

O-002-17

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. 3138295
BY CHICV HOLDING LIMITED**

TO REGISTER THE TRADE MARK:

STYLEWE

IN CLASS 35

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 406004
BY WE BRAND S.A.R.L**


BACKGROUND

1. On 28 November 2015 ChicV Holding Limited (the applicant) applied to register the mark shown on the cover page of this decision for the services listed below:

Class 35: Online retail store services connected with clothing; provision of an on-line marketplace for sellers and buyers of goods and/or services; provision of an on-line marketplace connected with clothing.

2. The application was published for opposition purposes on 8 January 2016.

3. The application is opposed by WE Brand S.a.r.l (the opponent) for all the services shown above under Section 5(2)(b) of Trade Marks Act 1994 (the Act). For the purpose of its claim the opponent relies on three marks, the details of which can be seen in the following table:

Mark details	Goods/services relied upon
<p data-bbox="204 1133 783 1167">European Union Trade Marks (EUTM)</p> <p data-bbox="204 1182 411 1216">No. 11312667</p>  <p data-bbox="204 1413 379 1447">Filing date:</p> <p data-bbox="204 1462 464 1496">1 November 2012</p> <p data-bbox="204 1576 480 1610">Registration date:</p> <p data-bbox="204 1626 379 1659">1 April 2013</p>	<p data-bbox="810 1133 1386 1995">Class 35: Advertising; business management; business administration; office functions; retail business services and the bringing together of cosmetics, perfumery, glasses, jewellery, leather products, clothing and clothing accessories and shoes, for the benefit of third parties in order to give consumers the possibility to examine and buy these products; sale promotion; business mediation in the purchase and sale of products; business mediation services in the trading of products to wholesalers; office functions in the field of drafting and closing of franchise agreements regarding the before</p>

	mentioned services; the aforesaid services also offered via electronic channels, including the Internet.
International Registration (IR) No. 1223927 WE FASHION International registration date: 20 May 2014 Date of designation of the EU: 20 May 2014 Date of protection granted in the EU: 29 September 2015	Class 25: Clothing, footwear, headgear, namely bonnets, hats and caps. Class 35: Retail business services relating to, and the bringing together (excluding transport) of products made of leather, namely leather handbags, wallets, purses and briefcases, umbrellas and parasols, trunks and travelling bags, bags not included in other classes ¹ , clothing, clothing accessories, footwear and headgear for third parties in order to enable consumers to view and buy these products; sales promotion; business mediation in the purchase and sale of products; mediation in commercial matters in the marketing of products in the context of the services of wholesalers; administrative services in connection with preparing and concluding of franchise agreements relating to the aforesaid services; the aforesaid services also provided via electronic channels, including the internet.
International Registration (IR) No. 1213402	Class 25: Clothing, footwear, headgear, bonnets, hats and caps; belts.

¹ The words “namely leather handbags, wallets, purses and briefcases, umbrellas and parasols, trunks and travelling bags, bags not included in other classes” do not appear in the registered specification, however, for reasons which will become apparent I do not need to deal with this inconsistency.

 <p>International registration date: 20 May 2014</p> <p>Date of designation of the EU: 20 May 2014</p> <p>Date of protection granted in the EU: 23 June 2015</p>	<p>Class 35: Advertising; business management; business administration; administrative services; retail business services relating to, and the bringing together (excluding transport) of products made of leather, clothing, clothing accessories, footwear and headgear for third parties in order to enable consumers to view and buy these products; sales promotion; business mediation in the purchase and sale of products; mediation in commercial matters in the marketing of products in the context of the services of wholesalers; administrative services in connection with preparing and concluding of franchise agreements relating to the aforesaid services; the aforesaid services also provided via electronic channels, including the internet.</p>
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4. The opponent claims that there is a likelihood of confusion, including the likelihood of association, because the marks are similar and because the goods and services are identical or highly similar.

5. The applicant filed a counterstatement denying the grounds of opposition.

6. Both sides filed written submissions during the evidential rounds. Whilst neither of the parties asked to be heard, they both filed written submissions in lieu of attendance at a hearing. I do not intend to summarise these submissions here, but I will bear them in mind and refer to them where appropriate.

DECISION

7. Section 5(2)(b) of the Act reads:

“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(1) of the Act, which states:

“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.”

