

O-486-21

**TRADE MARKS ACT 1994
IN THE MATTER OF APPLICATION No. 3443801
BY SRI RAHARDJO
TO REGISTER THE SERIES OF TWO TRADE MARKS
LLORA**

&


IN CLASSES 18 & 25

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER No. 419529 BY
ELORA**

BACKGROUND

1) On 13 November 2019, Sri Rahardjo (hereinafter the applicant) applied to register the series of two trade marks on the front page in respect of the following goods:

In Class 18: Leather and imitations of leather; animal skins and hides; leather (unworked or semi-worked); leather bags and wallets; bags; handbags; attaché cases; backpacks; briefcases; boxes made of leather; coin holders; credit card holders; document cases; duffel bags; evening bags; gym bags; key cases; leather straps; luggage bags; luggage tags; Pilots' bags; pouches; purses; satchels; shopping bags; shoe bags for travel; sling bags; skins of chamois, other than for cleaning purposes; suitcases; toiletry bags; tote bags; umbrellas; wallets; walking sticks; wristlets (bags).

In Class 25: Clothing, footwear, headgear; belts made of leather; leather coats; leather shoes.

2) The application was examined and accepted, and subsequently published for opposition purposes on 22 November 2019 in Trade Marks Journal No.2019/047.

3) On 21 February 2020 ELORA (hereinafter the opponent) filed a notice of opposition, subsequently amended. The opponent is the proprietor of the following trade marks:

| Mark | Number | Dates of filing & registration | Class | Specification relied upon |
|-------|-----------------|--------------------------------|-------|--|
| ELORA | UK 801339837 | 10.11.16 30.07.19 | 14 | Jewelry; jewelry; precious stones; timepieces and chronometric instruments; precious metals and their alloys; coins; works of art of precious metal; jewelry cases (caskets) or boxes of precious metal; cases; watch bands, chains, springs or glasses; key rings [trinkets or fobs]; statues or figurines (statuettes) of precious metals; cases or presentation cases for timepieces; medals. |
| | | | 18 | Leather and imitations of leather; animal skins; trunks and suitcases; umbrellas; parasols; walking sticks; whips, harness and saddlery; wallets; coin purses not of precious metal; handbags, backpacks, wheeled bags; |

| | | | | |
|--|--|--|----|---|
| | | | | bags for climbers and campers, travel bags, beach bags, school bags; vanity cases (empty); collars or clothing for animals; bags or net bags for shopping; bags or small bags (envelopes, pouches) for packaging (made of leather). |
| | | | 25 | Clothing; footwear; headgear; shirts; clothing of leather or imitation of leather; belts (clothing); furs (clothing); gloves (clothing); scarves; neckties; hosiery; socks; bedroom slippers; beach, ski or sports footwear; diapers of textile materials; underwear. |

4) The opponent contends that its mark above and the mark applied for are very similar and that the goods of the two parties are identical and / or similar and /or complementary. As such the mark in suit offends against Section 5(2)(b) of the Act.

5) On 20 August 2020 the applicant filed a counterstatement. The opponent denies the ground of opposition, stating that the marks and goods of the two parties are not similar.

6) Both sides are professionally represented, both seek an award of costs in their favour and both filed evidence. The matter came to be heard on 9 June 2021 when the opponent chose not attend but to rely upon submissions previously filed; the applicant was represented at the hearing by Mr Longstaff of Counsel instructed by Messrs Brandsmiths SL Ltd.

APPLICANT’S EVIDENCE

7) The applicant filed a witness statement, dated 18 February 2021, by Sri Rahardjo the owner of Llora. She states that she is Chinese-Indonesian and has adopted an Indonesian name as is common in Indonesia. Her Chinese name is Ling Fu, and she states that the mark LLORA comes from the “L” being the initial letter of her Chinese name (Ling), “O” for October when all the females in her family are born and “RA” from her Indonesian name Rahardjo. This does not explain why there is a double “L” at the start of the word. She states that the mark has been used on a range of Crocodile skin handbags which are limited in production to 400 per style. There are usually only twelve styles in

production at any one time. Since the business started in September 2015, she states that over 1,000 bags have been sold worldwide for a total of more than USD\$8 million. In the UK she states that the bags are sold in Selfridges and Harrods, with sales in the UK starting in July 2018. Ms Rahardjo claims that between 2018-19 Selfridges sold 23 handbags with a retail value of £128,000. In the period February 2020 – November 2020 Harrods sold 5 handbags for a total of £47,000. She states that between October 2019 and November 2020 £29,000 was spent promoting the handbags. It is stated that advertisements appeared in Tatler, Prestige and Wallpaper magazines, and the company also has an Instagram account. She contends that her mark is pronounced LORA. She contends that the opponent only sells in continental Europe and that it is not aimed at the UK market. She also claims that over twenty other retailers use the name ELORA as a trade mark or have goods such as clothing, footwear and handbags called ELORA. These are evidenced at exhibit SR8, but I note that the search date on all these items is 10 January 2021. Nor is it clear if there is any connection with the opponent, page 60 appears to be from the opponent. In at least one instance on page 59 the word is spelt ELLORA and refers to the colour of a pair of jeans.

