

**O-1017-20**

**TRADE MARKS ACT 1994**

IN THE MATTER OF  
UNITED KINGDOM (UK) DESIGNATION OF  
INTERNATIONAL REGISTRATION (IR) NO. 1566064:



IN CLASSES 18 AND 25  
IN THE NAME OF GIORGIO ARMANI S.P.A.

AND

OPPOSITION No. 424529 THERETO  
BY ERREA' SPORT S.P.A.

## BACKGROUND AND PLEADINGS

1. The subject of this opposition decision is the UK designation of international trade mark registration number 1566064 (“**the Application**”) for the figurative mark shown on the cover page of this decision (“**the Contested Mark**”).
2. The Application is in the name of Giorgio Armani S.p.A. (“**the Applicant**”) and was designated for protection in the UK on 30 September 2020, with an EUTM priority date of 15 April 2020 (“**the Relevant Date**”). The Application was published on 19 February 2021 in relation to the following goods (“**the Contested Goods**”):

**Class 18:** *Handbags; traveling bags; briefcases; leather briefcases; leather credit card holders; wallets; leather document briefcases; key-cases of leather and skins; purses; suit cases; cosmetic bags sold empty; gym bags; evening and shoulder bags for ladies; leather shopping bags; school bags; garment bags for travel; suit carriers for travel; shoe bags for travel; beach bags; diaper bags; backpacks; Boston bags; traveling trunks; duffel bags; overnight bags; carry-on bags; satchels; opera bags; vanity cases (not fitted); hides; cases and boxes made of leather; bags made of leather for packaging; leather straps; umbrellas; leather leashes; saddlery.*

**Class 25:** *Coats; jackets; trousers; skirts; tops; raincoats; overcoats; belts; braces for clothing; suits; stuff jackets; jumpers; jeans; dresses; cloaks; parkas; shirts; t-shirts; sweaters; underwear; baby-dolls being nightwear; bathrobes; bathing costumes; negligee; swim suits; dressing gowns; shawls; neckerchiefs; scarves; ties; neckties; sweat shirts; under shirts; polo shirts; body suits; shorts; combinations (clothing); wedding dresses; stockings; socks; shoes; slippers; overshoes; galoshes; wooden clog; soles for footwear; footwear upper; boots; ski boots; snow boots; half boots; esparto shoes or sandals; sandals; bath sandals; gloves; mittens; hats and caps; visors (headwear).*

3. On 19 May 2021, Errea' Sport S.p.A (“**the Opponent**”) filed an opposition based on **sections 5(2)(b)** and **5(3)** of the Trade Marks Act 1994 (“**the Act**”). Both grounds are directed at all of the goods under the contested application.

4. The notice of opposition relied originally, for both grounds, on five earlier registered trade marks.<sup>1</sup> However, by the date of the oral hearing the grounds were pursued relying only on the following four earlier registrations:

Earlier Trade Mark No.	Sign/Mark	Registered Classes relied on	Proof of use requested?
UK 914528591 (“Mark 1”) Filing date: 3 September 2015 Registration: 14 January 2016	RA	18, 25	N/A <sup>2</sup>
UK 907076862 (“Mark 2”) Filing date: 21 July 2008 Registration: 18 February 2009		18, 25	Classes 18 and 25
UK 901671759 (“Mark 3”) Filing date: 24 May 2000 Registration: 29 June 2001		18	Class 18
UK 900812891 (“Mark 4”) Filing date: 28 April 1998 Registration: 21 October 1999		25	Class 25

5. The Opponent’s claims under **section 5(2)(b)** include the following points:
- (i) that, on an overall comparison, the Contested Mark is similar to each of the above three earlier signs relied on by the Opponent;
  - (ii) that the Application covers goods in classes 18 and 25 identical to the goods in those classes covered by the Opponent’s earlier trade mark registrations, and that other goods are similar; and
  - (iii) that taking into account the “high similarities between the marks”, coupled with identical and similar goods, there exists a likelihood of confusion on the part of the

<sup>1</sup> Where the fifth trade mark involved *Errea est 1988* in a stylised cursive script.

<sup>2</sup> The EUTM from which this comparable mark stems became registered on 14 January 2016, which is less than five years before the Relevant Date. Consequently, the use provisions under section 6A of the Act do not arise and the Opponent is able to rely on the goods in classes 18 and 25 claimed under this earlier mark without having to show use.

public, which includes a likelihood of association with the Opponent's earlier trade marks.

6. The Opponent's claims under **section 5(3)** include the following points:
- (i) "the Opponent has made considerable use of its RA and errea and device trade marks, since at least as early as 1988, in relation to the goods covered by the earlier trade marks and is one of the leading brands at both national and international level. Additionally, the Opponent sponsors several English, Scottish, Italian and foreign football teams (as well as sponsoring a number of teams in relation to other sports) and sells its products worldwide. By virtue of this use, the Opponent has acquired a substantial reputation in their marks for RA and errea and device."
  - (ii) taking into account relevant factors from case law, the public will make a mental link between the earlier trade marks, giving rise to the following damaging consequences:
  - (iii) the public will believe that they are used by the same undertaking, or that there is an economic connection between the users of the marks;
  - (iv) use of the application will be detrimental to the distinctive character and to the repute of the earlier trade marks;
  - (v) use in the UK of the mark under the contested Application would take unfair advantage of the distinctive character or repute of the earlier trade marks.