9. In its notice of opposition, the opponent relies on its registration nos. 11312667, 1223927 and 1213402. In my view, the opponent’s best prospect of success lies with the marks 11312667 and 1223927. If the opponent cannot succeed in respect of these earlier registrations, it will be in no better position with regard to its other mark. I proceed on that basis. Both of these marks are earlier marks within the meaning of section 6(1) of the Act. As these marks had not completed their registration process more than 5 years before the publication date of the application in suit, they are not subject to proof of use as per Section 6A of the Act. The opponent can, as a consequence, rely upon the goods and services it has identified without having to prove use.

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:

- (a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;
- (b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;
- (c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;
- (d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;
- (e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;
- (f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a

composite mark, without necessarily constituting a dominant element of that mark;

- (g) a lesser degree of similarity between the goods or services may be offset by a greater degree of similarity between the marks, and vice versa;
- (h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;
- (i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;
- (j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;
- (k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

Comparison of goods and services

11. Some of the contested goods and services, e.g. *online retail store services connected with clothing* are identical to the goods and services on which the opposition is based, e.g. *retail business services and the bringing together of clothing, the aforesaid services also offered via electronic channels, including the Internet (11312667)* and *retail business services relating to, and the bringing together (excluding transport) of clothing, the aforesaid services also provided via electronic channels, including the internet (1223927)*. For reasons of procedural economy, I will not undertake a full comparison of the goods and services listed above. The examination of the opposition will proceed on the basis that the contested goods and services are identical to those covered by the earlier marks. If the opposition fails, even where the goods and services are identical, it follows that the opposition will also fail where the goods and services are only similar.

The average consumer and the nature of the purchasing act

12. As the case law above indicates, it is necessary for me to determine who the average consumer is for the services at issue; I must then determine the manner in which these services will be selected 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.”

13. The average consumer of the parties’ online retail services relating to clothing is a member of the general public. Whilst the average consumer of expensive clothing is likely to pay a higher degree of attention to the selection of an appropriate retailer, the position must also be considered from the perspective of more standard clothing and its retail, in which case the retailer will be selected with an average degree of care and attention. The selection process will be undertaken via predominantly visual means after perusal of websites, catalogues and advertising material, so visual aspects of the marks take on more importance, but there may be some scope for aural use of the marks given that recommendation by word of mouth may be sought by the average consumer.

14. The applied for online marketplace services cover the provision of an online platform for the promotion and sale of clothing and third parties’ goods and services. Even if the goods/services the subject of the marketplace could be more considered in some circumstances, it is worth noting that the specification relates to the marketplace services, not the actual goods/services themselves. The services will be sought by both independent sellers, i.e. individuals and small businesses, who use

the marketplace to market and sell their goods/services and end-users who purchase the goods/services offered through the marketplace. The service provider is likely to be selected with an average degree of care and attention by the end-users and the casual seller, though a business user is likely to pay a higher degree of attention because considerations relating to market target and marketing strategy will be born in mind. Once again, the selection of the services is overwhelmingly a visual one, not least because the services are provided via websites, though I do not discount aural considerations.

Distinctive character of earlier mark

15. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*²⁶, the Court of Justice of the European Union (CJEU) stated that:

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

16. In relation to the 11312667 mark, the mark will be understood as the letters WE (I say more about this below). Though I have no evidence on how the public would perceive these letters in the mark, I think it is likely (and the opponent seems to agree) that the average consumer will regard them as having the significance of the first person plural pronoun 'we', which reflects a well-known use of the word in ordinary everyday language. The word has no particular descriptive significance in the context of the registered goods and services, though it is not highly distinctive such as an invented or unusual word. The stylisation of the letters adds some distinctiveness to the mark, however, as this element has no counterpart in the applied for mark, this cannot strengthen the opponent's case². Overall, whilst I bear in mind that a registered trade mark must be assumed to have 'at least some distinctive character'³, given the nature of the word and the intensity of its use for the UK average consumer, I would assess the degree of distinctiveness of the mark 11312667 to be of a moderate level.

17. Insofar as the mark 1223927 is concerned, the word WE is combined with the word FASHION to form the phrase WE FASHION (I say more about this below). In the context of the registered retail business services relating to clothing, which, I have already found, represent the opponent's most favourable position, the phrase WE FASHION is clearly allusive of area of trade and I consider that the mark is possessed of a low to moderate degree of inherent distinctive character.