OPPONENT'S EVIDENCE

8) The opponent filed a witness statement, dated 23 March 2021, by Yves Duplatre the President of ELORA (a French company). He points out that the applicant has not supported its claim to have sold the volume of handbags claimed either worldwide or in the UK. He also contested the claim that the applicant has reputation in the UK. He also points out that no figure has been given for UK promotion, and that all the exhibits relied upon are either after the relevant date or relate to markets other than the UK. He makes a number of submissions that I shall refer to as and when required in my decision.

9) That concludes my summary of the evidence filed, insofar as I consider it necessary.

DECISION

10) Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Trade Marks Act relied on in these proceedings are

derived from an EU Directive. This is why this decision continues to make reference to the trade mark case-law of EU courts.

11) The only ground of opposition is under section 5(2)(b) of the Act which reads:

“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.”

12) An “earlier trade mark” is defined in section 6, the relevant part of 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 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.”

13) The opponent is relying upon its trade mark listed in paragraph 3 above which is clearly an earlier trade mark. The opponent’s mark was only registered in July 2019 and so is not caught by the proof of use conditions.

14) When considering the issue under section 5(2)(b) I take into account the following principles which 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 will wrongly believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

The average consumer and the nature of the purchasing decision

15) As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties' goods. I must then determine the manner in which these goods 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. (as he then was) 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.”

16) The goods at issue in these proceedings are, broadly speaking, bags, luggage and leather goods, clothing, footwear and headgear. Such goods will be sold in, inter alia, traditional retail outlets on the high street, through catalogues and on the Internet. The specifications of both parties are unlimited, and so I must keep all of these trade channels in mind. The average consumer of the goods at issue is a member of the general public (including businesses) who is likely, in my opinion, to select the goods mainly by visual means. I accept that more expensive items may be researched or discussed with a member of staff. In this respect I note that in *New Look Ltd v OHIM Cases- T-117/03 to T-119/03 and T-171/03*, the General Court (GC) said this about the selection of clothing:

“49. However, it should be noted that in the global assessment of the likelihood of confusion, the visual, aural or conceptual aspects of the opposing signs do not always have the same weight. It is appropriate to examine the objective conditions under which the marks may be present on the market (*BUDMEN*, paragraph 57). The extent of the similarity or difference between the signs may depend, in particular, on the inherent qualities of the signs or the conditions under which the goods or services covered by the opposing signs are marketed. If the goods covered by the mark in question are usually sold in self-service stores where consumer choose the product themselves and must therefore rely primarily on the image of the trade mark applied to the product, the visual similarity between the signs will as a general rule be more important. If on the other hand the product covered is primarily sold orally, greater weight will usually be attributed to any aural similarity between the signs.”

And

“50..... Generally in clothes shops customers can themselves either choose the clothes they wish to buy or be assisted by the sales staff. Whilst oral communication in respect of the product and the trade mark is not excluded, the choice of the item of clothing is generally made visually. Therefore, the visual perception of the marks in question will generally take place prior to purchase. Accordingly the visual aspect plays a greater role in the global assessment of the likelihood of confusion.”

17) In the same case the Court also commented upon the degree of care the average consumer will take when selecting clothing. It said:

“43. It should be noted in this regard that the average consumer’s level of attention may vary according to the category of goods or services in question (see, by analogy, Case C 342/97 *Lloyd Schuhfabrik Meyer* [1999] ECR I-3819, paragraph 26). As OHIM rightly pointed out, an applicant cannot simply assert that in a particular sector the consumer is particularly attentive to trade marks without supporting that claim with facts or evidence. As regards the clothing sector, the Court finds it comprises goods which vary widely in quality and price. Whilst it is possible that the consumer is more attentive to the choice of mark where he or she buys a particularly expensive item of clothing, such an approach on the part of the consumer cannot be presumed without evidence with regard to all goods in that sector. It follows that that argument must be rejected.”

