

**O-472-19**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF TRADE MARK APPLICATION 3336587**

**BY**

**CHISARA AGU-FRANKLYNN**

**TO REGISTER THE FOLLOWING TRADE MARK:**

**R U B Y W A R E**

**AND**

**OPPOSITION THERETO (NO. 414088)**

**BY**

**RUBIE'S COSTUME CO., INC.**

## **Background and pleadings**

1. Chisara Agu-franklynn (hereafter “the applicant”) applied to register the trade mark:

**R U B Y W A Я E**

in the UK on 06 September 2018. It was accepted and published in the Trade Marks Journal on 14 September 2018, for a range of goods and services in classes 03, 08, 18, 21 and 44; however, the goods against which this opposition has been brought are the applied for goods in class 03 only, namely:

**Class 03:** Make-up.

2. Rubie's Costume Co., Inc (“the opponent”) opposes the trade mark on the basis of Section 5(2)(b) of the Trade Marks Act 1994 (the Act).
3. The opposition is based on earlier European trade mark (EUTM) no. 33951 which was filed on 01 April 1996, and registered on 01 February 1999, for the mark:

**RUBIE’S**

4. Given the date of registration, the opponent’s mark qualifies as an earlier mark in accordance with section 6 of the Act. As the earlier mark was registered more than five years before the publication date of the application in suit, it is subject to the proof of use provisions contained in s. 6A of the Act.
5. The opponent’s earlier mark is registered in classes 03, 25 and 28, however for the purposes of this opposition, the opponent relies only on the goods registered in class 03, namely:

**Class 03:** Cosmetics and make-up for disguises.

6. In its statement of grounds, the opponent claims that:

- The marks are similar, and the goods involved are identical and/or similar, such that there exists a likelihood of confusion, which includes a likelihood of association.
- Both marks include a distinctive and dominant reference to the name 'Ruby'. This is an unusual girls name and may also reference the gemstone. There is only minimal stylisation in the element 'WARE' of the contested mark. Both marks begin with the letters 'RUB' and consumers place greater emphasis on the initial parts of marks.
- Phonetically the marks are very similar as they share the first two sounds 'ROO' or 'REEW' and 'BEE'. The contested mark also includes the element 'WARE', but it is commonly accepted that less emphasis is placed on the end of compound words.
- Conceptually, the earlier mark calls to mind the girl's name 'Ruby' as does the contested mark, however the element 'WARE' of the contested mark is largely descriptive of goods or merchandise for sale.
- The goods at issue are all in class 03 and are 'Make-up' in the contested mark and 'Cosmetics and make-up for disguises' in the earlier mark. The earlier term 'cosmetics' should be read broadly and as such, the goods should be found to be identical. Even if the opponent's goods are limited to those for use in disguises, i.e. for partywear and dressing up, the intended purpose remains the same. The opponent's goods include lipsticks and nail polishes, which even if provided in less common colours, can be categorised as the same goods as 'Make-up' generally.

7. In its counterstatement the applicant states that the marks would not be confused as the logos are different. The applicant does not put the opponent to proof of use of the earlier right and, as a consequence, the opponent may rely on all of the class 03 goods set out in paragraph five above.

8. The opponent has filed written submissions and evidence in chief. The applicant has filed written submissions. I will not summarise that information here but will refer to it as and when necessary, throughout my decision.
9. As no hearing was requested, this decision is taken following a careful perusal of the papers.
10. Throughout the proceedings the applicant has represented itself, whilst the opponent has been represented by Maucher Jenkins.

## **Decision**

### **Section 5(2)(b) of the Act**

11. Section 5(2)(b) of the Act is as follows:

“(2) A trade mark shall not be registered if because –

(a) ....

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.”

12. The following principles are gleaned from the decisions of the Court of Justice of the European Union (“the 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.

### **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**

13. The parties' respective specifications are:

<b>Opponent's goods</b>	<b>contested goods</b>
<b>Class 03:</b> Cosmetics and make-up for disguises.	<b>Class 03:</b> Make-up.

14. The General Court confirmed in *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T-133/05, that, even if goods or services are not worded identically, they can still be considered identical if one term falls within the scope of another (or vice versa):

“29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category,

designated by trade mark application (Case T-388/00 Institut 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”.

15. In submissions, the opponent has argued that the term ‘cosmetics’ within the earlier specification of goods at issue, should be considered in a broad sense. It has suggested that, due to the grammatical construction of the specification: ‘Cosmetics and make-up for disguises’, the term ‘Cosmetics’ may be perceived as an individual term, distinct from the term ‘make-up for disguises’. I find this argument to be persuasive. It is the case that there are two possible interpretations of the opponent’s earlier specification of goods. The earlier specification may be perceived to cover ‘cosmetics for disguises’ and ‘make-up for disguises’ or ‘cosmetics’ and ‘make-up for disguises’.