#### **Defence and proof of use requests**

7. The Applicant filed a notice of defence, including a counterstatement, denying the grounds.
8. In respect of the **section 5(2)(b)** ground, it claimed the following:
- (i) there is no similarity between the parties' respective marks "taken as a whole, or whether considered visually, phonetically or conceptually."
  - (ii) It requested that the Opponent provide proof of use in respect of the three registrations shown in the table above (the figurative marks).
  - (iii) It put the Opponent to proof in relation to the factors it relied on to assert similarity of the parties' respective goods, including channels of trade, consumers, clients and customers and market norms.

- (iv) It denied that there is any risk of confusion on the part of the public, including risk of association, between the Application and the Earlier Trade Marks.
9. In respect of the **section 5(3)** ground, it denied all aspects of the claim putting the Opponent to proof of its claimed reputation and denying that the consumer would make any mental link or that any of the claimed damaging consequences would arise.
10. It also claimed that the Applicant anyway has due cause to use the mark applied-for, claiming that “the R in the contested mark stands for recycled, a descriptive term,” and that EA stands for “Emporio Armani, one the Opponent’s well-known trade marks.”

### **Representation, papers filed and hearing**

11. The Applicant is represented in these proceedings by Haseltine Lake Kempner. For the Opponent, Stobbs IP provided professional representation throughout these proceedings.
12. During the evidence rounds the Opponent filed evidence in chief in relation to use of its marks; the Applicant filed evidence in chief, relating to the significance of the three letters in the Contested Mark, and the Opponent filed evidence in reply.
13. An oral hearing took place before me on 18 July 2021, where Julius Stobbs attended for the Opponent, having duly filed a skeleton argument. Submissions in lieu of attendance at the hearing were filed on behalf of the Applicant. In making this decision I have read all the papers filed, and have borne in mind the submissions made at the oral hearing. This decision refers to particular submissions and points of evidence only to the extent warranted.

### **DECISION**

14. I’ll deal first with the status of the earlier trade marks in this case,<sup>3</sup> and with the requirements for proof of use. The following provisions of the Act are relevant:

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3 as envisaged in sections 5(2)(b) and 5(3) of the Act.

**6A Raising of relative grounds in opposition proceedings in case of non-use**

(1) This section applies where—

- (a) an application for registration of a trade mark has been published,
- (b) there is an earlier trade mark of a kind falling within section 6(1)(a), (aa) or (ba) in relation to which the conditions set out in section 5(1), (2) or (3) obtain, and
- (c) the registration procedure for the earlier trade mark was completed before the start of the relevant period.

(1A) In this section “the relevant period” means the period of 5 years ending with the date of the application for registration mentioned in subsection (1)(a) or (where applicable) the date of the priority claimed for that application.

(2) In opposition proceedings, the registrar shall not refuse to register the trade mark by reason of the earlier trade mark unless the use conditions are met.

(3) The use conditions are met if—

- (a) within the relevant period the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or
- (b) the earlier trade mark has not been so used, but there are proper reasons for non-use.

(4) For these purposes—

(a) use of a trade mark includes use in a form (the “variant form”) differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor), and

(b) [...]

(5).....

(5A).....

(6) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services.

[...]

15. Related to the above cited section 6A, the following paragraphs of Schedule 2, Part 1 of the Act provide:

7(1) Section 6A applies where an earlier trade mark is a comparable trade mark (EU), subject to the modifications set out below.

(2) Where the relevant period referred to in section 6A(3)(a) (the “five-year period”) has expired before IP completion day—

(a) the references in section 6A(3) and (6) to the earlier trade mark are to be treated as references to the corresponding EUTM; and

(b) the references in section 6A(3) and (4) to the United Kingdom include the European Union.

(3) Where IP completion day falls within the five-year period, in respect of that part of the five-year period which falls before IP completion day—

(a) the references in section 6A(3) and (6) to the earlier trade mark are to be treated as references to the corresponding EUTM ; and

(b) the references in section 6A to the United Kingdom include the European Union

16. All four of the registrations relied on by the Opponent are comparable UK trade marks, created by the UKIPO on 1 January 2021 (prefixed with UK009), that mirror rights held under EUTMs registered before that date.<sup>4</sup> The meaning of “earlier trade mark”, under the Act includes a comparable trade mark (EU).<sup>5</sup>

17. Marks 2, 3 and 4 (the figurative marks) relied on by the Opponent had been registered for more than five years at the date of the priority claimed for the Application. Those three marks are therefore subject to the use conditions set out in section 6A. Since the Applicant has requested proof of use, the Opponent is able to rely on Marks 2, 3 and 4 only to the extent that the evidence satisfies the requirements of ‘genuine use’ as envisaged under section 6A(3)(a) of the Act, and in line with principles discernible from case law (as summarised below). In view of section 6A(1A), “**the relevant period**” in respect of which the Opponent must prove use of its marks is the five-year period ending

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4 European Union (Withdrawal Agreement) Act 2020

5 Section 6(1)(aa) of the Act

with the date of the priority claimed for the Application, namely: **from 16 April 2015 to 15 April 2020.**

18. In recognition that many comparable UK trade marks correspond to EUTMs that may never have been used in the UK, the legislation ensures that any use of the mark in the EU made before 1 January 2021, whether inside or outside the UK, counts as use of the comparable UK right. In the present case, the relevant 5-year period falls entirely before 1 January 2021, so use in the EU will be considered and the “relevant territory” effectively encompasses the EU and/or the UK.

