

O-105-19

TRADE MARKS ACT 1994

IN THE MATTER OF THE APPLICATION UNDER NO. 3278764

BY JAVED ASLAM

TO REGISTER THE TRADE MARK:

London Dream

FOR GOODS IN CLASS 25

AND

IN THE MATTER OF THE OPPOSITION THERETO UNDER NO. 412212

BY KTS GROUP LIMITED

BACKGROUND AND PLEADINGS

1. On 21 December 2017, Javed Aslam (“**the Applicant**”) applied to register the words “London Dream” as a trade mark in respect of the following goods in Class 25: *Casual clothing; fashion clothing; hosiery; headgear.*
2. The application was published for opposition purposes in the Trade Marks Journal on 19 January 2018 and is opposed by KTS Group Limited (“**the Opponent**”), which owns the following UK trade mark registrations:

UK trade mark No. 2060937 : DREAMS
Applied for on 13 March 1996; and Registered on 25 October 1996. For goods in Class 25: <i>Articles of clothing; swimwear, footwear and headgear.</i>
UK trade mark No. 2216417 : DREAM
Applied for on 7 December 1999; and Registered on 27 April 2001. For goods in Class 25: <i>Clothing; swimwear; footwear; headgear.</i>

3. Since the Opponent’s registered trade marks have dates of application for registration earlier than that of the Applicant’s trade mark, each of the Opponent’s marks is an “earlier trade mark” under section 6(1)(a) of the Trade Marks Act 1994 (“the Act”).
4. The opposition is based on section 5(2)(b) of the Act and is directed against all the goods in the application, which the Opponent submits are identical with, and/or similar to, those specified in the Opponent’s earlier registrations. The Opponent claims that the application is for a mark that is “visually, aurally and conceptually very similar” to the Opponent’s earlier marks - DREAM and DREAMS - such that “there is a likelihood of confusion, which includes the likelihood of association”.
5. Since both earlier marks of the Opponent had been registered for more than five years when the Applicant’s mark was published for opposition, they are potentially subject to the proof of use requirements, as per section 6A of the Act. The Opponent marked its Form TM7 (notice of opposition) to indicate that it relies on all of the goods for which its

marks are registered, but provided a statement of use only in relation to some of its goods, namely “clothing”.

6. The Applicant filed a notice of defence and a very brief counterstatement in which it denies the grounds of opposition, arguing that the difference between “DREAMS” and “LONDON DREAM” means that there will be no confusion in the marketplace. The Applicant marked its Form TM8 to indicate that it did not request evidence to show that the Opponent has used its earlier marks. The Form TM8 explained that if the Applicant did not request proof of use, the Opponent’s statement of use would be accepted with the consequence that the earlier marks may be relied on “for all the goods/services identified in the statement of use.” The Opponent may therefore rely on its earlier marks in respect of their registration for “clothing”¹.
7. The Opponent is represented in these proceedings by **Stratagem Intellectual Property Management Limited**; the Applicant has no professional representative. During the evidence rounds, neither party filed evidence, but submissions were filed on behalf of the Opponent. Neither party requested a hearing nor filed submissions in lieu. I take this decision based on the papers as indicated and taking into account relevant jurisprudence.

DECISION

8. The Opponent’s claim is based solely on section 5(2)(b) of the Act, which states:

“... 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 decisions of the EU courts provide the principles to be borne in mind when considering section 5(2)(b) of the Act:

¹ This is in line with section 6A(6) of the Act, which states: “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.”

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 that:

- (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 greater 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 the goods

10. The respective goods are set out below:

Applicant's goods	Class 25: <i>Casual clothing; fashion clothing; hosiery; headgear</i>
Opponent's goods	Class 25: <i>Clothing</i>

11. In *Gérard Meric v Office for Harmonisation in the Internal Market (OHIM)*, the General Court stated² that goods can be considered as identical when the goods designated by the earlier mark(s) are included in a more general category designated by the trade mark application, or when the goods designated by the trade mark application are included in a more general category designated by the earlier mark(s). The Applicant's "*Casual clothing; fashion clothing;*" are clearly identical to the Opponent's goods.
12. I also consider "*hosiery*" - stockings, socks, and tights - to be "*clothing*" and therefore identical to Opponent's goods. If they are not identical, I find them to be highly similar, all being garments, worn on the body by members of the public, for comfort, style and