16. Accepting the argument made by the opponent, and applying the *Meric* principle, the opponent’s earlier goods ‘Cosmetics’ when taken to be a distinct, unlimited term within the earlier specification, wholly encompasses the applied for goods ‘Make-up’, which are caught by the wider term. It is also the case however, that were I not to accept the opponent’s argument, the applicant’s goods ‘Make-up’ is itself a wide-ranging term which encompasses ‘Cosmetics and make-up for disguises’. Therefore, the *Meric* principle applies equally in this respect and the goods at issue are identical.

### **Average consumer and the purchasing act**

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*.

18. 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 word “average” denotes that the person is typical. The term “average” does not denote some form of numerical mean, mode or median.”

19. The goods at issue are cosmetics and make-up products. The average consumer of these goods is likely to be a member of the general public. It is possible that a professional consumer may also be involved in the purchase process, however more often it will be the general public consumer who will be selecting the goods at issue.

20. The goods concerned are largely day to day items which are relatively inexpensive, although there will be some products that are more expensive than others. As such, I consider that the average consumer will pay no more than a medium degree of attention during the selection process.

21. The average consumer will purchase the goods from traditional retail outlets and specialist suppliers either in a retail setting or from a website or catalogue. Consequently, visual considerations are likely to dominate the selection process. However, I do not discount that there may be an oral element to the purchase of these goods, given that advice may be sought from sales assistants in a store environment or over the telephone.

### **Comparison of marks**

22. 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.”

23. 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.

24. The marks to be compared are:

Earlier mark	Contested mark
<b>RUBIE’S</b>	R U B Y W A R E

25. The earlier mark is comprised of the single verbal element ‘RUBIE’S’ in a standard typeface. The contested mark comprises a single verbal element which will be perceived to be constructed from the conjoining of the words ‘RUBY’ and ‘WARE’. The contested mark is presented in fairly standard typeface but can be said to have some minor stylisation to it, in respect of the letter ‘R’ in ‘WARE’ which faces the opposite direction to the other letters in the mark. The ending ‘WARE’ of the contested mark will be considered to be descriptive of goods or merchandise for sale and therefore will be considered to be fairly weak. The overall impression in the earlier mark lies in the totality ‘RUBIE’S’. The word ‘RUBY’ in the contested mark can

be said to be the more distinctive element of the mark due to the descriptive nature of the element 'WARE', which plays a lesser role in the contested mark.

### **Visual similarity**

26. The marks at issue are visually similar inasmuch as they both share the initial three letters 'RUB' and a letter 'E'. They differ in the letters 'I' and 'S' of the earlier mark, and in a letter 'Y' and the suffix '-WARE' of the contested mark. As the marks both share identical beginnings, they can be said to be visually similar to a medium degree.

### **Aural similarity**

27. The opponent's earlier mark is likely to be articulated as *ROO/BEEZ*. The applicant's contested mark is likely to be articulated as *ROO/BEEWAIR*. The marks share the same beginnings in '*ROO/BEE(Z)*'. The marks differ phonetically in the final syllable of the contested mark '*WAIR*'. As the initial parts of the marks will be articulated identically, the marks are considered to be aurally similar to a higher than medium degree.

### **Conceptual similarity**

28. Conceptually the earlier mark will be perceived as the possessive form of the female forename Rubie and will convey the notion of something being provided by a person of that name. The contested mark is likely to be perceived as a reference to the female forename Ruby, combined with the suffix '-WARE' which will be considered as a descriptive term indicating goods for sale. It may also be perceived to be a reference to the Ruby gemstone, or to the deep-red colour associated with that gemstone. Where the term 'WARE' is perceived within the contested mark as goods for sale, the mark as a whole will convey the concept of goods provided by a person named Ruby, or goods that are ruby coloured or that are decorated with rubies. For that part of the average consumer who perceives the contested mark as conveying the notion of goods for sale or on offer by a person named Ruby, the marks at issue can be said to be conceptually similar to a high degree. For that part of the consumer

which perceives the contested mark as describing goods that are ruby coloured or decorated with rubies, the marks can be said to be conceptually dissimilar.

29. In conclusion, the marks have been found to be visually similar to a medium degree; aurally similar to a higher than medium degree and either conceptually similar to a high degree or conceptually dissimilar.