#### Case law on genuine use

19. In *Walton International Ltd & Anor v Verweij Fashion BV* [2018] EWHC 1608 (Ch) Arnold J summarised the law relating to genuine use as follows:

“114.....The CJEU has considered what amounts to “genuine use” of a trade mark in a series of cases: Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, *La Mer* (cited above), Case C-416/04 P *Sunrider Corp v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237, Case C-442/07 *Verein Radetsky-Order v Bunderversvereinigung Kamaradschaft ‘Feldmarschall Radetsky’* [2008] ECR I9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Merken BV v Hagelkruis Beheer BV* [EU:C:2012:816], [2013] ETMR 16, Case C-609/11 P *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], [2014] ETMR, Case C-141/13 P *Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089] and Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434], [2017] Bus LR 1795.

115. The principles established by these cases may be summarised as follows:

- (1) Genuine use means actual use of the trade mark by the proprietor or by a third party with authority to use the mark: *Ansul* at [35] and [37].



- (2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Leno* at [29]; *Centrotherm* at [71]; *Reber* at [29].
- (3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Leno* at [29]; *Centrotherm* at [71]. Accordingly, affixing of a trade mark on goods as a label of quality is not genuine use unless it guarantees, additionally and simultaneously, to consumers that those goods come from a single undertaking under the control of which the goods are manufactured and which is responsible for their quality: *Gözze* at [43]-[51].
- (4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: *Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37]; *Verein* at [14] and [22]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle* at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23].
- (5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial *raison d'être* of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71]; *Reber* at [29].
- (6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including:
  - (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question;
  - (b) the nature of the goods or services;
  - (c) the characteristics of the

market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: *Ansul* at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Leno* at [29]-[30], [56]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no de minimis rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72] and [76]-[77]; *Leno* at [55].

(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: *Reber* at [32].”

20. In making my determination as to whether the evidence presented shows the necessary genuine use, I also take account of judicial comment as to probative and evidential issues in such cases. In *Awareness Limited v Plymouth City Council*<sup>6</sup>, Daniel Alexander Q.C. sitting as the Appointed Person stated that:

“22. The burden lies on the registered proprietor to prove use [...]. However, it is not strictly necessary to exhibit any particular kind of documentation, but if it is likely that such material would exist and little or none is provided, a tribunal will be justified in rejecting the evidence as insufficiently solid. That is all the more so since the nature and extent of use is likely to be particularly well known to the proprietor itself. A tribunal is entitled to be sceptical of a case of use if, notwithstanding the ease with which it could have been convincingly demonstrated, the material actually provided is inconclusive. By the time the

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6 Case BL O/230/13

tribunal (which in many cases will be the Hearing Officer in the first instance) comes to take its final decision, the evidence must be sufficiently solid and specific to enable the evaluation of the scope of protection to which the proprietor is legitimately entitled to be properly and fairly undertaken, having regard to the interests of the proprietor, the opponent and, it should be said, the public.”

21. In *Dosenbach-Ochsner*<sup>7</sup>, Mr Geoffrey Hobbs Q.C., sitting as the Appointed Person stated that:

“22. When it comes to proof of use for the purpose of determining the extent (if any) to which the protection conferred by registration of a trade mark can legitimately be maintained, the decision taker must form a view as to what the evidence does and just as importantly what it does not ‘show’ (per Section 100 of the Act) with regard to the actuality of use in relation to goods or services covered by the registration. The evidence in question can properly be assessed for sufficiency (or the lack of it) by reference to the specificity (or lack of it) with which it addresses the actuality of use.”

#### Assessment of the evidence of use

22. The Opponent's evidence in chief, admitted into the proceedings, comprises the witness statement of Rosanna Fabbiani, dated 11 November 2021 (“**the WSRF**”) with **Exhibits RF1 – RF15**. Ms Fabbiani has been employed by the Opponent since February 2015 and is its Managing Director.

#### Use of Mark 2:



**Class 18:** *Bags, multipurpose sports bags, handbags, bags of leather and imitations of leather, gentlemen's handbags; canvas bags, bags for balls, bags, bags for*

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<sup>7</sup> *Dosenbach-Ochsner Ag Schuhe Und Sport v Continental Shelf 128 Ltd*, Case BL O/404/13

*campers, beach bags, travelling bags; key holders; beach bags; bum-bags; cosmetic bags sold empty; school satchels, trunks, travelling bags, suitcases, rucksacks; umbrellas, walking sticks, parasols; Leatherware; briefcases, leather and imitations of leather, satchels; business cards cases; purses, not of precious metal; notecases.*

**Class 25:** *Clothing for men, women and children; sportswear and leisurewear for men, women and children, including jumpers, tee-shirts, vests, sweatshirts, pullovers, polo shirts, shirts, skirts, trousers, shorts, Bermuda shorts, jackets, coats, jeans, jerseys, neckties, suits, jump suits (clothing), full tracksuits for sports teams, training suits, sports kits, including kits for football, five-a-side football, volleyball, rugby and basketball, clothing for football, five-a-side football, volleyball, rugby, basketball, tennis, skiing, cycling, golf, baseball, spinning, running and exercisewear in general not included in other classes; belts (clothing), belts for sports; footwear, shoes, sports shoes, including shoes for football, five-a-side football, volleyball, rugby, basketball, tennis, skiing, cycling, golf, baseball, spinning, running, gymnastics and exercise in general not included in other classes, ski boots, swimshoes, slippers; headgear, including hats, berets, bonnets, ear muffs, headbands and sweat bands, hats and berets for sport in general, bandanas; gloves (clothing), sashes for wear, wristbands; stockings, socks, sweat-absorbent stockings, slippers, tights; underwear, including briefs, bras, camisoles, underpants, boxers, thongs, underwear, in particular for playing sport, namely leg warmers, Bermuda shorts, elasticated tee-shirts, nightwear; beach clothes and bathing clothes, including bathing suits, bathing trunks, bath robes; rainwear*