18) Clearly, the average consumer's level of attention will vary considerably depending on the cost and nature of the item at issue. However, to my mind even when selecting routine inexpensive items of clothing such as socks, a woollen hat or a pair of slippers; the average consumer will pay attention to considerations such as size, colour, fabric and cost. In relation to leather goods which will frequently be part of the consumer's overall look I believe that broadly speaking the same average or medium level of attention will be paid to the selection of these items **Overall the average consumer is likely to pay a medium degree of attention to the selection of items of bags, leatherware, clothing, footwear and headgear.**

Comparison of goods

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

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

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

(a) The respective uses of the respective goods or services;

(b) The respective users of the respective goods or services;

(c) The physical nature of the goods or acts of service;

(d) The respective trade channels through which the goods or services reach the market;

(e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be, found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;

(f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

21) 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 fur Lernsysteme v OHIM- Educational Services (ELS)* [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark”.

22) In its written submissions the applicant accepted that **both parties’ goods in class 18 were either identical or very similar, and that the same applies to the class 25 goods of the two parties**. At the hearing Mr Longstaff submitted “I picked out four items which are, perhaps, of a lower degree of similarity, which would be boxes made of leather, document cases, umbrellas and walking sticks”. As I noted at the hearing the opponent’s specification includes “Umbrellas and walking sticks” so they must be regarded as identical. As to “document cases; boxes made of leather” to my mind these are highly similar to the opponent’s specification of “trunks and suitcases; Leather and imitations of leather; wheeled bags; travel bags”.

Distinctive character of the earlier trade mark

23) 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 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).”

24) In *Kurt Geiger v A-List Corporate Limited*, BL O-075-13, Mr Iain Purvis Q.C. as the Appointed Person pointed out that the level of ‘distinctive character’ is only likely to increase the likelihood of confusion to the extent that it resides in the element(s) of the marks that are identical or similar. He said:

“38. The Hearing Officer cited *Sabel v Puma* at paragraph 50 of her decision for the proposition that ‘the more distinctive it is, either by inherent nature or by use, the greater the likelihood of confusion’. This is indeed what was said in *Sabel*. However, it is a far from complete statement which can lead to error if applied simplistically.

39. It is always important to bear in mind what it is about the earlier mark which gives it distinctive character. In particular, if distinctiveness is provided by an aspect of the mark which has no counterpart in the mark alleged to be confusingly similar, then the distinctiveness will not increase the likelihood of confusion at all. If anything it will reduce it.’

40. In other words, simply considering the level of distinctive character possessed by the earlier mark is not enough. It is important to ask ‘in what does the distinctive character of the

earlier mark lie?’ Only after that has been done can a proper assessment of the likelihood of confusion be carried out”.

25) The opponent’s marks consists of the word “ELORA” which has no meaning as far as I am aware for the goods and services in question. It is not an issue that either party has raised. The word is a female name and is a shortened version of Eleanor. **As such it has an average level of inherent distinctiveness for the goods at issue. The opponent has not filed any evidence of use and so cannot benefit from enhanced distinctiveness through use.**

Comparison of trade marks

26) 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:

“.....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.”

27) It would be wrong, therefore, to artificially dissect the trade 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. The marks to be considered are as follows:

| Opponent’s earlier marks | Applicant’s Mark |
|--------------------------|------------------|
| ELORA | LLORA |



28) Clearly, the applicant's series of two marks is merely the word LLORA in upper and lower case with a different font chosen for the lowercase version which does not, in my opinion, amount to any stylisation that the average consumer will notice, it is negligible. I will carry out a single comparison test between the marks.

29) When considering the visual similarity the applicant accepts that both marks have the common element LORA, but contends that the first letter of the marks are the distinctive and dominant element. The opponent contends that both marks are five letter words which "coincide in their last 4 consecutive letters. Essentially, the marks are identical with the exception of their first letters, rendering them highly similar from a visual perspective". The opponent states that the average consumer rarely has the chance to compare both marks side by side and rely upon imperfect recollection. The opponent also submits:

"8. Since the assessment of similarity is not the result of a direct comparison of all the characteristics of the elements compared, insignificant differences between the marks in question may go unnoticed by an average consumer (judgment of 20/03/2003, C-291/00, Arthur et Félicie, EU:C:2003:169, [54])".

And:

"13. In view of this, we hereby reiterate the Opponent's submission that the overall impression created by both marks is visually highly similar, and we will continue the assessment of similarity of marks by comparing the marks at issue as the word mark 'LLORA' and the word mark 'ELORA'."

30) To my mind, the case referred to in the opponent's submissions above is not on all fours with the instant case. I do not believe that the first letter of a name can be considered to be insignificant. On this basis "Fred" would have to be considered similar to "Bred" or "Clive" similar to "Alive". I reject such a proposition. Visually there are differences and also similarities.