² Case T- 133/05, at paragraph 29 of that judgment.

protection, and sold in clothes shop and commonly in the same section of a supermarket. They therefore share the same nature, intended purpose, method of use, users and channels of trade³. Since hosiery will be worn with other garments, “there is a close connection between the goods, 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” and they are therefore complementary in the sense described in *Boston Scientific*⁴. I find the same analysis applies in relation to “headgear”, which I also find highly similar to clothing.

The average consumer and the purchasing process

13. It is necessary to determine who is the average consumer for the services in question and to consider how the services are likely to be selected and purchased. It must also be borne in mind that the average consumer’s level of attention is likely to vary according to the category of goods in question⁵. In *Hearst Holdings Inc*,⁶ 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 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... [it] does not denote some form of numerical mean, mode or median.”

14. The average consumer in this case – for clothing goods, hosiery and headgear – will be members of the general public, who will purchase the goods in shops or via the internet. They will see the marks used on the goods as labelling or branding or in advertising, where a consumer will peruse shelves and browse the internet to select the goods. Therefore, I consider the purchase to be a primarily visual one⁷, but aural considerations

³ See such factors bearing on similarity of goods and services at paragraph 23 of the Court of Justice of the European Union (CJEU) ruling in *Canon*, Case C-39/97 (above), and in the judgment of Jacob J (as he then was) in *British Sugar PLC v James Robertson and Sons* [1996] R.P.C. 281

⁴ *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06

⁵ *Lloyd Schuhfabrik Meyer*, Case C-342/97

⁶ *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)

⁷ See paragraphs 49 and 50 of the judgment of the General Court in *New Look Limited v OHIM*, joined cases T-117/03 to T-119/03 and T-171/03.

may also play a part, such as on the basis of word of mouth recommendations, so I also take into account the aural impact of the marks in the assessment.

15. Clothing goods vary considerably in price, from inexpensive to quite costly; while they are not everyday goods, neither are they infrequent purchases. The average consumer, in the process of buying clothing goods, will consider how the goods look and whether they suit the buyer - in various degrees taking account of factors such as cut, style, sizing, and, for some, brand. The level of attention of the average consumer in buying the goods specified in this case will be of a normal or average level.

Comparison of the marks

16. It is clear from *Sabel BV v. Puma AG* 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.”

17. 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. The marks to be compared are:

Opponent’s earlier trade marks	Applicant’s contested trade mark
DREAMS	London Dream
DREAM	

18. The Opponent's word mark "DREAM" is closer to the Applicant's mark than the plural form of that word, and I shall therefore proceed with this decision primarily on the basis of the singular version, which provides the stronger basis for the opposition (although I shall briefly consider the plural form when I deal with likelihood of confusion). The overall impression of the latter earlier mark is that it is the ordinary English word, "dream", which has various meanings that will be familiar to the average consumer. The overall impression of the Applicant's mark is that it is a two-word phrase made up of the place name "London" and the word, "dream", each word qualifying the other.

Visual similarity

19. The marks have a degree of visual similarity because the whole of the earlier mark is present within the Applicant's mark. The earlier trade mark happens to be shown in upper case, whereas only the first letters of the Applicant's mark are capitalised; however, that visual difference may be disregarded for the purposes of assessing visual similarity, since fair and normal use of a word mark would certainly allow the mark to be presented in title case⁸ or uppercase. The comparison on a visual basis may thus be between: LONDON DREAM vs DREAM; or London Dream vs Dream.
20. On seeing the Applicant's mark, the average consumer will notice that it starts with the word "London". Not only is that the longer of the two words, but since it is the *first* word, its visual impact is notable, emphasising the difference between the respective marks. In my view there is a visual similarity between the marks to a little less than medium degree.

