

O/010/21

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00003468278

BY ALISON SMITH

TO REGISTER THE TRADE MARK:



IN CLASS 43, 44 AND 45

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. 600001410

BY LOUISE ROOT

## **Background and pleadings**

1. On 19 February 2020, Ms Alison Smith (“the applicant”) applied to register the trade mark shown on the cover page of this decision in the UK. The application was published for opposition purposes on 6 March 2020. The applicant seeks registration for the following services:

Class 43     Animal boarding; Animals (Boarding for -) ;Boarding for animals; Boarding for pets; Boarding kennel services; Cattery services; Dog day care services; Pet boarding services; Pet day care services; Pet hotel services.

Class 44     Pet bathing services; Pet grooming; Pet grooming services.

Class 45     Pet sitting.

2. The application was opposed by Ms Louise Root (“the opponent”) on 6 May 2020. The opposition is based upon section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). For the purposes of her opposition based upon section 5(2)(b), the opponent relies on the following trade mark:

### **VERY IMPORTANT PETS**

UK registration no. UK00002435790

Filing date 16 October 2006; registration date 8 June 2007.

Relying upon all goods for which the earlier mark is registered, namely:

Class 43     Pet boarding, dog boarding.

Class 44     Professional pet sitting services, pet feeding, dog walking, pet grooming, pet nail clipping services, pet medication services, pet day care, doggie day care, pet minding, live in pet sitting.

3. The opponent claims that her mark is similar to the applicant's mark and is opposing all services for which the applicant seeks protection.

4. The applicant filed a counterstatement denying the claims made.

5. The opponent filed evidence of use with her Form TM7F. 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.”

6. The net effect of these changes is to require the parties to seek leave in order to file evidence in fast track oppositions. No leave was sought to file any further evidence in respect of these proceedings.

7. 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; neither party elected to file written submissions.

8. Both parties are unrepresented.

### **Evidence**

9. The opponent filed evidence which accompanied her TM7F dated 5 June 2020 in the form of exhibits 1 to 23. I have considered the opponent's evidence in its entirety and will summarise the relevant parts of it below, where appropriate.

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

10. Section 5(2)(b) reads as follows:

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

(a)...

(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.”

11. 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.”

12. Given the filing date for the applicant’s trade mark, it qualifies as an earlier trade mark under section 6 of the Act. Although the opponent’s mark had been registered for more than 5 years at the date of the application in issue and is, therefore, subject to the proof of use provisions in section 6A of the Act, the applicant did not request

that the opponent provide proof of use in her counterstatement. Consequently, the opponent can rely upon all of the services she has identified.

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

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:

- (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.

**Comparison of services**

14. The competing services are as follows:

<b>Opponent's services</b>	<b>Applicant's services</b>
<u>Class 43</u> Pet boarding, dog boarding.	<u>Class 43</u> Animal boarding; Animals (Boarding for - ); Boarding for animals; Boarding for

<p><u>Class 44</u> Professional pet sitting services, pet feeding, dog walking, pet grooming, pet nail clipping services, pet medication services, pet day care, doggie day care, pet minding, live in pet sitting.</p>	<p>pets; Boarding kennel services; Cattery services; Dog day care services; Pet boarding services; Pet day care services; Pet hotel services.</p> <p><u>Class 44</u> Pet bathing services; Pet grooming; Pet grooming services.</p> <p><u>Class 45</u> Pet sitting.</p>
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15. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, the General Court (“GC”) stated that:

“29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 Institut for 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.”

### **Class 43**

16. “Doggie day care” in the opponent’s specification is self-evidently identical to “dog day care services” in the applicant’s specification.

17. “Pet day care services” in the applicant’s specifications is self-evidently identical to “pet day care” in the opponent’s specification.

18. “Pet boarding” and “dog boarding” in the opponent’s specification will be either self-evidently identical or identical on the principle outlined in *Meric* to “Animal boarding”, “Animals (Boarding for)”, “Boarding for animals”, “Boarding for pets”,

“Boarding kennel services”, “Pet boarding services” and “Pet hotel services” in the applicant’s specification.

19. “Cattery services” in the applicant’s specification will also fall within the broader category of “pet boarding” in the opposition’s specification. These services can, therefore, be considered identical on the principle outlined in *Meric*.

#### **Class 44**

20. “Pet grooming” in the opponent’s specification and “pet grooming services” in the applicant’s specification are self-evidently identical.

21. “Pet grooming” appears identically in both the opponent’s specification and the applicant’s specification.