24. The evidence scarcely features Mark 2 at all, such that it shows no actual use of the sign at all in relation to any of the above goods in the relevant period or territory, let alone sales or promotion of the relevant goods bearing the sign. Pages 12 – 17 of **Exhibit RF3** show one short-sleeved top and one pair of sports shorts, photographed on the floor, where the Mark 2 sign (above the words “errea sport”) appears on those goods and its attached swing tag. However, these are images of literally the same two individual items of clothing, and reveal nothing of where, when, whether or how such goods were sold or promoted. Page 3 of Exhibit RF3 is of unclear nature or origin, but shows the errea figurative sign (Marks 3 and 4) above the message “official technical sponsor” of Reyer Venezia Mestre, and shows two men in football tops that bear the errea figurative sign.



Use of Marks 3 and 4



26. **Mark 3** is registered in respect of the following goods in Class 18:

*Bags, handbags, trunks, travelling bags, rucksacks, bags, document holders, pocket wallets*

27. **Mark 4** is registered in respect of the following goods in Class 25:

*Articles of sport clothing; hats, caps, muffs, dressing gowns, belts for sports use, hosiery, antiperspiration hosiery, socks, cotton socks, tights, shorts, leisure suits (clothes), team matching track suits, track training suits.*

28. The Opponent's skeleton argument submitted that the evidence from Ms Fabbiani shows as follows:

“that the Opponent has made use of the Earlier Marks relied upon in relation to the following goods:

in class 25 for: “*football playing shirts, football shorts, football and other sports socks, football and other sports gloves, Goalkeeper shirts, Goalkeepers bottoms (trousers and shorts), referee tops and shorts, rugby shirts, rugby shorts, athletic shirts, athletic shorts and skirts, basketball and netball tops and bottoms (shorts and trousers), players bibs, training shorts and trousers, training sets, training shirts, sweat tops, training trousers, jackets*”;

and in class 18 for: “*bags and holdalls*”.

29. The Applicant’s submissions in lieu of attending the hearing criticised almost all of Ms Fabbiani’s evidence as unsubstantiated or irrelevant. It must be said that for a company that Ms Fabbiani states to be “regarded as one of the leading brands in relation to [technical] sportswear at both national and international level”, the evidence filed was strikingly flawed. Charged with demonstrating use of the errea’ figurative sign during the period **16 April 2015 to 15 April 2020**, it is perplexing why so much of the evidence fell (very far) outside of the relevant period. Much of the evidence was irrelevant, poorly corroborated, undated or vague.
30. I do not accept the Opponent’s contention that the evidence shows genuine use in respect of goods in Class 18. Page 32 of Exhibit RF3 appears to be an extract from an Errea catalogue, and shows images of holdalls and other bags that bear a sign very similar to the sign of Mark 3. The sign on those goods involves the word ‘errea’ and the double diamond device, and I find that despite a slight reconfiguration, that sign may be considered an acceptable variant form of the sign under Mark 3. However, the page is shown as from a 2021 catalogue, so is outside the relevant period. There is also no information on pricing, sales, or promotion of the goods. WSRF states at paragraph 28 that Exhibit RF12 details its branded goods offered for sale via a UK distributor (Maysim), which, Ms Fabbiani states, includes bags and holdalls. However, I see no reference to bags or holdalls in Exhibit RF12. In some of the Technical Sponsorship Agreements between the Opponent and several English football teams shown at **Exhibit RF9** (which I return to below) there is reference to “players kit bags”, but this is insufficient to establish genuine use. **I find that the Opponent has failed to show proof of genuine use of Mark 3 in respect of goods in Class 18 and is therefore unable to rely on that earlier registration.**



32. **Exhibit RF12** shows “a webpage showing point of sale availability in the UK for [the Opponent’s] products” and Ms Fabbiani states at paragraph 28 of WSRF that “by way of representative example” are exhibited webpages from the Opponent’s distributor “Maysim.co.uk” which she states is “one of a large number of such distributors in the UK”, and who are an established dealer of sportswear branded with Mark 4, including football playing shirts, football shorts sport socks and gloves, and various other sports tops and trousers (and equipment such as shin pads and balls). This is another flawed exhibit as the Maysim webpages are shown to date from 2014 (before the relevant period) and the web page showing sales outlets in the UK (the page seemingly taken from the Opponent’s [errea.com](http://errea.com) website) is undated. Nor is it shown what, when or whether those UK outlets sold goods in connection with Mark 4. However, the [errea.com](http://errea.com) webpage does list around two dozen sports shop outlets around the UK and I do not dismiss its relevance entirely, and will take account of it in gauging the whole of the evidence in the round.
33. Paragraph 33 of WSRF refers to **Exhibit RF15** as showing a range of copies of invoices for the years 2008 - 2017 to show sales made by the opponent in the UK relating to luggage, clothing and sporting articles in particular. Exhibit RF15 comprises just eight

invoices. All of the invoices include Mark 4 in their top left corner, but only two of the invoices relate to the relevant period. One of those two invoices is to Rochdale Association Football Club Limited in the amount of over £33k, but the invoice includes no information as to the goods or services provided. The second of those two invoices is to Port Vale Football Club Limited in respect of goalkeeper shirts and training shirts, totalling over £5k.

