

O-209-16

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION No. 3083258
BY MAHMOOD SHAFI, BUSHRA SHAFI AND YASSER SHAFI**

TO REGISTER THE TRADE MARK



IN CLASS 24

AND

**IN THE MATTER OF OPPOSITION
THERE TO UNDER No. 404052 BY
MONTFORD SERVICES SDN. BHD.**

Background and pleadings

1) On 26 November 2014, Mahmood Shafi, Bushra Shafi and Yasser Shafi (hereafter I shall refer to these individuals in the singular, i.e. “the applicants”) applied to register the following trade mark (“the application”).



2) The application was subsequently accepted and published in the UK trade marks journal on 26 December 2014 for the following class 24 goods:

Household textile articles; bed clothes; bed covers, bedspreads, eiderdowns, duvets, duvet covers, quilts, quilt covers, valanced bed sheets and covers; pillowcases; curtains, towels, wall hangings, wall coverings; cushion covers, upholstery fabrics and covers; textile piece goods; blankets; bedspreads and mattress covers; and pillow cases and bolster cases; blinds made wholly or principally of textile materials; piece goods of textile materials and household textile articles; towels, duvets, textiles and textile piece goods not included in other classes; bed and table covers; artificial silk piece goods; bed sheets, pillow cases, bolster cases, pyjama cases and nightdress cases, all made wholly or principally of artificial silk; hygienic and anti-allergy covers for pillows, bed blankets and mattresses, hygienic and anti-allergy covers and fitted sheets for mattresses; household linen; loose covers for furniture; napkins, serviettes, table mats, table runners, table cloths; table covers; oven gloves gloves and handkerchiefs.

3) On 27 March 2015, Montfort Services Sdn. Bhd. (“the opponent”) opposed the application on the basis of Section 5(2)(b) of the Trade Marks Act 1994 (the Act). This is on the basis of its earlier European Union (formerly Community) Trade Mark (“the earlier mark”). Pertinent details of the earlier mark are as follows:

Mark: SAMUEL COURTAULDS
Filing date: 3 October 2013
Date of entry in register: 7 May 2014
Goods/services: Class 25: Clothing, footwear and headgear.

Class 35: Retail services of clothing, headgear and footwear; the bringing together, for the benefit of others, of a variety of goods namely, clothing, headgear and footwear, enabling customers to conveniently view and purchase those goods in a department store; the bringing together, for the benefit of others, of a range of articles of clothing, headgear, footwear, enabling customers to conveniently view and purchase those goods in a retail clothes store or a retail footwear store; the bringing together, for the benefit of others, of a range of articles of clothing, headgear, and footwear, enabling customers to conveniently view and purchase those goods from a general merchandise catalogue by mail order, or by means of telecommunications, the Internet and/or computer networks; Internet shopping services in relation to clothing, headgear and footwear; promotion and publicity services.

4) The opponent argues that the respective marks are confusingly similar and the applied for goods similar to the goods and services covered by its earlier mark.

5) The applicant filed a counterstatement stating that they disagree with the opponent’s claim.

6) Both sides filed evidence in these proceedings. This will be summarised to the extent that it is considered appropriate/necessary.

7) Only the opponent filed written submissions which will not be summarised but will be referred to as and where appropriate during this decision. A Hearing took place via video-link on 16 February 2016, with the opponent represented by Mr Sanjay Kapur of Potter Clarkson LLP. The applicant did not attend.

Evidence

Opponent's evidence

Witness statement of Sanjay Kapur and exhibits SK1 to SK5

8) Mr Kapur is a trade mark attorney and partner of Potter Clarkson LLP, the opponent's professional representatives. Most of the statements made by Mr Kapur are composed of legal arguments and submissions. I will refer to these where necessary in my decision. To support the opposition, Mr Kapur provides the following information:

- Samuel Courtauld was an industrialist born in 1793 and who died in 1881.
- The Courtaulds business employed around 2,500 in the mid-1880's and the business was, apparently, a renowned producer of silk fabric.
- The Courtauld Institute of Art was named after the Courtauld family since Samuel Courtaulds (not the same Samuel Courtaulds born in 1793) was one of the "founding fathers"¹.
- In the 18th, 19th and 20th Centuries, it was common for successful families, individuals and companies to create their own Crest/Coat of Arms.
- The Courtaulds family created a crest, which Mr Kapur claims to be very similar to the application (i.e. the same design but without the words COURTAULDS FABRICS), in an attempt from the applicant to associate itself to the opponent.