31) Moving onto the aural comparison the opponent submits:

“14. As explained above, the marks in question coincide in their last 4 consecutive letters, namely ‘LORA’. The Opponent’s mark will be read by the English consumer as ‘Elora’, whilst the Applicant’s mark ‘LLORA’ may be read by English consumers as either:

- a) the word “Lora”, in which case this would be wholly included in the Opponent’s earlier mark and thus aurally highly similar to the same; or
- b) the words “El” (being the pronunciation of the first letter ‘L’ in the Applicant’s mark) and “lora”, which together would be read as “Ellora”/“Elora”; in this case, the marks are considered virtually identical from a phonetic perspective.

15. The marks are therefore aurally virtually identical or at least highly similar.”

32) I completely agree with the opponent that the applicant’s mark will be pronounced as two syllables: “ELLE” and “AURA”. It is a recognised girl’s name and as such will be pronounced as the opponent suggests. However, I am not convinced that the average consumer would dissect the applicant’s mark and announce the first letter as “ELLE” and then jam the other four letters to get “LAURA”. If one begins saying the letters of a word one tends to continue as it is presumed that they stand for individual words such as RSPCA, AA, ROSPA etc even if one is slightly unsure what word each letter represents. I also note that whilst few of the UK population actually speak Welsh a substantial number would have visited Wales and be aware of the double “L” in place names. They will be aware that the nearest English sound is “THL” and that one needs a considerable amount of phlegm in one’s throat to make the right sound. The character in Blackadder was right in cautioning about asking for directions in Wales “otherwise you’ll end up washing spit out of your hair for a week”. If the consumer has not visited Wales then they are more likely, in my opinion, to ignore the double “LL” at the start, as one does with LLAMA, and pronounce the word as “LAURA”. There are aural similarities and differences in the marks of the two parties.

33) Turning to consider the conceptual comparison, the opponent contends:

“16. It is submitted that the marks are conceptually highly similar.

17. Indeed, both marks denote girls' names. Furthermore, English consumers may read the Applicant's mark 'LLORA' as 'ELORA' (as shown above), such that this may be understood as an alternative spelling of the name 'Elora'.

18. It has been held that two marks are deemed to be conceptually similar when they evoke the same idea or the same concept. As such, the Applicant's mark is highly similar to the Opponent's mark as they both evoke girls' names; moreover, the marks may be understood as variations of the same name 'ELORA' such that they may be deemed conceptually virtually identical.

19. In view of this, it is submitted that the marks are conceptually virtually identical or at least highly similar."

34) I am willing to accept the contention that both parties marks will be seen as girls names. However, I do not accept that the applicant's mark will be seen as an alternative spelling of the opponent's mark. The name ELORA is not common in the UK and will be seen as being an unusual, probably foreign, name. The term LLORA if seen as a name at all will probably be seen as a Welsh version of Laura, or simply someone's deliberate misspelling of Laura in a misguided attempt to make it seem more exotic and interesting. If the marks are both seen as names then at the widest aspect there is some conceptual similarity but it also highlights the considerable differences in the marks. Both are short marks and have completely different first letters. The average consumer is well used to differentiating between names which are highly similar e.g. Stephen / Stephanie. **Overall, the marks have some similarities but these are far outweighed by the dissimilarities.**

Likelihood of confusion

35) 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 goods 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 goods, 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 average consumer will be concerned to ensure that the goods meet their practical or aesthetic requirements and so are likely to pay at least an average or medium level of attention to the selection of the goods in classes 18 and 25 at issue.
- Overall, the marks have some similarities but these are far outweighed by the dissimilarities.
- The opponent's mark is inherently distinctive to an average degree and cannot benefit from enhanced distinctiveness through use.
- both parties' goods in class 18 were either identical or very similar, and that the same applies to the class 25 goods of the two parties.

36) I take into account the views expressed in *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, where Mr Iain Purvis Q.C., as the Appointed Person, explained that:

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

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

38) From the above it is clear that despite the goods being identical (for the most part) and allowing for the concept of imperfect recollection, there is no likelihood of consumers being directly or indirectly

confused into believing that the goods applied for and provided by the applicant are those of the opponent or provided by an undertaking linked to it. The opponent under section 5(2)(b) therefore fails.

CONCLUSION

39) The opposition under Section 5(2)(b) fails.

COSTS

40) As the applicant has been successful it is entitled to a contribution towards its costs.

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| Preparing a statement and considering the other side's statement | £300 |
| Filing evidence | £1000 |
| Attendance at hearing | £1400 |
| TOTAL | £2700 |

54) I order Elora to pay Sri Rahardjo the sum of £2700. This sum is to be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against the decision is unsuccessful.

Dated this 28th day of June 2021

George W Salthouse

**For the Registrar,
the Comptroller-General**