Comparison of marks

18. 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 them, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

² The level of 'distinctive character' is only likely to increase the likelihood of confusion to the extent that it resides in the elements of the marks that are similar. See *Kurt Geiger v A-List Corporate Limited*, BL O-075-13

³ *Formula One Licensing BV v OHIM*, Case C-196/11P

“.....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.”

19. It would be wrong therefore artificially to dissect the marks, although it is necessary to take into account their distinctive and dominant components and to give due weight to any other features, (which are not negligible) and therefore contribute to the overall impressions created by them.

20. The respective marks are shown below:

Applicant’s mark	Earlier mark (11312667)	Earlier mark (1223927)
STYLEWE	WE	WE FASHION

Overall impression

21. The applied for mark consists of the single word STYLEWE presented in plain capital letters of equal size. The opponent argues that the mark will be seen, spoken and perceived as two words STYLE and WE whilst the applicant disputes that the mark consists of (and will be perceived as) a single invented word STYLEWE. In particular, the opponent’s primary argument is that the element WE retains an independent distinctive role in the STYLEWE mark in accordance with the *Medion*⁴ case, the principle from which I have noted already as:

“(f) ...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

⁴ Case C-120/04 *Medion AG v Thomson Multimedia Sales Germany & Austria GmbH*

composite mark, without necessarily constituting a dominant element of that mark”

22. I do not agree with the opponent that WE plays an independent distinctive role in the STYLEWE mark. Looking at the mark, my first impression is that it is a compact and homogeneous sign and it reads only as a one-word mark. I am not convinced that the average consumer will readily divide STYLEWE in two parts. There is no space between the letters ‘E’ and ‘W’ and because all of the letters are of the same size, the mark does not naturally lend itself to be divided into two distinct elements. Further, there is nothing particularly noticeable about the sequence WE which would have a striking effect upon the eye in a way that consumers would immediately separate it from the rest of the mark. I must, of course, bear in mind that fair and notional use of the applied for mark will cover use in a variety of scripts; but it is a step too far to consider than normal and fair use would encompass a presentation of the mark in a combination of upper and lower case which would accentuate the separation between the sequences STYLE and WE in a way that it would artificially divide the mark up into two parts, e.g. StyleWe, STYLEwe, styleWE. The word in the applied for mark is STYLEWE and, I agree with the applicant, it is how it will be seen by the average consumer. Accordingly, the mark will be understood as a meaningless invented word and its distinctiveness lies in its totality.

23. I will now consider each of the marks relied upon in turn.

24. The 11312667 mark consists of two identical stylised elements with three prongs, one facing up and one turned on the side. These elements most resemble the two letters of the alphabet W and E. Regardless of whether the average consumer is likely to look at the opponent’s mark as a device mark or a letter mark with a particular stylisation, the overall impression the trade mark creates will be dominated by what, in my view, will be construed as the distinctive word WE. This is likely to create in the mind of the average consumer an association with the concept of the first person plural pronoun ‘we’ and the opponent does not state otherwise. However, as the degree of stylisation is far from negligible, it too will contribute to the overall impression, although to a lesser extent.

25. The 1223927 mark consists of the two words WE FASHION presented in plain capitals. The word FASHION is weakly distinctive in relation to the registered retail services relating to clothing. Insofar as the word WE is concerned, it seems to me that it could be perceived and remember in two ways. It could function as the pronoun 'we', in a manner that WE FASHION would be understood as a phrase that hangs together. Whilst the combination of words is unusual, the phrase has clearly some allusive qualities and it is likely to be perceived as the provider referring to itself and to its area of trade in some form of slogan. Based on this interpretation, the distinctiveness of the mark lies in the combination of the words and the element WE does not retain an independent distinctive role. In the alternative, the sequence WE could be perceived as a trading name, i.e. a company called WE, in which case the word FASHION would have little significance in the mark and the distinctive component of the mark would be the element WE. However, in view of the manner in which the mark is presented and given the opponent's submissions that the public will perceive the earlier sign as the pronoun 'we', I think the former is more likely than the latter.

Visual similarity

26. From a visual point of view, the visual impressions created by the 11312667 mark and the applied for mark are strikingly different. The applied for mark is a word mark presented in standard upper case whereas the earlier mark is a fairly stylised mark. The marks are of different length and whilst there is a similarity to the extent that the letters WE are discernible in the 11312667 mark, which creates a point of coincidence with the last two letters of applied for mark, the difference in their appearance cancel out the initial point of similarity. Overall, I find that there is no visual similarity between the marks⁵.