34. Ms Fabbiani states at paragraph 15 of WSRF that Exhibit RF2 shows a Wikipedia entry for Erreà that lists details of to whom the Opponent “supplies branded kit in the UK (and around the world)”. The Applicant criticises (reasonably) the self-editable nature of Wikipedia evidence; but even taking the exhibit at face value, it refers to football club deals from 1994, 2011 and 2013 – outside the relevant period. It includes fairly lengthy lists of sporting clubs under the heading “Sponsorship Teams”, covering basketball, football, rugby league and volleyball. Some of the named teams include national teams (eg Wales Rugby League) and well known football teams such as Norwich City, Queens Park Rangers and Den Haag. However, the list does not, in and of itself, reveal use of Mark 4 in relation to the relevant goods during the relevant period.
35. I have highlighted above examples of the significant flaws in the evidence. However, the evidence also contains various exhibits that in my view convincingly demonstrate that the Opponent has supplied a wide range of sporting clubs with their team kits and where Mark 4 is clearly visible. I note some of that relevant evidence in the following paragraphs.
36. Page 19 of **Exhibit RF5** shows an article dated 13 January 2020 from Norwichcity.myfootballwriter.com, which is headed “The Norwich City FC 2019-2020 Premier League campaign: c’est fini” and above that heading are two photographs of Norwich City players wearing their team tops and where Mark 4 is clearly visible.
37. **Exhibit RF7** supports paragraph 23 of WSRF as to the extent of kit sponsorship by the Opponent, which includes the relevant period and territory. Exhibit RF7 shows extracts from the Opponent’s website, where the document is shown to date from “1/12/2018” and lists, for example, sports teams including: Norwich City FC (Championship); Millwall (Championship); Queen’s Park Rangers (Championship); Blackpool FC (League 1); MK Dons (League 1); Port Vale FC (League 1); Wigan Warriors (Super League Champions);



and British Canoeing.<sup>8</sup> Page 13 of Exhibit RF7 shows the wider EU sports sponsorship coverage 2018-2019 – in Italy and Spain and elsewhere. I note similar information for 2019-2020 from page 25 of **Exhibit RF10**.

38. Page 13 of **Exhibit RF8** shows an article heading from errea.com dated 27/6/2017 that reads “ERREA and Millwall FC unveil their home kit for 2017-2018.” It shows a small image of a player wearing a top on which is (just) discernible Mark 4. Next to that image is a URL for mfcshop.co.uk with the message “In store and online”.
39. **Exhibit RF9** includes various “Technical Sponsorship Agreement” between the Opponent and various English football teams within the relevant period and including definitions of “the Strip” supplied (covering home and away and third strip various tops, coats and tracksuits). Page 8 of Exhibit RF9 shows an article from millwallfc.co.uk, dated 24 March 2016, which is headed “Millwall announce Errea as new kit supplier” from the 2016/17 season. Page 13 of Exhibit RF9 shows an article dated 2 July 2015 from the website of Norwich City Football Club - canaries.co.uk - which is headed “City Delighted to Extend Errea Deal”. It quotes the Chief Executive of Norwich City Football Club praising the quality of the Errea kits and the level of service to the Club “and to the fans”. At page 34 of the exhibit, a comparable article, dated 14/7/2017, makes clear Errea’s role in providing the 2017 - 2018 Norwich City away kit.
40. Taking the evidence in the round I find that the Opponent has shown proof of genuine use of the Mark 4 sign approximately in respect of what Mr Stobbs characterised at the hearing as (I believe) “technical sportswear”. Such a term would include most, if not all, of the particular goods in Class 25 put forward in the Opponent’s skeleton argument (as at my paragraph 29 above) including sports tops and bottoms and socks. For reasons that will become clear, I do not consider it necessary to establish a fair specification of the Class 25 goods on which the Opponent can rely for Mark 4 with greater precision than: “articles of sport clothing” (which term features in the Mark 4 registration).

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8 Page 37 of Exhibit RF10 is an article dated 3 July 2017 from the Opponent’s website announcing its agreement with British Canoeing.

Conclusion on proof of use

41. I have found the evidence insufficient to establish genuine use during the relevant period in respect of Mark 2 and Mark 3. Those claimed earlier marks play no further role in this decision.
42. I have found the evidence of genuine use sufficient only in relation to Mark 4, based on a notional fair specification of “articles of sport clothing”.

Determination of the claims based on Mark 4

43. Section 5(2)(b) of the Act, reads as follows:

“5. – [...]

(2) A trade mark shall not be registered if because – [...]

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark”.

44. Section 5(3) of the Act reads as follows:

(3) *A trade mark which—*



(a) *is identical with or similar to an earlier trade mark, and*

(b) . . . . .

*shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom (or, in the case of a European Union trade mark or international trade mark (EC), in the European Union) and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark.*

Section 5(3A) states that those provisions apply “irrespective of whether the goods and services for which the trade mark is to be registered are identical with, similar to or not similar to those for which the earlier trade mark is protected.”

45. A claim under section 5(2)(b) and under section 5(3) of the Act requires that between the earlier mark and the contested mark, there is at least some similarity. In the present case, I find there is no similarity between the respective marks below.