### **Distinctive character of the earlier trade mark**

30. 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. The opponent has claimed that its earlier mark has gained an enhanced level of distinctive character through use of the mark and has filed evidence to support this claim.
32. The evidence provided by the opponent is comprised of a Witness Statement of Mark P Beige, President of the opponent company, with exhibits MPB1-MPB5 and a Witness Statement of Sharon Kirby, an attorney with the opponent's representative Maucher Jenkins, with exhibits SK1-SK3.
33. In his Witness Statement, Mr Beige states that the opponent company has been in business since 1951 in the United States of America. The opponent subsequently opened a UK operation in 1996, wholly owned by the opponent company Rubie's Costume Co., Inc. Exhibit MPB1 is comprised of a license agreement between Rubie's Costume Company Inc. and Rubie's Masquerade Company (UK) Limited, which establishes the business relationship between the two entities.
34. Exhibit MPB2 comprises a page from the opponent's website which lists UK sellers of its products as Tesco, Sainsbury's, George at Asda, Argos, Hamley's and Toys 'R' Us. The opponent states that Rubie's is the world's largest designer, manufacturer and distributor of fancy dress costumes and accessories. The opponent claims that they have won or been nominated for all of the iconic industry awards. The opponent also claims that the 'Rubie's' name is well-known throughout the world, including the UK, for costumes, fancy dress, and costume and theatrical makeup products.
35. The opponent claims that since 2013, Rubie's UK has sold in excess of 1.2 million units of makeup products and associated goods in the UK. Exhibit MPB3 is comprised of five columns showing yearly turnover figures for the opponent, from 2013-2017 with figures in US dollars. It is however impossible to extrapolate EU or UK based sales from the information as it is presented.
36. Exhibit MPB4 is comprised of four invoices relating to sales of goods in the UK, in respect of various items including fancy dress costumes, wigs, fake teeth and cosmetic products including makeup. Three of the invoices are dated from 2013, one of which does not include makeup as a product sold/ordered. The fourth invoice is

dated from 2016. The invoices show sales of goods across the UK, in St Helens; Solihull; Dunfermline and Brighton. These invoices show sales figures in pounds sterling and, when taking into account only those goods which can be considered to be make-up and cosmetic products, the total sales amount to approximately £730.

37. Exhibit MPB5 is comprised of three invoices showing a selection of sales of 'Rubie's' cosmetic products in Spain. The invoices are dated 2013, 2015 and 2016 and cover geographically Alicante, Barcelona and Tarragona. The total value of sales is €65,841 but all of the information is in Spanish, which makes it difficult to establish precisely what goods have been ordered/sold.
38. The evidence from Ms Kirby shows that she performed a number of internet searches as part of her preparation for the opposition case at hand.
39. Exhibit SK1 is comprised of print-outs from the oxforddictionaries.com website. It shows a description of the 'Oxford comma' as well as definitions of makeup and cosmetics. Exhibit SK2 is comprised of pages of websites from companies including Superdrug; Debenhams; Boots; Urbandecay; Cult Beauty and Amazon; showing selected types of makeup. SK3 is comprised of an article from Glamour magazine titled: '21 Beauty products to buy for Halloween'.
40. The information from Ms Kirby in exhibits SK2 and SK3 shows that main stream makeup and cosmetics manufacturers do, at least for certain/seasonal events such as Halloween, produce a range of more theatrical goods or products with unusual or less common colours.
41. The opponent's evidence states that the mark 'RUBIE'S has been used in the UK since 1996. It shows that there have been sales of products in the UK and Spain between 2013-2016. It also shows that there is a market cross-over between the more common or normal make-up and cosmetics and the less common, more theatrical products, for at least certain seasonal events such as Halloween, where consumers will use brighter or more garishly coloured cosmetics.
42. Whilst the evidence shows that the opponent's mark has been used across the UK and Spain to a certain degree on the relevant goods, I am not persuaded that it is

sufficient to prove that the opponent's mark enjoys a higher level of distinctive character due to the use made of the mark in the UK. The information in exhibit MPB3 lacks specificity and, whilst I do not doubt the opponent's claim that in the UK it has sold in excess of 1.2 million units of make-up products and associated goods, the evidence does not provide me with sufficiently clear information to establish which products were sold, levels of sales of specific goods, and whether the earlier mark is present on e.g. product packaging or promotional marketing materials. No evidence relating to marketing and promotional activities intended to raise brand awareness has been submitted.

43. Consequently, I do not accept that the evidence is sufficient to prove that the earlier mark has acquired an enhanced level of distinctive character through use made of it in the UK.