Aural similarity

21. The additional word "London" means that the Applicant's mark has three syllables, whereas the Opponent's mark is a single syllable. Although the common word in the marks will be spoken identically, the average consumer will be immediately aware of the aural difference introduced by the longer word that starts the Applicant's mark and which is absent from the Opponent's mark. In my view there is aural similarity between the marks to a degree between low and medium.

⁸ See the ruling of Iain Purvis QC, sitting as the Appointed Person in *Groupement Des Cartes Bancaires v China Construction Bank Corporation*, Case BL O/281/14 (at paragraph 21). See also the ruling of the CJEU in *Sadas SA, v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* Case T-346/04 4 November 2005 at paragraph 47.

Conceptual similarity

22. The concept of the Opponent's mark resides in the word "dream", which is an ordinary English word that has several meanings, including⁹, as a noun: (i) "a series of thoughts, images, and sensations occurring in a person's mind during sleep"; or (ii) "a cherished aspiration, ambition, or ideal"; or (iii) "a person or thing perceived as wonderful or perfect". And as a verb: (i) "to experience dreams during sleep"; or (ii) "to indulge in daydreams or fantasies about something greatly desired".
23. In the Applicant's mark the way in which the average consumer will likely perceive the concept of that same word is substantially qualified by the inclusion of the additional word "London". Rather than the solo isolated word "dream", the concept is restricted and made specific to connote "a big city dream", or more particularly, a dream relating to the UK capital city. I find the effect of that particularisation to be significant, invoking whatever concepts arise in the mind of the average consumer when confronted with the name of that globally renowned city. The two words of the Applicant's mark are mutually limiting. In my view there is a notable conceptual difference between the parties' marks.

Distinctive character of earlier trade mark

24. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 the Court of Justice of the European Union (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 ...

*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 ..."*¹⁰

⁹ <https://en.oxforddictionaries.com/definition/dream>

¹⁰ It goes on to identify various other considerations that would only be apparent from evidence, such as market share, long-standing use; promotional expenditure etc.

25. The word DREAM does not directly describe the Opponent's goods, but since the word is an ordinary English word and one that may be readily perceived to carry a laudatory or aspirational message, I consider that on an inherent basis, its degree of distinctive character falls below a normal level for the goods at issue (items of which may well be described in everyday language or in promotional material as "a dream sweater, skirt, dress" etc.). Distinctiveness may be enhanced through use in the relevant market and I note the submissions that the Opponent "has made substantial use of its DREAMS mark in the UK since at least 1982 and subsequently also elsewhere in the EU, and of the DREAM mark since 1990, and such use is continuing. The opponent's DREAM mark has also been used in the UK and Ireland by a licensee." However, since the Opponent has filed no evidence in these proceedings I am unable to assess whether the distinctive character of its earlier marks may have been enhanced through their use. Since I can consider only inherent distinctiveness, I find that the Opponent's earlier mark "DREAM" has a lower than ordinary degree of distinctive character. (I refer to the distinctive character of Opponent's "DREAMS" mark where I consider likelihood of confusion below.)

Conclusion as to likelihood of confusion

26. I now turn to reach a conclusion as to the likelihood of confusion between the two marks if they were used in relation to the goods at issue. This is a global assessment of likelihood of confusion that takes account of my findings set out in the foregoing sections of this decision and of the principles from case law outlined in paragraph 9 above.

27. The parties' goods are identical or highly similar – a factor which favours the Opponent. I also note that case law¹¹ provides that where goods are self-selected, or where the consumer sees the mark when purchasing the goods, visual considerations predominate. Consequently, in the assessment of likelihood of confusion, greater weight is to be given to the importance of visual similarity – and of course difference. In comparing the marks I have found there is some visual similarity – which I estimate as being to "a little less than medium degree". I have also found that aural factors play a (less important¹²) role in the selection process for the goods and, again, I have found some aural similarity, which I estimate as being to a degree between low and medium.

¹¹ See for example paragraphs 68 – 69 of the judgment of the EU court in *Quelle AG v OHIM* T-88/05.