Mark 4	Contested Mark
	

46. The only overlap between the marks is that the three individual letters that feature in the Contested Mark appear also in Mark 4. In my view that overlap is not sufficient to consider the marks to be similar.

47. Visually the two figurative marks are very different. Mark 4 has two additional letters making the word 'errea', which is presented in a particular lower-case font. It also features a notable device, resembling two melded diamond shapes. Contrastingly, the Contested Mark has no diamond device and is configured entirely differently, with the outsized capital letter "R" separated by a dash from the capital letters E A to its right, the E positioned above the A.

48. Aurally I find that the average consumer in the UK would pronounce Mark 4 to rhyme with 'merrier' or possibly as 'err-ay-ah'. Contrastingly the Contested Mark would be spoken to sound out each of the three letters individually – 'R' 'E' 'A' (AR -EE -AY). The marks are not aurally similar.

49. Conceptually, there is no similarity. The average consumer in the UK would perceive errea as a meaningless invented word and would perceive the Contested Mark as three separate letters.

50. I find that the marks are not similar overall and in the absence of the required element of similarity between the marks, the claims based on Mark 4 under both section 5(2)(b) and 5(3) must inevitably fail. For the sake of complete clarity, even if the marks were used in respect of identical goods, I find the lack of similarity sufficient to prevent both the

possibility of a likelihood of confusion, thereby defeating the section 5(2)(b) claim, and the calling to mind of the earlier mark, thereby defeating the section 5(3) claim (even if Mark 4 were considered to have a reputation in respect of articles of sport clothing).

#### Determination of the claims based on Mark 1

51. Mark 1 is the earlier plain word mark "RA". It had been registered for less than five years at the Relevant Date, such that the use provisions under section 6A of the Act are not engaged. This means that this tribunal can take into account all of the specified goods relied on in Class 18 and 25 as set out below:

**Class 18:** *Casual bags; Multipurpose sports bags; Handbags; Bags of leather and imitations of leather; Small bags; Canvas bags; Bags for balls; Haversacks; Camping, beach, travelling bags; Key wallets; Beach bags; Bumbags; Cosmetic bags sold empty; School knapsacks; Trunks [luggage]; Travel baggage; Travel garment covers; Backpacks; Umbrellas; Walking sticks; Parasols; Briefcases; Leather and imitations of leather; Satchels; Business cards cases; Purses, not of precious metal; Wallets; Sport bags; Football bags; Wetsuit bags.*

**Class 25:** *Sports clothing and leisurewear for men, women and children, including sports jerseys; Undershirts; Tee-shirts; Tank tops; Sweat shirts; Pullovers; Polo-neck jerseys; Shirts; Skirts; Trousers; Trousers shorts; Bermuda shorts; Jackets [clothing]; Coats; Denim jeans; Neckties; Gowns; Clothing, suits; Full tracksuits for sports teams; Training suits; Sports kits, including kits for football, five-a-side football, volleyball, rugby and basketball; Clothing for football, five-a-side football, volleyball, rugby, basketball, tennis, cycling, golf, baseball, spinning, running and exercise in general, not included in other classes; Snow suits; Belts for clothing; Belts for sports; Footwear; Footwear; Shoes for sports, including shoes for football, five-a-side football, volleyball, rugby, basketball, tennis, cycling, golf, baseball, spinning, running, gymnastics and exercise in general, not included in other classes; Ski boots; Swimshoes; Mules; Headgear, including caps and hats; Ear muffs; Head sweatbands; Hats and berets for sport in general; Bandanas [neckerchiefs]; Gloves [clothing]; Sashes for wear; Cuffs; Stockings; Socks; Sweat-absorbent stockings; Slippers; Pantihose; Underwear, including underpants, Brassieres, Vest tops, Boxer shorts, Boxer shorts, Thongs; Underwear, in particular for playing sport,*

*namely legwarmers, Bermuda shorts, elasticated T-shirts; Sleepwear; Beachwear and bathing wear, including bathing suits, bathing trunks; Robes; Rainproof clothing.*

### **The section 5(2)(b) ground**

52. The relevant wording of this section is set out at my paragraph 43 above. Determination of a section 5(2)(b) claim must be made in light of 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. The principles are:
- (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.

### **Conceded similarity of goods**

53. I note that at paragraph 87 of its final submissions the Applicant concedes that “the goods of the Application are at least similar to the goods in classes 18 and 25 covered by the Earlier Registrations.”
54. Comparing the Opponent’s Mark 1 specifications under Class 18 and Class 25, with those under the Application, I find that the respective goods are very largely identical. The parties’ specifications contain either identical or directly equivalent terms, or else contain broader terms such that the broader category covers terms specified by the other party.<sup>9</sup> For instance, in Class 18 the Opponent specifies: *Casual bags; Sport bags; Bags of leather and imitations of leather; Small bags; Canvas bags; Travel baggage; Umbrellas; Walking sticks; Briefcases; Leather and imitations of leather; Business cards cases; Wallets*. Likewise, the Opponent’s Class 25 goods include broad and other identical

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<sup>9</sup> GC confirmed in *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T-133/05.

terms such as *Sports clothing and leisurewear for men, women and children, Coats; Footwear; Headgear; Socks; Underwear; Bandanas [neckerchiefs]; Gloves [clothing]*.

55. Only a minority of the parties' Class 18 goods do not have comparable identical terms. For instance: the Applicant's *leather leashes; saddlery*, - but even those goods have at least some similarity with, for instance, the Opponent's Mark 1 *Leather and imitations of leather*.