¹ Exhibit SK1 (extract from the Courtauld Institute of Art website)

- The crest is shown in publications dated September 1930, May 1931, April 1933 and November 1933².
- Exhibit SK4 to the witness statement comprises of examples of brands who produce and sell goods under classes 24 and 25. These include designers such as Armani, Hugo Boss and Ralph Lauren plus retailers such as Marks and Spencer, John Lewis, Linea (House of Fraser) and Jasper Conran.
- Exhibit SK5 comprises of a list of brand names which have trade mark registrations covering classes 24 and 25

Applicant's evidence

Witness statement of Mahmood Ahmad Shafi and exhibits MS1-MS2

9) Mr Shafi states that he is making the statement on behalf of all the applicants. He states that he is involved in the soft furnishings and household textiles industry for 38 years, and has never come across the brand COURTAULDS.

10) Exhibit MS1 to Mr Shafi's witness statement consists of an undated Google search for "Courtaulds". Mr Shafi states that the search did not identify any goods for sale. The rest of the witness statement consists of comments on the opponent's evidence and reference to another trade mark registration for GOLDSMITH & CO., THE CAMEO COLLECTION, used by Mr Shafi. The aforementioned registration does not have any bearing on these proceedings.

Opponent's evidence in reply

Witness statement of Sanjay Kapur

11) Mr Kapur's second witness statement consists of commentary on Mr Shafi's evidence. He argues that "it seems quite remarkable, and almost unbelievable, that the Applicant would first search, and then seek to use and register a trade mark with

² Exhibit SK3 (extract from the British Industrial Historical website, Grace's Guide)

the component COURTAULDS if, as it is claimed, that Mr Shafi had never come across the brand.”

Legislation

12) Section 5(2)(b) of the Act is 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, or there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark”.

Case law

13) The following principles are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P.

The principles

(a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely

upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;

(f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

(g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;

(h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;

(i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;

(j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;

(k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

Comparison of goods and services

14) 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”.

15) 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 users of the respective goods or services;
- b) The physical nature of the goods or acts of services
- c) The respective trade channels through which the goods or services reach the market
- d) 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;
- e) 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.

16) The respective goods and services are set out below:

Applicant's goods	Opponent's services
<p>Class 24: Household textile articles; bed clothes; bed covers, bedspreads, eiderdowns, duvets, duvet covers, quilts, quilt covers, valanced bed sheets and covers; pillowcases; curtains, towels, wall hangings, wall coverings; cushion covers, upholstery fabrics and covers; textile piece goods; blankets; bedspreads and mattress covers; and pillow cases and bolster cases; blinds made wholly or principally of textile materials; piece goods of textile materials and household textile articles; towels, duvets, textiles and textile piece goods not included in other classes; bed and table covers; artificial silk piece goods; bed sheets, pillow cases, bolster cases, pyjama cases and nightdress cases, all made wholly or principally of artificial silk; hygienic and anti-allergy covers for pillows, bed blankets and mattresses, hygienic and anti-allergy covers and fitted sheets for mattresses; household linen; loose covers for furniture; napkins, serviettes, table</p>	<p>Class 25: Clothing, footwear and headgear.</p> <p>Class 35: Retail services of clothing, headgear and footwear; the bringing together, for the benefit of others, of a variety of goods namely, clothing, headgear and footwear, enabling customers to conveniently view and purchase those goods in a department store; the bringing together, for the benefit of others, of a range of articles of clothing, headgear, footwear, enabling customers to conveniently view and purchase those goods in a retail clothes store or a retail footwear store; the bringing together, for the benefit of others, of a range of articles of clothing, headgear, and footwear, enabling customers to conveniently view and purchase those goods from a general merchandise catalogue by mail order, or by means of telecommunications, the Internet and/or computer networks; Internet shopping services in relation to clothing, headgear and footwear;</p>

mats, table runners, table cloths; table covers; oven gloves gloves and handkerchiefs.	promotion and publicity services.
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17) The opponent argues that the goods are generally similar since they are complementary to its goods. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criteria capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06, the General Court stated that “complementary” means:

“...there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking”.