22. “Pet bathing services” which appears in the applicant’s specification will fall within the broader category of “Pet grooming” in the opponent’s specification. These services can, therefore, be considered identical on the principle outlined in *Meric*.

#### **Class 45**

23. “Pet Sitting” in the applicant’s specification and “professional pet sitting services” in the opponent’s specification are self-evidently identical.

24. I note that the parties’ goods are registered in different classes. However, I bear in mind the decision of Ms Anna Carboni, as the Appointed Person, in *Proctor and Gamble Company v Simon Grogan*, BL O/176/08, in which she stated:

“31. [...] The International Classification system is used to classify goods and services for the purposes of registration of United Kingdom trade marks pursuant to section 34(1) of the Act and rule 7(2) of the Trade Marks Rules 2000 (as amended).



32. The International Classification system also applies to Community trade marks. Rule 2(4) of Commission Regulation 2968/95/EC implementing the Regulation on the Community trade mark (40/94) states as follows:

(4) The classification of goods and services shall serve exclusively administrative purposes. Therefore, goods and services may not be regarded as being similar to each other on the ground that they appear in the same class under the Nice Classification, and goods and services may not be regarded as being dissimilar from each other on the ground that they appear in different classes under the Nice Classification.

33. It is thus made plain under the Community trade mark system that class numbers are irrelevant to the question of similarity of goods and services.

34. There is no similarly plain provision in the Act or the Directive. The Court of Appeal has held that, although the purpose of classifying goods and services is primarily administrative, that does not mean that the class numbers in an application have to be totally ignored in deciding, as a matter of construction, what is covered by the specification: *Altecnic Ltd's Trade Mark Application (CAREMIX)* [2001] EWCA Civ 1928, [2002] RPC 639. But neither the Court of Appeal, not the ECJ, not any other court or tribunal in the United Kingdom, has gone so far as to state that class numbers are determinative of the question of similarity of goods in the case of national trade marks. On the contrary, they are frequently ignored.”

25. In reaching my decision I have considered whether the different class numbers prevent me from finding these services to be identical. In light of the above case law, I do not consider that the different class numbers prevent the services from being identical.

### **The average consumer and the nature of the purchasing act**

26. 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 the services are likely to be selected by the average consumer. 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.”

27. The services are largely aimed at members of the general public, more specifically, those who own a pet and therefore the average consumer will be a pet owner. The specifications cover many different services which all have a different frequency of purchase. These will vary from day care services, which may be purchased every day, to kennels which may only be purchased once or twice a year. The average consumer will take various factors into consideration such as the cost and suitability for their specific requirements, bearing in mind the type and breed of animal. Therefore, the level of attention paid during the purchasing process will be medium.

28. The services are likely to be purchased following perusal of signage on specialist outlets or their websites. The purchasing process for these services is, therefore, likely to be dominated by visual considerations. However, I do not discount that there may also be an aural component to the purchase of the services given that advice may be sought from a sales assistants or a recommendation may have been given through word-of-mouth.

### **Comparison of the trade marks**


29. 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.”

30. 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.

31. The respective trade marks are shown below:

Opponent’s trade mark	Applicant’s trade mark
<p style="text-align: center;">VERY IMPORTANT PETS</p>	

32. The opponent's mark consists of three recognisable dictionary words, "VERY IMPORTANT PETS". There are no other elements to contribute to the overall impression, which lies in the combination of these words.

33. The applicant's mark consists of the acronym V.I.P followed by the wording VERY IMPAWTANT PETS. The acronym V.I.P is encased in a crown with pawprint devices. The words VERY IMPAWTANT PETS are presented with a black line above and beneath them. The words are surrounded by a cartoon dog, mouse, cat, goldfish and 4 pawprints on a neutral colour background. In my view, the overall impression lies in the combination of the wording and devices, with the background playing a lesser role in the overall impression.

34. Visually, both marks overlap in the presence of the words "VERY" and "PETS". The wording of IMPORTANT and IMPAWTANT are visually similar, with only two letters (A and W as opposed to O and R) differentiating them. The different letters are in the middle of the word which makes them less striking. The wording in the applicant's mark is slightly stylised. However, as the opponent's mark is a word mark, it can be used in any standard typeface. I do not, therefore, consider the difference in font to be of relevance to my assessment.

35. The acronym V.I.P., the devices, the black lines and the background in the applicant's mark all act as point of visual difference as they have no counterpart in the opponent's mark. I consider that there is between a low and medium degree of visual similarity between the marks.

