BL O-451-20

TRADE MARKS ACT 1994

REGISTRATION NO. 2627153 FOR THE TRADE MARK:

HR MULTISPORT

IN THE NAME OF HELEN RYDER AND A REQUEST FOR INVALIDITY THERETO UNDER NO. 502775 BY MAVIM HOLDING GMBH

BACKGROUND & PLEADINGS

1. The trade mark **HR MULTISPORT** was applied for on 5 July 2012 and entered in the register on 11 January 2013. It stands registered in the name of Helen Ryder ("the proprietor") for a range of goods and services in classes 12, 39 and 41.

2. On 16 August 2019, Mavim Holding GmbH ("the applicant") applied to declare the registration mentioned above invalid; the application is only directed against the services in class 41 of the registration (shown in paragraph 16 below). The application is based upon section 5(2)(b) of the Trade Marks Act 1994 ("the Act"). In its application, the applicant indicates that it is relying upon services in class 41 in the two International Registrations designating the United Kingdom ("IRUK") shown below:

> No. 774686 for the trade mark shown below, which designated the UK on 28 December 2001 (claiming an international convention priority date of 12 October 2001 from an earlier filing in Austria) and which was granted protection on 12 December 2002:

"Colours claimed - White, light blue, dark blue."

> No. 775479 for the trade mark shown below, which designated the UK on 28 December 2001 (claiming an international convention priority date of 12 October 2001 from an earlier filing in Austria) and which was granted protection on 2 August 2002:

"Colours claimed - White, light blue, dark blue."

3. Although in its application the applicant identifies the services in class 41 upon which it is relying, it has actually listed the services in Ms Ryder's registration rather than the services in class 41 of its own IRUKs. However, as it clearly identifies Class 41, I shall proceed on the basis that the applicant intended to rely upon all the services in class 41 of its IRUKs (which are identical) and which are shown in paragraph 16 below.

4. The proprietor filed a counterstatement in which she denies there is a likelihood of confusion.

5. In these proceedings, both parties represent themselves. Although neither party filed evidence, both parties filed written submissions during the evidence rounds. At the conclusion of the evidence rounds the parties were asked if they wished to be heard, failing which, a decision from the papers would be issued. Periods expiring on 6 and 20 May 2020 respectively were allowed for these purposes. Both of these periods fell within the "interrupted days" period implemented by the Intellectual Property Office as a result of the disruption caused by the Covid outbreak. Consequently, the parties were allowed until 30 July 2020 in which to request a hearing and until 27 August 2020 to file written submissions. Neither party requested a hearing or elected to file written submissions in lieu. I have read all of the submissions filed and shall keep them all in mind in reaching a conclusion.

DECISION

6. The relevant legislation is as follows:

> "47(1)…
>
> (2) Subject to subsections (2A) and (2G), the registration of a trade mark may be declared invalid on the ground-
>
> > (a) that there is an earlier trade mark in relation to which the conditions set out in section 5(1), (2) or (3) obtain, or
> > (b)…

unless the proprietor of that earlier trade mark or other earlier right has consented to the registration.

(2A) The registration of a trade mark may not be declared invalid on the ground that there is an earlier trade mark unless –

(a) the registration procedure for the earlier trade mark was completed within the period of five years ending with the date of the application for the declaration,

(b) the registration procedure for the earlier trade mark was not completed before that date, or

(c) the use conditions are met.

(2B) The use conditions are met if –

(a) the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with their consent in relation to the goods or services for which it is registered-

(i) within the period of 5 years ending with the date of application for the declaration, and

(ii) within the period of 5 years ending with the date of filing of the application for registration of the later trade mark or (where applicable) the date of the priority claimed in respect of that application where, at that date, the five year period within which the earlier trade mark should have been put to genuine use as provided in section 46(1)(a) has expired, or

(b) it has not been so used, but there are proper reasons for non-use.

(2C) For these purposes –

(a) use of a trade mark includes use in a form (the “variant form”) differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor), and
(b) use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(2D) In relation to a European Union trade mark or international trade mark (EC), any reference in subsection (2B) or (2C) to the United Kingdom shall be construed as a reference to the European Community.

(2DA)…

(2E) 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.

(2F) Subsection (2A) does not apply where the earlier trade mark is a trade mark within section 6(1)(c)

(2G) An application for a declaration of invalidity on the basis of an earlier trade mark must be refused if it would have been refused, for any of the reasons set out in subsection (2H), had the application for the declaration been made on the date of filing of the application for registration of the later trade mark or (where applicable) the date of the priority claimed in respect of that application.