27. In respect of the 1223927 mark, both marks are presented as plain word marks so that the difference in their presentation is less significant. However, the word

⁵ See the comments of Iain Purvis, Q.C., sitting as the Appointed Person, in *The Royal Academy of Arts v Errea Sport S.p.A* (BL O/010/16) where he upheld a Tribunal decision that there was no visual similarity between two marks when one comprised the letters RA and the other contained a highly stylised representation of what would be seen as conveying the idea of the letters RA.

FASHION is made up of letters that do not bear any visual resemblance with the letters of the applied for mark. This creates a noticeable visual difference. Both marks contain the element WE combined with the sequence STYLE and the word FASHION respectively, however, the common element is placed on opposite sides of the words and the marks have different beginnings. Further the earlier mark is presented as a two-word mark whereas the applied for mark is presented as a one-word mark. Overall the degree of similarity is low.

Aural similarity

28. I already found that the figurative elements of the 11312667 mark resemble the letters W and E. In line with my finding that the word WE in the earlier marks is likely to be perceived as the pronoun 'we', the marks will be pronounced as WEE (11312667) and WEE FASHION (1223927), respectively. On the basis of my finding that the STYLEWE mark will be perceived as one word, I am of the view that the most likely pronunciation of the mark is STYLE-YOU, in which case the common element WE will be articulated as YOU rather than WEE and there would be no phonetic similarity with neither of the earlier marks.

29. If the mark is divided as the opponent suggests, it will be pronounced as STYLE – WEE. This means that the 11312667 mark would have the same sound of the last syllable of the applied for mark, in which case the marks would be aurally similar to, at best, a medium degree. In respect of the 1223927 mark, the pronunciation of the elements FASHION and STYLE will create a noticeable phonetic difference and I consider that the overall degree of aural similarity will be low.

Conceptual similarity

30. For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer. The assessment must be made from the point of view of the average consumer. I have already found that the relevant public will see STYLEWE as an invented word with no meaning. Even if I were to accept the possibility that the average consumer would identify in the mark two elements,

STYLE and WE, the combination of these elements does not send a clear conceptual message.

31. In the 11312667 mark, I have already found that the sequence WE is likely to be perceived as the first person plural pronoun “we” and that in the mark 1223927 the phrase WE FASHION is likely to be taken as a form of slogan clearly allusive of the area of trade. Overall, there is no conceptual similarity between the marks.

Likelihood of confusion

32. 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 marks may be offset by a greater degree of similarity between the respective services and vice versa. 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 marks and must instead rely upon the imperfect picture of them he has retained in his mind.

33. Both parties referred to European Union Intellectual Property Office (EUIPO) decisions in opposition proceedings where the opponent opposed the registration of different marks from the one at issue based on earlier marks other than the ones relied upon in these proceedings (although the graphical representation of the marks relied upon before the EUIPO was the same as the ones relied upon in these proceedings). Aside from the fact that decisions of the EUIPO do not bind national offices, the marks to which the EUIPO decisions refer were certainly not on all fours with the instant case. Thus, I will say no more about it.

34. There are two types of relevant confusion to consider: direct confusion (where one mark is mistaken for the other) and indirect confusion (where the respective similarities lead the consumer to believe that the respective goods come from the same or a related trade source). This distinction was summed up by Mr Iain Purvis Q.C. sitting as the Appointed Person in *L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10:

“16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: “The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark.

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

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

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

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

35. The opponent’s submissions are clearly framed on the basis that there is a likelihood of indirect, rather than direct, confusion. In my view this is a wise approach simply because the difference between the competing marks are so pronounced that

even proceeding on the most favourable position for the opponent that identical services are involved, it is very unlikely that anyone paying an average degree of attention would directly confuse the marks. This is all the more so since I found that the selection process is overwhelmingly a visual one and that there is no visual similarity with the 11312667 mark and only a low degree of similarity with the 1223927 mark. I will proceed, therefore, on that basis.