18) In *Sanco SA v OHIM*, Case T-249/11, the General Court indicated that goods and services may be regarded as ‘complementary’ and therefore similar to a degree in circumstances where the nature and purpose of the respective goods and services are very different, i.e. *chicken* against *transport services for chickens*. The purpose of examining whether there is a complementary relationship between goods/services is to assess whether the relevant public are liable to believe that responsibility for the goods/services lies with the same undertaking or with economically connected undertakings. As Mr Daniel Alexander Q.C. noted as the Appointed Person in *Sandra Amelia Mary Elliot v LRC Holdings Limited (LOVE case)* BL-0-255-13:

“It may well be the case that wine glasses are almost always used with wine – and are, on any normal view, complementary in that sense - but it does not follow that wine and glassware are similar goods for trade mark purposes.”

19) Whilst on the other hand:

“.....it is neither necessary nor sufficient for a finding of similarity that the goods in question must be used together or that they are sold together.

20) I shall, of course, take into consideration whether the goods/services are complementary to one another but must stress that this is only one factor in deciding whether similarity of goods and/or services exists. I must also take into consideration the remaining factors set out in *Treat* (see above).

21) The opponent also relies upon the argument that since textiles are required to produce its goods this contributes to the degree of similarity. Again this is an argument which I shall take into consideration though goods being a component part of a finished article is not sufficient to find similarity. This issues was discussed in *Les Éditions Albert René v OHIM*, Case T-336/03, whereby the General Court said at paragraph 61 that:

“... The mere fact that a particular good is used as a part, element or component of another does not suffice in itself to show that the finished goods containing those components are similar since, in particular, their nature, intended purpose and the customers for those goods may be completely different.”

22) During the hearing Mr Kapur separated the goods into three tiers with the first having the highest degree of similarity and the other tiers progressively less. I shall assess each in turn.

Tier one

Bed clothes

23) Bed clothes are goods which are used to cover beds, for example sheets and blankets. They are, of course, not goods which one would wear to bed which are covered by class 25. I do not see how these goods can be considered to be similar to those relied upon by the opponent. They clearly differ in intended purpose in that the opponent's goods are to be worn and the applicant's to cover beds, they are not

in competition with one another and I cannot see any reason why they would be complementary. They are not similar.

Towels

24) The applied for towels are used to dry one's self following a bath or shower. Mr Kapur argues that towels are highly similar to clothing since this term covers bathrobes. In my view, bathrobes clearly differ in intended purpose. Generally they would not be sold in the same shops, though if they were (for example in large retail stores) they would not be in close proximity to one another. Whilst I am mindful of the guidance provided by Mr Alexander in the *LOVE* case, I do not consider towels to be complementary to the opponent's goods since one is not indispensable or important to the other. Further, I am mindful In view of the aforementioned, I do not consider there to be any degree of similarity between the goods.

Pyjama cases and nightdress cases, all made wholly or principally of artificial silk

25) The applied for pyjama and nightdress cases are self-explanatory, i.e. they are cases which pyjamas and nightdresses are placed. The opponent's earlier clothing, footwear and headgear are all intended to be worn and purchased based on their aesthetic appeal. Therefore, the intended purpose of the goods are different. They are not in competition with one another, but since pyjamas and nightdresses are covered by clothing, there may be a degree of complementarity between pyjamas and nightdresses and their cases.

26) Except for large retailers, the goods are not likely to be sold in the same establishments but if they were they would not be in close proximity to one another. Taking all of the aforementioned into consideration, I consider there to be a very low degree of similarity between the goods.

