

O-161-18

3220414

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. 3220414 BY
BARNABY'S BREWHOUSE LTD**

TO REGISTER THE TRADE MARK:



FOR GOODS IN CLASS 32

AND

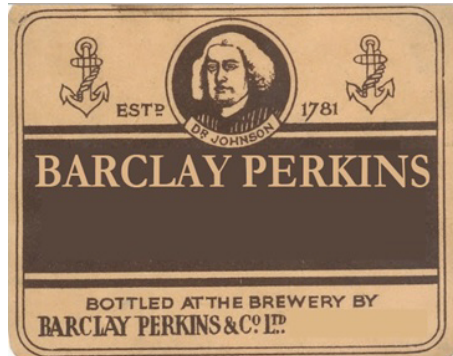
**IN THE MATTER OF OPPOSITION TO ITS REGISTRATION
UNDER NO. 60000636**

BY

SIMON WRIGHT

Background

1) On 22 March 2017 Barnaby's Brewhouse Ltd ("the Applicant") applied to register the following trade mark:



The application was published for opposition purposes on 07 April 2017. Registration is sought for the following goods:

Class 32: *Beer and brewery products; mineral and aerated waters; non-alcoholic drinks; fruit drinks and fruit juices; syrups for making beverages; shandy, de-alcoholised drinks, non-alcoholic beers and wines.*

2) The application is opposed by Mr Simon Wright. The opposition is based on section 5(2)(b) of the Trade Marks Act 1994 ("the Act"), for the purposes of which Mr Wright relies on UK trade mark no. 3177456 for the following mark ("the earlier mark"):



3) The following goods of the earlier mark's specification are relied on for the purposes of this opposition:

Class 32: *Beer; Beer wort; Beers; Beers enriched with minerals; Beverages consisting principally of fruit juices; Beverages enriched with added minerals; Beverages enriched with added minerals [not for medical purposes]; Beverages enriched with added trace elements; Beverages enriched with added trace elements [not for medical purposes]; Beverages enriched with added vitamins; Beverages (non-alcoholic-); Beverages (Non-alcoholic -); Beverages (Preparations for making -); Carbonated non-alcoholic drinks; Cider, non-alcoholic; Coffee-flavored ale; Coffee-flavored beer; Extracts for making beverages; Extracts of hops for making beer; Ginger ale; Ginger beer; Grape juice; Hops (Extracts of -) for making beer; Hops (extracts of-) for making beer; Malt beer; Non-alcoholic beverages; Non-alcoholic cocktail mixes.*

4) The earlier mark was filed on 30 July 2016 and registered on 28 October 2016. The significance of these dates is that (1) Mr Wright's mark constitutes an earlier mark in accordance with section 6 of the Act, and (2) it is not subject to the proof of use conditions contained in section 6A of the Act, its registration process having been completed less than five years before the publication of the Applicant's mark.

5) Mr Wright claims that the mark is similar to the earlier mark for identical or similar goods, and that there consequently exists a likelihood of confusion within the meaning of Section 5(2)(b) of the Act. The Applicant filed a notice of defence and counterstatement, contending that the respective marks have only the words "Barclay Perkins" in common and that, other than that, they are a different shape and use different devices. It pointed out that the opposed mark "*carries the anchors of the original Anchor Brewery as well as the image of Dr Johnson. When originally in use this was referred to as "Doctor Brand" which demonstrates it was seen as a separate brand to the design registered by the opponent*".

6) Rules 20(1)-(3) of the Trade Marks Rules (“TMR”) (the provisions which provide for the filing of evidence) do not apply to fast track oppositions, but Rule 20(4) does. It reads:

“(4) The registrar may, at any time, give leave to either party to file evidence upon such terms as the registrar thinks fit.”

The net effect of these provisions is that parties are required to seek leave in order to file evidence (other than proof of use evidence, which is not relevant in this case) in fast track oppositions. Neither side sought leave to file evidence in these proceedings.

7) Rule 62(5) (as amended) of the Trade Marks Rules 2008 (as amended by the Trade Marks (Fast Track Opposition) (Amendment) Rules 2013) (“the Rules”) provides that arguments in fast track proceedings shall be heard orally only if (1) the Office requests it or (2) either party to the proceedings requests it and the registrar considers that oral proceedings are necessary to deal with the case justly and at proportionate cost. Otherwise written arguments will be taken. Neither side is professionally represented. Neither side requested a hearing or filed written submissions in lieu of a hearing. I therefore give this decision after a careful review of all the papers before me.

Section 5(2)(b)

8) 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”.

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

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

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

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

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

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

(f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive

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

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

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

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

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

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

Comparison of goods

10) In assessing whether there is a likelihood of confusion I must make my comparison of the goods on the basis of the principles laid down in the case law, which I set out below.

11) In the judgment of the 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”.