36. The opponent claims that there is a likelihood of confusion on the basis that the dominant component in the applied for mark is the element WE and that the other element of the mark, the sequence STYLE, is weak. According to the opponent, as the differences between the competing marks are created by a weak element, they are insufficient to differentiate them. The opponent submits that this is likely to result in the average consumer believing that the applied for mark is “a particular category of the same brand and [attributing] the same commercial origin to the services offered by the opponent and applicant”. In this connection, it refers me to Case T-104/01⁶ in which the General Court (GC) recognised that it is common for clothing manufacturers to use sub-brands and argues that “the public will perceive trade marks used in the fashion industry that have elements in common as originating from the same companies”. However, this is not what the Court said. In the relevant part of that decision, the Court referred to sub-brands as “signs that derive from a principal mark and which share with it a common dominant element, in order to distinguish his various lines from one another (women's, men's, youth).” Whilst the sub-brand argument could have had a bearing if the word WE was featured independently in the applied for mark, that is not the case here. In this connection, I note that in a recent decision, BL-O-590/16, the Appointed Person upheld a Tribunal decision where the Hearing Officer rejected the opponent’s submission that the dominant element of the word “mobicard” was “mobi” because the “card” element was not distinctive in the context of the concerned class 36 services. The Appointed Person stated:

“Whilst it is correct that, in accordance with the case law of the Court of Justice of the European Union (“**CJEU**”) cited by the Hearing Officer in

⁶ *Claudia Oberhauser v OHIM*

paragraph 10 of her Decision, an overall impression conveyed to the public may be dominated by one or more of its components the word element in the mark applied for is not ‘*mobi*’ but ‘*mobicard*’ and therefore even if it was appropriate to regard the word elements as dominant the comparison would be ‘*mobicard*’ and ‘*Mobe*’. To do otherwise would be to artificially dissect the word element of the mark applied for that is to say to ignore entirely one half of the word element (which is presented as a single word) of the mark applied for contrary to the case law of the CJEU.”

37. Applying similar considerations to the case at issue, I have found that the average consumer will extract from the 11312667 mark the word WE which is the dominant and distinctive element of the mark. I also found that the element WE is absorbed in the word STYLEWE and can be extracted only by a process of dismemberment that the average consumer is not likely to engage in. Accordingly, the distinctive character of the applied for mark resides in the word STYLEWE and the element WE does not bear an independent distinctive role within the mark. The opponent’s conclusion implies that the average consumer would take the applied for mark as a brand extension of the earlier mark but, as the applicant submits, in a brand extension the brand would not normally become part of a word in such a way as to lose its independent distinctive role. This is all the more so when the brand name is possessed of only a moderate degree of inherent distinctive character and has the significance of a word commonly used in everyday language which the average consumer would not be surprised to find being used by other providers. Accordingly, I find that even where identical services are involved and an average degree of attention is paid, the presence of the common element WE will not result in the average consumer assuming that the marks are used by economically connected undertakings. **There is no likelihood of indirect confusion in respect of the 11312667 mark.**

38. In respect of the 1223927 mark, I found that, due to the make-up of the mark, the element WE is unlikely to be perceived as a brand name and does not perform an independent distinctive role within the mark. Rather, it will be seen as being part of the phrase WE FASHION in which it has the significance of the pronoun ‘we’, rather than of a trading name. For any resemblance between the WE FASHION mark and

STYLEWE mark to be identified, one must indulge not only in a dissection of the mark, but also in an inversion of the order of the words, i.e. WE STYLE, in which case one would be comparing different marks. Further, even in that case, the opponent's argument is not based on the significance of the word WE as a brand name and I have found that the term 'we' having the significance of a pronoun in the phrase WE FASHION does not necessarily retain an independent distinctive role. There are, quite simply, too many steps and speculations for a real likelihood of confusion to be found. Overall, I find that the marks are not distinctively similar and even if the average consumer were to note the element WE in the mark STYLEWE, it would not assume to indicate an economic link. **There is no likelihood of indirect confusion in respect of the 1223927 mark.**

Conclusion

39. The opposition fails.

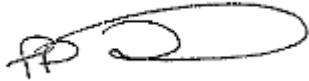
COSTS

40. As the applicant has been successful, it is entitled to a contribution towards its costs. Awards of costs are governed by Annex A of Tribunal Practice Notice ("TPN") 4 of 2007. Using that TPN as a guide, I award costs to the applicant on the following basis:

Considering the Notice of Opposition and filing a counterstatement:	£200
Preparing written submissions and considering the other party's submissions:	£250
Total:	£450

41. I order WE Brand S.a.r.l to pay ChicV Holding Limited the sum of **£450**. 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 day 4TH January 2017

A handwritten signature in black ink, appearing to be 'TP' followed by a large, stylized flourish.

**Teresa Perks
For the Registrar
The Comptroller – General**