### **The average consumer and the purchasing process**

56. In *Hearst Holdings Inc*,<sup>10</sup> Birss J explained that "... *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 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 word "average" denotes that the person is typical*".
57. The average consumer for almost all of the goods (which are broadly bags, clothing etc) will be a member of the general public. The average consumer will purchase the goods either by self-selection from a retail outlet, or from a website or catalogue equivalent. Consequently, visual considerations are likely to dominate the selection process. However, I do not discount that there may also be an aural component to the purchase, given the potential for oral recommendations and that advice may be sought from retail assistants.
58. Goods such as clothing and bags will vary in price, but are typically not very expensive. Some goods (e.g. socks) may be purchased quite regularly, others much less so (e.g. briefcases). Nonetheless, the purchasing process will take into account, according to the goods at issue, questions such as size, colour, durability and suitability for occasion or purpose, and in my view the average consumer will typically pay a medium degree of attention. (Clearly goods such as saddlery would entail a higher degree of attention.) Similarly, I acknowledge that goods such as "hides" are not typically goods for the general public, more for manufacturers or craft persons, where attention levels would likely be higher.

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<sup>10</sup> *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), at paragraph 60.

## **Distinctiveness of the earlier mark**

59. The distinctive character of the earlier mark must be assessed, as, potentially, the more distinctive the earlier mark, either inherently or through use, the greater the likelihood of confusion.<sup>11</sup> In *Lloyd Schuhfabrik*, 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-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 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)”.

60. It appears from paragraph 51 of the Opponent’s skeleton argument that no claim of enhanced distinctive character is pursued in respect of Mark 1. I anyway find nothing in the evidence filed to suggest any use of the sign “RA” in respect of any of the goods. In assessing the distinctive character of Mark 1, I therefore have only its inherent characteristics to consider. Paragraph 50 of the Opponent’s skeleton argument promoted the distinctive character of Mark 1 only to the extent of noting that as a registered trade mark it possesses distinctive character. At paragraph 69 of its final submissions, the Applicant submits that “the letters RA are not particularly distinctive given that there is the

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11 *Sabel BV v Puma AG*, Case C-251/95 at [24]



possibility for many undertakings to adopt letters as indicators of trade origin.”<sup>12</sup> In my view, the combination of just two letters from the alphabet, with no figurative aspect, is not especially distinctive. Although the letters in Mark 1 have no allusive connection to the goods, I consider Mark 1 to be inherently distinctive to a degree that is quite low – lower than medium. In this regard, I note that in *Kunze Folien GmbH v Kartell UK Limited*, BL O/084/14, Iain Purvis QC (as he then was), sitting as the Appointed Person, referred with approval to a decision of the Fourth Board of Appeal of OHIM (now the EUIPO), *Alfa-Beta Vissilopoulos AE v Agro de Bazan*, Case R 82/2011-4.5. The Board of Appeal considered the letters AB in a stylised form against AB in a different stylised form, saying at paragraph 16:

*“As to the distinctive character of the letter combination ‘AB’ in the earlier marks and of the contested mark, either perceived as the letter ‘B’ or as a possible letter combination such as ‘PB’ or ‘AB’, it should be noted that letters or letter combinations of two or three letters are inherently weak, given the limited number of letters in the alphabet, the great number of meanings that acronyms and abbreviations may have and the fact that consumers frequently encounter abbreviations and letter combinations of all kinds in everyday life and business as generic abbreviations but not as marks. In view of this, the graphical design in which the letter combinations appear strongly influences the consumer’s perception. The distinctive character of the conflicting marks to a large extent rests in their specific graphic elements.”*

### **Comparison of the marks**

61. It is clear from *Sabel* that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated in *Bimbo* 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

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12 (I note that at paragraph 12 of WSRF, Ms Fabbiani states that the sign originates from the combination of “the letters ‘R’ and ‘A’, the initials of the children of the chairman and owner of ERREA’ SPORT.)

*of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.*"<sup>13</sup>

62. It would therefore be wrong to dissect the trade marks artificially, but it is necessary to take into account the distinctive and dominant components of the marks and to give due weight to any other features that are not negligible and therefore contribute to the overall impressions created by the marks. The marks to be compared are shown below:

<b>The earlier trade mark:</b>	RA
<b>The contested mark:</b>	

63. The overall impression of the earlier word mark is that it is simply the letter R next to the letter A. Neither letter dominates and Mark 1 will be seen as a meaningless unified combination of those two letters.

64. The overall impression of the contested mark is that it involves three letters – R, E and A presented in an unusual configuration in a thick upper-case font. Reading left to right, the R is the first element in the mark and is more than twice the size of the other two letters (E and A), which are separated from the R by a dash, with the E arranged above the A. The R is notably dominant within the mark. The E and A appear paired on an equal footing with one another. All elements of the contested mark contribute to its overall impression, though the letter components, configured as they are, contribute significantly more than the dash.

#### *Visual similarity*

65. I bear in mind that a plain word mark protects the word itself, such that it may be used in any colour or ordinary font or case. Mark 1 may therefore be presented in a comparable

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13 *Bimbo SA v OHIM, Case C-591/12P* (at paragraph 34)

font to the Contested Mark. Both marks feature the letters R and A, where the R is the first element in the reading of the mark, and the A the last element. There is thus some visual similarity between the marks. However, there are also notable visual differences arising from the presence in the Contested Mark of the outsized dominant R, and the additional letter, E, paired vertically with the A and separated from the R by a dash. In my view the marks are visually similar to less than a medium degree.