Oven gloves

27) Oven gloves are used to remove hot items from an oven. They are purchased in order to protect one's hands. The opponent's class 25 goods are broad and do

cover gloves. These are goods which would be purchased based on their comfort and aesthetic appeal. They are not in competition with oven gloves nor are they complementary. They do not share distribution channels and would not be sold in the same establishments. They are not similar.

Handkerchiefs

28) A handkerchief is material (often cotton) used to wipe one's nose and is usually placed in a pocket, often on show as a fashion accessory. It differs in nature and intended purpose to the opponent's goods. They are not in competition with one another. Whilst they are used as a fashion accessory, I do not consider handkerchiefs to be complementary to clothing since they are not important or indispensable for the use of each other. They may be sold in the same establishments and via the same distribution channels. Overall, I accept that there is a modicum of similarity but pitch it as very low.

Tier two

Household textile articles; bed covers, bedspreads, eiderdowns, duvets, duvet covers, quilts, quilt covers, valanced bed sheets and covers; pillowcases; curtains, cushion covers, upholstery fabrics and covers; textile piece goods; blankets; bedspreads and mattress covers; and pillow cases and bolster cases; piece goods of textile materials and household textile articles; duvets, textiles and textile piece goods not included in other classes; bed and table covers; artificial silk piece goods; bed sheets, pillow cases, bolster cases, hygienic and anti-allergy covers for pillows, bed blankets and mattresses, hygienic and anti-allergy covers and fitted sheets for mattresses; household linen; napkins, serviettes, table mats, table runners, table cloths; table covers

29) Since I have already found there to be a very low (if at all) degree of similarity between the opponent's goods and those in tier one, then it must follow that the other two tiers are also not similar. Nevertheless, since the comparison of goods is clearly a key determining factor in the overall outcome of this opposition, I shall continue with the assessment.

30) In my view, the nature and purpose of the various applied for class 24 goods differ to the earlier class 25 clothing, footwear and headgear. They are goods which are not in competition with one another and they are not complementary. Further, the goods are unlikely to be sold in the same shops, apart from retailers who sell a variety of goods in which case they would be in different areas.

Tier three

Wall hangings, wall coverings; blinds made wholly or principally of textile materials; loose covers for furniture

31) I do not see any plausible reason why these goods may be considered similar to the opponent's goods or services. I do not consider it necessary to say anything further on this point.

32) For the avoidance of doubt I have considered whether the applied for goods are similar to the opponent's class 35 services but I consider the opponent to be in a better position relying upon class 25. It must follow, therefore, that where there is little or no similarity between the goods, the opponent cannot be in any better position relying upon the services.

Comparison of marks

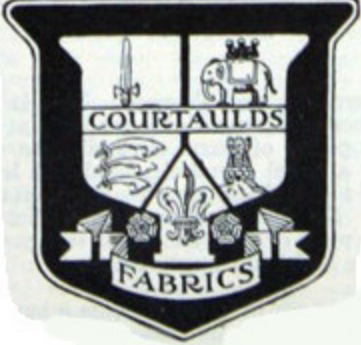
33) It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, 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.”

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

35) The respective trade marks are shown below:

Application	Earlier mark
	<p style="text-align: center;">SAMUEL COURTAULDS</p>

36) The application is of a crest which contains the words COURTAULDS FABRICS and numerous devices. Since FABRICS is descriptive for the subject goods it is not prominent or distinctive in the mark as whole. Instead I consider the devices and crest device to be prominent. The COURTAULDS is also prominent and would be recognised as name but it is not as prominent as the devices and crest.

37) The earlier mark consists of the two words SAMUEL COURTAULDS. This would immediately be recognised as a name, therefore the overall impression of the mark is the name of a person.

38) Visually, both marks contain the name COURTAULDS. The application consists of a number of elements which lessens the overall degree of visual similarity. On

this basis, I consider the overall degree of visual similarity to be below medium but not low.

39) Conceptually, the application would be remembered as COURTAULDS, i.e. the surname of the manufacturer or originator of the goods. The earlier mark would be remembered as SAMUEL COURTAULDS. I find that the surname COURTAULDS would be remembered in each of the respective marks but they are not identical since consumers would also conceptualise the forename in the earlier mark. Therefore, I consider the respective marks to be conceptually similar to a high degree.

