsavers International Healthcare Ltd & Others v Asda Stores Ltd* [2012] EWCA Civ 24 at [96] Kitchin LJ stated:

“A mark registered in black and white is, as this court explained in *Phones 4U* [2007] R.P.C. 5, registered in respect of all colours.”

As it would be legitimate for the opponent to present her trade mark in these colours, the fact that the opponent's trade mark is presented in black and white is not a point which assists the applicant.

Overall conclusion

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

Costs

35. As the opponent has been successful she is entitled to a contribution towards her costs. Awards of costs are governed by Annex A of Tribunal Practice Notice (TPN) 4 of 2007. Using that TPN as a guide, but making no award to the opponent in respect of her written submissions (which for the most part related to the use she states she has made of her earlier trade mark) which are not matters germane to the issue before the Tribunal, I award costs to the opponent on the following basis:

Preparing a statement and considering the applicant's statement:	£200
Opposition fee:	£100
Total:	£300

36. I order Blend It Shakes Ltd to pay to Safeena Ahmed the sum of **£300**. This sum is to be paid within fourteen days of the expiry of the appeal period or within fourteen days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 14th day of July 2015

C J BOWEN
For the Registrar