*Aural similarity*

66. Mark 1 will be spoken as the two letters “R” “A” i.e. ARr – AY (not, in my view, as one syllable “RAH”). The Contested Mark will be spoken as the three letters “R” “E” “A” i.e. ARr – EE - AY (not, in my view, as two syllables “Ree-a”). It is possible that the dominance of the R in the Contested Mark and the pairing of the E and A may lead to an emphasis on the R, but even if that were the case, the aural effect would be fairly minimal. The sounds that start and end the marks are identical, but the middle syllable “EE” sound in the Contested Mark creates a notable aural difference. In my view the marks are aurally similar to no more than a medium degree.

*Conceptual similarity*

67. The marks have no immediately graspable concept beyond their representation of letters. The average consumer would certainly not know what the letters R A stood for. Despite filed evidence and submissions on both sides, the average consumer would not know what the letters R - E A stood for either. Although I accept that E A are the initials of the words Emporio Armani, I do not accept that in the context of the Contested Application they would readily be understood as such by the average consumer. Nor do I accept that the average consumer would understand the letter R in the context of the Contested Application to mean “Recycled.” However, to the extent that the Contested Mark presents the bare concept of *three* letters R – E A, whereas Mark 1 presents the bare concept of *two* letters “R A”, I find the conceptual *difference* introduced by the additional letter to be greater than the similarity arising from the marks’ common letters R and A. Alternatively, I find a conceptual comparison of the marks may be considered to result in a neutral outcome.

## Conclusion as to likelihood of confusion

68. In my global assessment of likelihood of confusion, I take account of all of my findings relevant to this ground. The factors operate interdependently:
- (i) The vast majority of the parties' goods are identical, and the remainder have some degree of similarity;
  - (ii) I bear in mind that a lesser degree of similarity between the marks may be offset by a great degree of similarity between the goods or services;
  - (iii) I have found the marks to be visually similar to less than a medium degree (in view of the additional E and the unusual configuration) and aurally similar to no more than a medium degree. Notwithstanding the additional letter E in the Contested Mark, the conceptual position is more or less neutral;
  - (iv) The average consumer will be a member of the general public, who is reasonably well informed and reasonably circumspect and observant, and who will typically pay a medium degree of attention in selecting and purchasing the goods at issue, and in that process visual considerations are likely to dominate, even where there may be an aural aspect in the purchase;
  - (v) The earlier mark is inherently distinctive to a degree that is quite low – lower than medium – since it involves just two plain letters. There has been no enhancement to the distinctiveness of the earlier mark through use in relation to the goods.
69. In my view the average consumer will not mistake one mark for the other. The striking configuration and particularly the prominent additional E are enough to avoid such direct confusion, even in respect of identical goods. The earlier mark based on two plain letters lacks strong distinctiveness and the additional third, different letter, operates to prevent one mark being imperfectly recalled as the other. Nor is there any “proper basis” why the average consumer would consider the Contested Mark to be another brand of the owner of the earlier mark, so no indirect confusion arises either.<sup>14</sup> A finding of indirect confusion

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<sup>14</sup> See Arnold LJ at [13] of the judgment in *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207.

should not be made merely because the two marks share a common element.<sup>15</sup> In the present case, I am not convinced that merely the shared presence of the letters R and A is enough even to call one mark to mind on encountering the other, but even if that were the case, that would be mere association, not indirect confusion.

**Outcome:** There is no likelihood of confusion, direct or indirect. The opposition based on sections 5(2)(b) fails.

### **The section 5(3) ground**

70. The relevant wording of this section is set out at my paragraph 44 above. To succeed on this ground, the Opponent must establish that Mark 1 is (i) similar to the Contested Mark (ii) has a reputation in respect of the goods relied on (iii) and that use of the Contested Mark, without due cause, would lead to one or more of the heads of damage listed in the section. Those elements are cumulative, so the absence of any one element will defeat the claim. Unlike Marks 2, 3 and 4, Mark 1 satisfies the requirement for similarity between the marks. However, as I noted at my paragraph 60 above, the evidence in no way suggests that Mark 1 has been used, let alone acquired a reputation either in the EU or in the UK.

71. **Outcome:** Since Mark 1 has no reputation, the opposition based on section 5(3) fails.

### **COSTS**

72. The Applicant is entitled to a contribution towards its costs in successfully defending the opposition. In line with the scale published in the annex to Tribunal Practice Notice (2/2016), I award the following costs:

Considering the Opponent's statement of grounds and preparing a counterstatement	<b>£300</b>
Considering and commenting on the other side's evidence (I make no separate award for the evidence filed by the Applicant, as I consider it to have had very limited relevance in this decision.)	<b>£800</b>

<sup>15</sup> As noted, for instance, by James Mellor Q.C. (as he then was), as the Appointed Person in *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17

Preparing submissions in lieu of attending the hearing	<b>£400</b>
TOTAL	<b>£1,500</b>

73. I order Errea' Sport S.p.A. to pay Giorgio Armani S.p.A the sum of £1500 (one thousand five hundred pounds). This sum is to be paid within 21 days of the end of the period allowed for appeal or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings (subject to any order of the appellate tribunal).

**Dated this 18<sup>th</sup> day of November 2022**

*Matthew Williams*

**For the Registrar**

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