¹² See *Canali Ireland v OHIM* [2005] ECR II-2479, paragraph 55

28. Case law also states that an assessment of the likelihood of confusion implies that conceptual differences between two signs may counteract aural and visual similarities between them, provided that at least one of those signs has, from the point of view of the relevant public, a clear and specific meaning, so that the public is capable of grasping it immediately¹³.
29. The Opponent submits that the word “London” in the Applicant’s mark creates no conceptual difference to render the mark individually distinctive from the Opponent’s marks. I disagree. In my view, the average consumer will immediately grasp the concept evoked by the Applicant’s mark of a dream relating to London – the concept is in that way clear and specific. There is therefore a conceptual difference in Applicant’s mark that I find distinguishes it from the Opponent’s earlier marks (both DREAM and DREAMS). The combination of the two words of the Applicant’s mark creates a phrase which has a greater degree of distinctiveness than either of its two constituent words.
30. The Opponent submits that the public would perceive goods bearing the Applicant’s mark “as being the Opponent’s DREAM goods, originating from London, where the opponent is based. The potential for confusion is obvious.” I again disagree. There is no evidence to show where the Opponent’s business is based or that the average consumer would anyway know about that. In the Applicant’s mark, its two words¹⁴ qualify each other and work in tandem to make a two-word phrase trade mark, more distinctive and contextually specific than (and different from) the solo word “dream” that is the Opponent.
31. The Opponent’s submissions refer me to the principle set out by the Court of Justice decision in the *Medion* case¹⁵, but I find the reasoning in that case to be not applicable to the present facts. The average consumer will not perceive the Applicant’s mark as consisting of a house mark (London) plus a secondary mark (Dream)¹⁶. I do not find that the word “Dream” serves an independent distinctive role in the composite mark; the words “London Dream” will read essentially as a unit that holds together as a phrase with its own specific meaning¹⁷.

¹³ See, to that effect, Case C-361/04 P *Ruiz-Picasso and Others v OHIM* [2006] ECR I-643, paragraph 20, and Case C-206/04 P *Mühlens v OHIM* [2006] ECR I-2717, paragraph 35 et seq.).

¹⁴ The order of the two words is of course vital – were the words reversed the effect would be quite different.

¹⁵ *Medion AG v Thomson Multimedia Sales Germany & Austria GmbH* Case C-120/04

¹⁶ Contrast the High Court ruling of Arnold J in *Aveda Corporation v Dabur India Ltd* [2013] EWHC 589 (Ch)

¹⁷ Contrast *BULOVA ACCUTRON Trade Mark* [1969] RPC 102

32. The risk of confusion requires an overall evaluation that takes into consideration all pertinent factors of the case in hand, and the perception of the trade marks on the part of the average consumer of the product in question plays a determinant role in that evaluation. The average consumer normally perceives a mark as a whole and does not proceed to analyse its various details, and in this case I find the overall impressions conveyed by each of the parties' marks are different.
33. The average consumer is deemed reasonably well informed and reasonably circumspect and observant; in this instance a member of the public, paying a normal or average level of attention when selecting the goods at issue, will see the longer word "London", that starts the Applicant's mark. Its role in the mark is important and it is implausible, even allowing for imperfect recollection, that the consumer will overlook its presence in the Applicant's mark (or its absence from the Opponent's marks). There will be no direct confusion of the marks, which is to say that a consumer will not mistake one for the other. That is not the end of the matter, however, and I must also consider whether there may be indirect confusion - where the average consumer realises the marks are not the same, but puts the similarity that exists between the marks/goods down to the responsible undertakings being the same or related.
34. Indirect confusion (and how it differs from direct confusion), was considered by Mr Iain Purvis QC, sitting as the Appointed Person¹⁸, in *L.A. Sugar Limited v By Back Beat Inc*,¹⁹ 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 recognised 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

18 An Appointed Person is a senior lawyer, expert in intellectual property law, who hears appeals against decisions of the trade mark tribunal.

19 Case BL-O/375/10

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.