12) 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.

13) In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T-133/05 (“*Meric*”), the General Court (“the GC”) stated that:

“29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by the trade mark application (Case T-388/00 *Institut für Lernsysteme v OHIM- Educational Services (ELS)* [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark (Case T-104/01 *Oberhauser v OHIM — Petit Liberto (Fifties)* [2002] ECR II-4359, paragraphs 32 and 33; Case T-110/01 *Vedial v OHIM – France Distribution*

(HUBERT) [2002] ECR II-5275, paragraphs 43 and 44; and Case T-10/03 *Koubi v OHIM — Flabesa (CONFORFLEX)* [2004] ECR II-719, paragraphs 41 and 42)".

14) When it comes to understanding what terms used in specifications mean and cover, the guidance in the case-law is to the effect that "in construing a word used in a trade mark specification, one is concerned with how the product is, as a practical matter, regarded for the purposes of the trade"¹ and that I must also bear in mind that words should be given their natural meaning within the context in which they are used; they cannot be given an unnaturally narrow meaning².

15) I shall make the comparison with reference to the Applicant's goods. I shall go through them term by term (but grouping them when it is useful and reasonable to do so³.

16) The term *beer* is included in both the competing specifications, so this item is manifestly identical. The Applicant's *mineral and aerated waters; non-alcoholic drinks; fruit drinks and fruit juices; de-alcoholised drinks, non-alcoholic beers and wines* all fall within the ambit of Mr Wright's *beverages (non-alcoholic-)*, and are thus identical under the guidance in *Meric*. Similarly, the Applicant's *syrups for making beverages* fall within Mr Wright's *Beverages (Preparations for making -)*, and are thus identical. In the same way, Mr Wright's *Beer, Beer wort and Extracts of hops for making beer* are all covered by the Applicant's *brewery products*, and are thus identical under the guidance in *Meric*. Moreover, even *brewery products* other than those designated in Mr Wright's specification would in any case be highly similar by virtue of their nature, use, users, and channels of trade. The Applicant's *shandy*, while not normally a strictly non-alcoholic beverage, is customarily regarded as an alternative to non-alcoholic beverages because of its low alcohol content and taste; by virtue of its nature, purpose and users, and the fact that it is in competition with *non-alcoholic beverages*, it is highly similar to them.

¹ *British Sugar Plc v James Robertson & Sons Limited (Treat)* [1996] R.P.C. 281

² *Beautimatic International Ltd v Mitchell International Pharmaceuticals Ltd and Another* [2000] FSR 267

³ See the comments of the Appointed Person in *Separode* BL O-399-10

The average consumer and the purchasing process

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

“60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The words “average” denotes that the person is typical. The term “average” does not denote some form of numerical mean, mode or median.”

18) Consumers of brewery products such as beer wort, extracts for making beverages or extracts of hops for making beer might perhaps include those brewing beer commercially, and consumers of extracts for making beverages or extracts of hops for making beer might include, for example, bars and restaurants. However, the average consumer of all the goods in the specifications of both the opposed mark will consist of, or include, the general public purchasing beer or non-alcoholic drinks, or preparations for making such drinks (such as squash concentrates and cordials, ingredients for home brewing, etc). These goods are not particularly costly, nor are they infrequent purchases. An average degree of care and consideration will be deployed in their selection. The purchasing process will normally involve self-selection in retail outlets or their online equivalents, or orders may be placed orally in a bar or restaurant, though even in this latter case the product or its mark will often be on display at the bar, or on a drinks menu, etc. (see *Simonds Farsons Cisk plc v*

OHIM Case T-3/04 at paragraph 58). In view of all this, though the visual aspects of the marks may take on more importance, the aural aspect of the marks may also have a role to play and will be considered in my assessment.

Comparison of the marks

19) 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.”

It would be wrong, therefore, to dissect the trade marks artificially, 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.

20) The marks to be compared are shown below:

The opposed mark	The earlier mark
	

21) The opposed mark takes the form of a horizontal rectangle surrounded by a simple narrow two-line border with rounded corners, and presented in sepia, giving the mark the appearance of a label. The centre of the top part of the mark is taken up with an image of a man in an eighteenth century wig shown in a round frame, the subject being identified in small, but legible, letters at the bottom of the frame as Dr Johnson. The abbreviation “ESTd” appears to the left of the frame and the date “1781” to its right, the whole of this top part of the mark being flanked by anchor devices. A broad dark band, with light lines at its edges, runs across the whole of the central part of the mark, with the words BARCLAY PERKINS, shown in the light sepia background colour, running prominently across the band’s top part. Below this dark band appear the words “BOTTLED AT THE BREWERY BY and, in somewhat larger letters on the bottom line, BARCLAY PERKINS & CO. Ltd”.