40) Aurally, the devices within the application are not likely to be verbalised. Therefore, they would be referred to as COURTAULDS FABRICS. The application would be verbalised as SAMUEL COURTAULDS. In my view the respective marks are aurally similar to a high degree.

Average consumer and the purchasing act

41) The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer, Case C-342/97*.

42) In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. described the average consumer at paragraph 60 in these terms:

“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.”

43) The applied for goods cover various textile goods such as bed clothes, duvet covers, curtains, cushions, etc. They are goods which would be purchased by the general public. The goods would be purchased following a perusal of shop displays, websites, catalogues and brochures. Therefore, they are predominantly a visual purchase, though I do not discount aural recommendations by shop assistants, friend and family. Further, since the goods are not particularly expensive I also find that the degree of care and attention paid when purchasing the goods is medium. With regard to the opponent’s goods, I also consider the degree of care and attention paid following a visual inspection.

Distinctive character of the earlier trade mark

44) In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 the CJEU stated at paragraphs 22 and 23 that:

“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).

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).”

45) The opponent has not provided evidence which would support a claim to an enhanced degree of distinctive character due to the use made of the mark. There are no turnover figures, marketing spend or details of how the mark has been used. Therefore, I may only consider the inherent distinctive character of the mark. The earlier mark is not descriptive or allusive of a characteristic of the goods. It would be immediately recognised as a name. On this basis, I consider the inherent distinctive character in the mark to be medium.

GLOBAL ASSESSMENT – Conclusions on Likelihood of Confusion.

46) Where there is no similarity between the goods, there cannot be a likelihood of confusion. Having concluded that there is no degree of similarity between the respective goods except for the applicant’s “pyjama cases and nightdress cases, all made wholly or principally of artificial silk; handkerchiefs”, then I must only consider the position in relation to them

47) In determining whether there is a likelihood of confusion, a number of factors need to be borne in mind. The first is the interdependency principle, i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective services and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the opponent’s trade mark since the more distinctive the trade mark, the greater the likelihood of confusion. I must also keep in mind that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon imperfect recollection.

48) Earlier in this decision I concluded that:

- There is very low degree of similarity between the applied for “pyjama cases and nightdress cases, all made wholly or principally of artificial silk; handkerchiefs” and the opponent’s class 25 clothing.
- The respective marks are conceptually and aurally similar to a high degree and visually similar to a below medium degree but not low.
- The goods would be purchased following a visual inspection and an average degree of care and attention would be paid.
- The earlier mark has a medium of inherent distinctive character.

49) Whilst there is a very low degree of similarity between some of the goods, this is not offset by the overall degree of similarity between the marks to the extent that there is a likelihood of confusion either directly (mistaking one mark for another) or indirectly (where the respective similarities lead the consumer to believe that the respective goods come from the same, or related, trade source). The opposition fails in its entirety.

50) During the hearing Mr Kapur made numerous references to the heritage of the Courtaulds’ brand and stated in his witness statement that “It seems quite plain to me that the Applicant has simply copied the coat of arms that has been historically associated with the Courtauld brand.”. I do appreciate the claim that Mr Kapur is making though the case law in determining whether a likelihood of confusion exists under section 5(2)(b) means that Mr Kapur’s argument has no bearing on the overall outcome of these proceedings.

COSTS

51) The applicant has been successful and is entitled to a contribution towards their costs. There has not been a great deal of evidence filed by either party, particularly the applicant, so I consider an award of £500 to be a sufficient contribution towards the cost of the proceedings. The sum is calculated as follows:

Considering the statement and	
preparing a counterstatement	£200

Considering and filing evidence £300

Total £500

52) I therefore order Montford Services Sdn. Bhd to pay Mahmood Shafi, Bushra Shafi and Yasser Shafi the sum of £500. The above sum should be paid within fourteen days of the expiry of the appeal period or within fourteen days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 25th day of April 2016

MARK KING

For the Registrar,

The Comptroller-General