36. Aurally, the opponent's mark will be given its ordinary English pronunciation of VER-REE IMM-PAWT-TANT PE-TS. The applicant's mark would be pronounced as VEE-AYE-PEE, VER-REE IMM-PAWT-TANT PE-TS. Only the addition of V.I.P acts as a point of aural difference between the two marks. I consider that there is between a medium and high degree of aural similarity between the marks.

37. Conceptually, both marks are likely to be recognised as deriving from the same acronym and saying; "V.I.P" and/or "very important person". However, in the applicant's mark, the word important has been changed to impawtant for a comedic

purpose, to include a reference to an animal's paw. This is likely to be recognised as a reference to the services for which the applicant seeks protection. Moreover, this concept is reinforced by the presence of the cartoon dog, mouse, cat, goldfish and 4 pawprint devices that surround the wording.

38. The marks, therefore, overlap in their reference to the common acronym/phrase "V.I.P" and/or "very important person". However, the alteration of the word IMPORTANT to IMPAWTANT in the applicant's mark will be a point of conceptual difference. Further, there will be some conceptual difference created by the devices in the applicant's mark, for example, the crown device has no counterpart in the opponent's mark. I consider that the marks are conceptually similar to a high degree.

39. Even if I am wrong in my finding that both will be recognised as a reference to the common acronym/phrase "V.I.P" and/or "very important person", the word IMPAWTANT in the applicant's mark will still be seen as a deliberate misspelling of the word IMPORTANT. In those circumstances, I still consider that the marks will be conceptually similar to between a medium and high degree.

#### **Distinctive character of the earlier trade mark**

40. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 the 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 C108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-2779, 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 promotion of 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).”

41. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use that has been made of it.

42. The opponent has not pleaded enhanced distinctiveness. However, as evidence was filed with the Form TM7F, I will consider whether a finding of enhanced distinctiveness could be made for the sake of completeness. For the purposes of this assessment, the relevant date is the date of the application in issue i.e. 19 February 2020. The opponent confirms that the mark VERY IMPORTANT PETS was registered on the 8 June 2007, being used in the South of England, with plans of expansion to the whole of the UK in the next two to three years. For my assessment, the expansion of the business is not relevant, I must only consider the exhibited evidence relating to use of the mark prior to the relevant date in order to demonstrate whether that mark has acquired enhanced distinctiveness.

43. I have noted the sales figures for the opponent’s annual turnover period ending 31 December for VERY IMPORTANT PETS services which was outlined in the opponent’s evidence as below:

2015	£136,003	2018	£129,203
2016	£132,887	2019	£131,787
2017	£129,367		

44. This amounts to around an average turnover of £131,849 yearly. Whilst this is not an insubstantial turnover, it does not appear to me to be a particularly significant market share given what must undoubtedly be an extensive market in the UK.

45. The opponent states that the following figures are the amount that have been spent per year on advertising the services sold under VERY IMPORTANT PETS:

2015	£5,387	2018	£7,175
2016	£8,019	2019	£6,000
2017	£5,000		

46. I also note in particular the following from the opponents evidence to support the investment figures provided in promoting VERY IMPORTANT PETS:

- a) Exhibits 6 and 12, a Time and Leisure Magazine invoice from 2017 depicting costs of £450. There is no information provided regarding what the payment was for, however, given that the payment is to a magazine I will proceed on the basis that it was payment for an advert in the magazine.
- b) Exhibit 8, a VIVIDSKY invoice potentially from 2015. This exhibit was difficult to read and therefore I was unable to determine the exact date of this invoice, however, I could determine the costs which amounted to £191.97.
- c) Exhibit 9, a Web Development invoice for July 2015 and January 2016. This exhibit was difficult to read and therefore I was unable to determine costs incurred.
- d) Exhibit 11, a Photography invoice dated June 2017 for the Very Important Pets Promotional Video depicting costs of £200.
- e) Exhibit 13, a RVN LTD invoice dated 29 September 2017 for the Social Media Package depicting costs of £450.

f) Exhibit 14, a TONIK invoice for web development. The document is very difficult to read and, consequently, I am unable to determine the costs incurred and identify a date.

g) Exhibit 18, a Facebook Advert invoice dated the 8 June 2016 for £160.59.

47. The opponent has also provided scanned copies of what appears to be promotional pamphlets for their different services and a business card.<sup>1</sup> However, all of these appear to be undated and no information has been provided about the distribution of these materials.