22) The figurative elements of the opposed mark and its general layout are by no means negligible, and do make a contribution to its overall impression; but it is the prominent central words BARCLAY PERKINS on which the distinctive weight of the mark clearly falls. I also bear in mind that, though this is no more than a rule of thumb, the case law reflects the view that, as a general rule, verbal elements of a trade mark will, in practice, often be more distinctive than its figurative elements,

because the average consumer will generally more easily refer to the product in question by quoting its name than by describing the figurative element of the trade mark⁴.

23) The earlier mark is presented in black and white and is framed by a broad, dark, vertical oval band with a very narrow light decorative outer border. The whole mark has the appearance of a label. In addition to some tiny decorative dots the narrow outer border contains, insofar as I can make them out, the words “THIS LABEL IS ISSUED BY BARCLAY PERKINS & CO - BREWERS LONDON”; these words are so tiny in relation to the mark as a whole that they are highly unlikely to be read, or even noticed, by the average consumer. Across the top half of the broad dark oval band the words “BARCLAY PERKINS & Co” stand out prominently in the contrasting white of the background. At the top of the space within the dark oval frame is a simple shield device bearing the abbreviation “BP&Co”. Beneath this, in the centre of the mark, and underlined by a simple straight line and dot, the words “BARCLAY PERKINS” are displayed in a cursive script which appears to represent a personal signature. At the end of the signature is an indeterminate squiggle which may be intended to signify “& Co”, but I do not consider that the average consumer will make the effort to decipher this final scribble, or even notice it; the script will be read simply as the signature “BARCLAY PERKINS”. The figurative elements of the mark and its general layout are by no means negligible, and do make a contribution to its overall impression; but it is the prominent words BARCLAY PERKINS on which the distinctive weight of the mark clearly falls.

24) I bear in mind that the earlier mark is not limited as to colour and that, consequently, it may be used in any colour, including that in which the opposed mark is presented, but there are several points of obvious visual difference between the marks: their overall shape is different; the roundel portrait of Dr Johnson, the flanking words “ESTd 1781” and anchor devices, and the words “BOTTLED AT THE BREWERY BY BARCLAY PERKINS & Co Ltd” are all missing from the earlier mark; conversely, neither the shield device bearing the abbreviation “BP&Co” nor the form

⁴ See, for example, Case T223/16, *Massive Bionics, SL v EUIPO, Apple Inc.* at paragraph 62.

of signature shown below it in the earlier mark are used in the opposed mark. On the other hand, the words BARCLAY PERKINS (followed by “& Cos” in the earlier mark) are prominent in both marks, in both cases being strikingly displayed in the contrasting background colour against a broad dark band. Given that “& Cos” in the earlier mark (and, for that matter, the unobtrusive “& Co Ltd” in the opposed mark), will be perceived as merely representing the routine ending of a business name, being descriptive of the legal form of the business, it is the prominent and distinctive words BARCLAY PERKINS on which the consumer’s attention will focus in both marks. Taking all this into account, viewed overall there is at least a moderate degree of visual similarity between the marks.

25) In its notice of defence and counterstatement the Applicant, having pointed out that the opposed mark “*carries the anchors of the original Anchor Brewery as well as the image of Dr Johnson*” contends that “*When originally in use this was referred to as “Doctor Brand” which demonstrates it was seen as a separate brand to the design registered by the opponent*”. This is not explained further in the notice of defence and counterstatement, and no written submissions were filed. In the absence of further elucidation I must assume that what is meant is that at some point in the past consumers of the relevant products would have perceived the anchor devices and image of Dr Johnson as indicating a “separate brand” which they would have recognized and referred to as “Doctor Brand”.

26) This contention is irrelevant to my assessment for two reasons. Firstly, it is the perception of the average consumer in the UK at the point when the opposed mark was applied for which I must have regard to. Secondly, these are “Fast Track” proceedings in which no application for leave to file evidence was filed. There is therefore absolutely no evidence before me to support the proposition even that a mark using the anchor devices and image of Dr Johnson has been in recent use, let alone that the contemporary average consumer would regard the inclusion of those indicia as indicating a different commercial origin from that indicated by the earlier mark – or that the mark will be referred to orally in a different way. I must therefore make my own assessment as to how the contemporary average consumer at the relevant time would refer to the competing marks.

27) Figurative elements of a mark are not normally expressed orally. In the earlier mark the abbreviation “BP&Co” on the shield device and the form of signature below it both reflect the prominently displayed and striking large capitals of “BARCLAY PERKINS & Cos”. In the opposed mark the elements “ESTd 1781” and “BOTTLED AT THE BREWERY BY BARCLAY PERKINS & Co Ltd” will not be articulated in oral dealings. Nor will what will be perceived as routine indications of legal form, such as “& Cos” or “& Co Ltd”. In trade both marks will be articulated as “BARCLAY PERKINS”. There will be aural identity.