44. Turning then to the question of the inherent distinctive character of the earlier mark, I am aware that female forenames are sometimes used in conjunction with make-up and cosmetics, however this, in and of itself, does not mean that forenames are not capable of functioning as a badge of origin. It can also be argued that Ruby/Rubie is not one of the more common female forenames and is quite memorable. I therefore conclude that the earlier mark 'RUBIE'S' is inherently distinctive to a medium degree.

### **Likelihood of Confusion**

45. I now draw together my earlier findings into a global assessment of the likelihood of confusion, keeping in mind the legal principles established previously (see paragraph 12 above).

46. 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 marks may be offset by a greater degree of similarity between the respective goods and vice versa. As I mentioned above, it is also necessary for me to keep in mind the distinctive character of the opponent's trade mark as the more distinctive it is, the greater the likelihood of confusion. I must also keep in mind the average consumer for the goods, the nature of the purchasing

process and the fact that the average consumer rarely has the opportunity to make direct comparisons between marks side by side but must instead rely upon the imperfect picture of them he has retained in his mind.

47. In written submissions the applicant has stated that the contested mark 'RUBYWARE' is a coined word that will not be found in a dictionary. The earlier mark 'RUBIE'S' implies possession, whereas the contested mark is a made-up name. As such, the applicant denies that there would be any cause for confusion between the earlier mark and a coined expression which is not defined in the Oxford Dictionary.

48. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one trade mark for the other, whilst indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and goods/services down to the responsible undertakings being the same or related.

49. I have already found that:

- the goods are identical;
- the marks are visually similar to a medium degree; aurally similar to a higher than medium degree and either conceptually similar to a high degree or conceptually dissimilar;
- the average consumer will more likely be a member of the general public;
- the consumer can be expected to be paying an average level of attention when selecting the goods at issue;
- during the selection process, the visual and aural considerations will both be important;
- the earlier mark has a medium degree of inherent distinctiveness;
- the inversion of the letter 'R' in the element 'WARE' of the contested mark, whilst not going unnoticed, will be perceived as a minor degree of design stylisation and the term 'WARE' will be automatically read as such, regardless of this stylisation.

50. Having weighed up all of the factors, I conclude that there is no likelihood of direct confusion between the marks. The differences between the marks will not go unnoticed and the average consumer will not mistake one mark for the other.

51. I must therefore go on to consider the potential for indirect confusion between the marks.

52. In *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, Mr Iain Purvis Q.C., as the Appointed Person, explained that:

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

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).”

53. These examples are not exhaustive but provide helpful focus.

54. It is my opinion that the second category set out by Mr Purvis applies in this instance. I have previously found that the element ‘WARE’ in the contested mark, will be perceived as a descriptive term indicating goods or merchandise for sale. This non-distinctive aspect of the later mark will not reduce the likelihood that the average consumer will perceive the shared aural and conceptual similarities between the earlier mark ‘RUBIE’S’ and the initial element of the later mark ‘RUBY’. I conclude therefore that there will be indirect confusion between the marks at hand, as the average consumer will believe that the goods on offer come from the same or economically linked undertakings.

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

56. In this respect I conclude that the shared female forename Ruby/Rubie is sufficiently memorable that the average consumer, bearing in mind the identical nature of the goods at issue, would expect there to be a link between the undertakings behind these marks.

## **Conclusion**

57. The opposition has succeeded. The application is refused for all of the goods which were the subject of opposition, namely:

### **Class 03: Make-up**

58. The application may proceed to registration in respect of all of the applied for goods and services in classes 08, 18, 21 and 44, which were not the subject of opposition.

## **Costs**

59. The opponent has been successful and is entitled to a contribution towards its costs, which are sought on the usual scale (contained in Tribunal Practice Notice 2/2016). I award the opponent the sum of £600 as a contribution towards the cost of the proceedings. The sum is calculated as follows:

Official fee for opposition	£100
Preparing the statement of case and considering the counterstatement	£200
Preparing written submissions and considering the applicant's submissions	£300
<b><u>Total</u></b>	<b><u>£600</u></b>

60. The official fee for opposition appears on the TM7 to be £200, however the ground of opposition was section 5(2)(b) only. The opposition fee for this ground is £100.

61. I make no award of costs in respect of the preparation of evidence on the part of the opponent, as the evidence contributed nothing to the success of the opposition and was not found to be sufficient to prove an enhanced level of distinctive character.

62. I therefore order Chisara Agu-franklynn to pay Rubie's Costume Co., Inc. the sum of £600. The above sum should be paid within 14 days of the expiry of the appeal period or, if there is an appeal, within 14 days of the conclusion of the appeal proceedings.

**Dated this 13th day of August 2019**

**Andrew Feldon  
For the Registrar  
The Comptroller-General**