17. *Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:*

(a) *where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right (“26 RED TESCO” would no doubt be such a case)*

(b) *where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as “LITE”, “EXPRESS”, “WORLDWIDE”, “MINI” etc.).*

(c) *where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension (“FAT FACE” to “BRAT FACE” for example).”*

35. No likelihood of confusion arises where a later mark merely calls to mind the earlier mark (mere association). Sitting as the Appointed Person in *Eden Chocolat*²⁰, James Mellor QC stated as follows:

“81.4 ... I think it is important to stress that a finding of indirect confusion should not be made merely because the two marks share a common element. When Mr Purvis was explaining²¹ in more formal terms the sort of mental process involved at the end of his [16], he made it clear that the mental process did not depend on the common element alone: ‘Taking account of the common element in the context of the later mark as a whole.’ (my emphasis).”

36. In the present case I also dismiss the likelihood of indirect confusion: I have explained that I find DREAM to have a lower than normal inherent degree of distinctive character (on account of its potential laudatory message) and that there is no evidence of its

²⁰ Case BL O-547-17 *Eden Chocolat be more chocstanza (word & device) v Heirler Cenovis GmbH*

²¹ In *L.A. Sugar Limited v By Back Beat Inc* Case BL-O/375/10 –above.

enhancement through use. The common element between the parties' marks is clearly not "so strikingly distinctive" that it would be assumed that "no-one else but the brand owner would be using it in a trade mark at all". If the earlier mark is brought to mind at all, the average consumer would consider the common element to be a coincidental deployment of an ordinary English word. The additional word "London", beginning the Applicant's mark, does not naturally suggest a sub-brand or brand extension. I reject the Opponent's claim that consumers would assume the marks are being used by the same undertakings and / or that there is an economic connection between the parties.

37. Even taking account of the interdependence principle, whereby a lesser degree of similarity between marks may be offset by a greater degree of similarity between the goods and services at issue, I find there is no likelihood of confusion - the identity of the goods does not negate this.

38. I have assessed the Opponent's claim based primarily on the basis of the earlier mark "DREAM" since precisely that word appears in the contested mark. However, I take into account that the Opponent's "DREAMS" mark may function more distinctively as a trade mark than the word in its singular form - one would not otherwise talk of a "DREAMS" sweater, skirt, dress, etc - where the laudatory message is less immediate. However, even though DREAMS may possess an ordinary degree of distinctive character, the additional letter "S" creates a further difference between the parties' marks (visually, aurally and conceptually), such that the DREAMS mark also fails to lead to a likelihood of confusion. **Consequently, the opposition under section 5(2)(b) fails; the application may proceed to registration.**

39. I note that to support the claimed likelihood of confusion the submissions refer to the Opponent having filed oppositions or otherwise raised objections and succeeded in actions against other DREAM/DREAMS marks in Class 25, identifying several EUTM marks as examples, including: DREAM COLOUR; I DREAM; PURPLE DREAMS; SWEET DREAMS; BIG DREAM; DREAM PETS; NORDIC DREAMS; D denim dream; SWISS DREAMS. Not only are such rulings not binding on a UK tribunal, they will have been decided on their specific facts and evidence and in the context of the EU market, where different language considerations may arise. The Opponent also refers to success

at first instance and in subsequent appeals challenging “dream Desigual” marks²² and “dreams by baci lingerie”²³ – again those EU appeal cases will have been decided in context, but each anyway invokes a house mark²⁴ that would make applicable the principle in *Medion*, and consequently produce a likelihood of confusion.

Costs

40. The winning party is generally entitled to a contribution towards its costs. The Applicant, being a litigant in person, was invited by the Registry to indicate how many hours it spent on the applicable activities and was informed that costs may be payable at £19.00 an hour in line with The Litigants in Person (Costs and Expenses) Act 1975 (as amended). However, the Applicant did not complete and return the pro-forma provided, and therefore, as advised in the official correspondence, no costs will be awarded. (I note that given the extent of papers filed in these proceedings costs would anyway have been very modest in this instance.)
41. **I therefore make no order for costs.**

21st of February 2019

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

²² (R629/2013 & R1489/2013-2)

²³ (R1521/2013-2)

²⁴ Likewise the other case referenced by the submissions - T-43/05 – Camper SL v OHIM (“Brothers by Camper”)