28) For the same reasons as I have already explained above at paragraph 26 I do not accept that I should attribute any special conceptual significance to the anchor devices and image of Dr Johnson in the opposed mark beyond that which is immediately obvious. That said, these devices and image in the opposed mark clearly have a conceptual content which is missing from the earlier mark, and thus constitute elements of conceptual difference. Similarly, the simple shield device with the abbreviation “BP&Co” and the form of signature in the earlier mark are not present in the opposed mark. This is of less conceptual significance, however, since the abbreviation and signature both simply reflect the conceptual content of the prominent and striking word element “BRADLEY PERKINS & Cos”.

29) The average consumer will not give much attention to the routine commercial indication “& Cos”. It is the prominent and distinctive words BARCLAY PERKINS on which the consumer’s attention will focus in both marks. They may be seen either as the forename and surname of an individual or as two surnames forming the name of a business. In either case, they contribute a strong element of conceptual identity. The net effect is that, viewed overall, there is a high degree of conceptual similarity between the marks.

The distinctiveness of the earlier mark

30) The degree of distinctiveness of the earlier mark must be assessed. This is because the more distinctive the earlier mark, either on the basis of inherent qualities

or because of use made, the greater the likelihood of confusion (see *Sabel BV v. Puma AG*, paragraph 24). In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97, the CJEU stated that:

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

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

31) There is no evidence of enhanced distinctiveness through use to be considered. This leaves the question of inherent distinctive character. I have found that, though the figurative and graphic elements of the mark are not negligible, and do make some contribution to the distinctive character of the earlier mark, its distinctive weight lies in its word element which, consisting of a name or names, is neither descriptive nor allusive of the relevant goods. The surname name PERKINS is not uncommon, but BARCLAY does not strike one as a particularly common forename, so that I would judge BARCLAY PERKINS to have a normal degree of distinctiveness when seen as an individual's name. Similarly, BARCLAY is not an uncommon surname,

but I would consider the combination of the surnames BARCLAY and PERKINS as also having a normal degree of distinctive character. Viewed overall, I consider the earlier mark as a whole to have a slightly higher than normal degree of inherent distinctive character.

Likelihood of Confusion

32) The factors assessed so far have a degree of interdependency (*Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer Inc*, paragraph 17); a global assessment of them must be made when determining whether there exists a likelihood of confusion (*Sabel BV v. Puma AG*, paragraph 22). There is no scientific formula to apply, however. It is a matter of considering the relevant factors from the viewpoint of the average consumer and determining whether they are likely to be confused.

33) I have found the goods of the competing specifications to be identical or highly similar, and that an average degree of care and consideration will be deployed in their selection. I have found the earlier mark to have a slightly higher than normal degree of inherent distinctive character. I have found at least a moderate degree of visual similarity, aural identity and a high degree of conceptual similarity between the competing marks. Bearing in mind my findings on the average consumer and the purchasing process, I nevertheless do not consider that the average consumer would mistake the opposed mark for the earlier mark (i.e. directly confuse them), even when considered in relation to identical goods or services. Even bearing in mind the principle of imperfect recollection, I consider that the visual differences between the marks are sufficient to avoid a likelihood of direct confusion.

34) That leaves the possibility of indirect confusion to be considered, and in this connection it is useful to bear in mind the observations of Mr Iain Purvis QC, sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10 (“L.A. Sugar”), where he noted that:

“16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are

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

35) The common element here consists of the prominent and striking words BARCLAY PERKINS, an element on which I have found the distinctive weight of both marks falls, and on which the average consumer’s attention will focus in both marks. I have explained in paragraph 26 above why I cannot accept the Applicant’s apparent contention that use of the anchor devices and image of Dr Johnson in the opposed mark would be taken by the average consumer as indicating a different commercial origin from that of the earlier mark. On the contrary, the average consumer will not attribute any special significance to these indicia beyond that which is immediately apparent. He or she will regard it as far too great a coincidence to suppose that two independent concerns should happen to be using the name BARCLAY PERKINS prominently on goods which I have found to be identical or highly similar. The differences in the marks will be seen simply as indicative of a variant mark or sub-brand. The consumer will believe that they are marks used by the same or by economically linked undertakings – that they “come from the same stable”. There will be indirect confusion.

Outcome

36) **The opposition succeeds in its entirety.**

Costs

37) Mr Wright has been successful and is entitled to a contribution towards his costs. In making my award I have borne in mind that the pleadings of both parties were basic and brief and that neither party filed written submissions. I hereby order Barnaby's Brewhouse Ltd to pay Mr Simon Wright the sum of £200. This sum is calculated as follows:

Opposition fee	£100
Preparing a statement and considering the other side's statement	£100

This 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 13th day of March 2018

**Martin Boyle
For the Registrar,
The Comptroller-General**