48. I note that the geographical use of the mark is limited to just the South of England. I also note, that no market share figure has been provided and that the turnover figures do not appear to represent a particularly significant market share in what must be a fairly extensive market in the UK. I do recognise that the opponent has been using their mark for a number of years and has invested in advertising. However, the sums invested do not seem to me to be particularly high. Taking this all into account, I do not consider that the opponent has demonstrated that the distinctive character of the mark has been enhanced through use.

49. I will now consider the inherent distinctiveness of the opponent's mark.

50. The earlier mark consists of three recognisable dictionary words: VERY IMPORTANT PETS presented in capitals. The words VERY IMPORTANT will be seen as laudatory, and the word PETS will be seen as descriptive of the service. However, combined, the words are an adaption of a well-known phrase 'very important person'. The comical pun element which changes the word person to pets contributes to the distinctive character of the mark, to a degree. Taking all of this into account, I consider that the opponent's mark has a low degree of inherent distinctive character.

### **Likelihood of confusion**

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<sup>1</sup> Exhibits 1 to 5 and Exhibit 22



51. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods or services down to the responsible undertakings being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa. It is necessary for me to keep in mind the distinctive character of the earlier mark, the average consumer for the services and the nature of the purchasing process. In doing so, I must be alive to 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 that he has retained in his mind.

52. The following factors must be considered to determine if a likelihood of confusion can be established:

- I have found the marks to be visually similar to between a low and medium degree.
- I have found the marks to be aurally similar to between a medium and high degree.
- I have found the marks to be conceptually highly similar or similar to between a medium and high degree, depending upon whether the reference to the common acronym/phrase “very important persons” is recognised in the opponent’s mark.
- I have found the earlier mark to be inherently distinctive to a low degree.
- I have identified the average consumer to be members of the general public who own a pet, who will select the services primarily by visual means, although I do not discount an aural component.
- I have concluded that a medium degree of attention will be paid during the purchasing process.
- I have found the parties services to be identical.

53. Taking all of the above factors into account, and notwithstanding the principle of imperfect recollection, I do not consider there to be a likelihood of direct confusion. As previously mentioned, the average consumer selects the services primarily by visual means, whilst paying a medium degree of attention. In these circumstances, I do not consider that the devices used in the applicant's mark will be overlooked by the average consumer. I do not consider that the average consumer will mistake one mark for the other. Consequently, I do not consider there to be a likelihood of direct confusion.

54. It now falls to me to consider the likelihood of indirect confusion. Indirect confusion was described in the following terms by 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.”

55. As previously established, the distinctiveness of the opponent's mark lies in the combination of the wording VERY IMPORTANT PETS because the average consumer is likely to recognise it as deriving from and creating a comical pun out of the acronym and phrase V.I.P and/or “very important person”. Although the opponent's mark is low in distinctiveness, this does not prevent a likelihood of confusion occurring (*L'Oreal SA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* (T-109/07)). I consider that the variation between IMPORTANT in the

opponent's mark and IMPAWTANT in the applicant's mark is likely to be overlooked by the average consumer.

56. I consider that the average consumer will see the additions of the devices and the letters "V.I.P" as an embellishment of the original mark VERY IMPORTANT PETS, i.e. as an alternative mark which is being used by the same or economically linked undertakings. For example, the word mark might be only used in the body of promotional materials whereas the composite mark might be used on a store front or employee uniforms. Taking all of the factors listing in paragraph 52 above, I therefore consider there to be a likelihood of indirect confusion.

### **Conclusion**

57. The opposition is successful in its entirety and the application is refused.

### **Costs**

58. Award of costs in fast track proceedings are governed by TPN 2/2015. The opponent has been successful and would normally be entitled to a contribution towards her costs.

59. However, as the opponent is unrepresented, at the conclusion of the evidence rounds the tribunal wrote to the opponent and invited her to indicate whether she intended to make a request for an award of costs. The opponent was informed that, if so, she should complete a Pro Forma, providing details of her actual costs and accurate estimates of the amount of time spent on various activities in the opposition. She was informed that " if the pro-forma is not completed and returned, costs, other than official fees arising from the action (excluding extensions of time) may not be awarded".

60. The opponent did not file a completed Pro Forma. That being the case I award the opponent the sum of £100 in respect of the official fee only.

**Total**

**£100**

61. I therefore order Alison Smith to pay Louise Root the sum of £100. This sum is to be paid within 21 days of the expiry of the appeal period or within 21 days of the determination of this case if any appeal against this decision is unsuccessful.

**Dated this 7th day of January 2021**

**L FAYTER**

**For the Registrar**