(2H) The reasons referred to in subsection (2G) are-

(a) that on the date in question the earlier trade mark was liable to be declared invalid by virtue of section 3(1)(b), (c) or (d), (and had not yet acquired a distinctive character as mentioned in the words after paragraph (d) in section 3(1));

(b) that the application for a declaration of invalidity is based on section 5(2) and the earlier trade mark had not yet become sufficiently distinctive to support a finding of likelihood of confusion within the meaning of section 5(2);

(c)…

(3)…

(4)…

(5) Where the grounds of invalidity exist in respect of only some of the goods or services for which the trade mark is registered, the trade mark shall be declared invalid as regards those goods or services only.

(5A) An application for a declaration of invalidity may be filed on the basis of one or more earlier trade marks or other earlier rights provided they all belong to the same proprietor.

(6) Where the registration of a trade mark is declared invalid to any extent, the registration shall to that extent be deemed never to have been made: Provided that this shall not affect transactions past and closed."

7. 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.

5A Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only."

8. Both of the trade marks being relied upon by the applicant at paragraph 2 qualify as earlier trade marks under the provisions of section 6 of the Act. As these trade marks completed their protection process more than five years before both the date the application for invalidation and trade mark under attack were filed, they are, in principle, subject to the proof of use provisions. In its application, the applicant indicated it has used its trade marks on all the services in class 41 it had erroneously identified. However, as in her counterstatement the proprietor did not request the applicant to provide proof of use, I intend to proceed on the basis the applicant is entitled to rely upon all the services in class 41 of its IRUKs without having to establish that genuine use has been made of them.

Case law

9. The following principles are gleaned from the decisions of the courts of the European Union 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 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 will wrongly believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

My approach to the comparison

10. In these proceedings, the applicant is relying upon the two trade marks shown in paragraph 2. The second of those trade marks i.e. no. 775479 looks like this:

11. Of this trade mark, the applicant states:

“Our trade mark and the opponent's trade mark have very similar names. Our trade mark is "Multisport", and the opponent's trade mark is "HR MULTISPORT". There is a difference only in 2 letters, which could be confusing.”

12. It appears to me that what the applicant may have intended to say is that the above trade mark contains the words “MULTI” and “SPORT” presented in what I infer is Cyrillic characters. However, even if that was its intention, as the above trade mark is protected for the same services as the other IRUK upon which it relies and

which is identical save for the fact that its includes the words “MULTI” and “SPORT” presented in English, I shall begin by conducting the comparison on the basis of IRUK no. 774686, returning to IRUK no. 775479 later in this decision.

13. In their written submissions, the parties have commented upon, inter alia, (i) how their respective trade marks are actually used, (ii) the areas of commercial interest to them, and (iii) the absence of confusion. In *Devinlec Développement Innovation Leclerc SA v OHIM,* Case C-171/06P, the Court of Justice of the European Union (“CJEU”) stated:

> “59. As regards the fact that the particular circumstances in which the goods in question were marketed were not taken into account, the Court of First Instance was fully entitled to hold that, since these may vary in time and depending on the wishes of the proprietors of the opposing marks, it is inappropriate to take those circumstances into account in the prospective analysis of the likelihood of confusion between those marks.”

And:

In *Roger Maier and Another v ASOS,* [2015] EWCA Civ 220, Kitchen L.J. stated:

> “78....the court must.... consider a notional and fair use of that mark in relation to all of the goods or services in respect of which it is registered. Of course it may have become more distinctive as a result of the use which has been made of it. If so, that is a matter to be taken into account for, as the Court of Justice reiterated in Canon at paragraph [18], the more distinctive the earlier mark, the greater the risk of confusion. But it may not have been used at all, or it may only have been used in relation to some of the goods or services falling within the specification, and such use may have been on a small scale. In such a case the proprietor is still entitled to protection against the use of a similar sign in relation to similar goods if the use is such as to give rise to a likelihood of confusion.”

14. In relation to the absence of confusion, in *Roger Maier and Another v ASOS, Kitchen* L.J. stated that:

> “80. .....the likelihood of confusion must be assessed globally taking into account all relevant factors and having regard to the matters set out in *Specsavers* at paragraph [52] and repeated above. If the mark and the sign have both been used and there has been actual confusion between them, this may be powerful evidence that their similarity is such that there exists a likelihood of confusion. But conversely, the absence of actual confusion despite side by side use may be powerful evidence that they are not sufficiently similar to give rise to a likelihood of confusion. This may not always be so, however. The reason for the absence of confusion may be that the mark has only been used to a limited extent or in relation to only some of the goods or services for which it is registered, or in such a way that there has been no possibility of the one being taken for the other. So there may, in truth, have been limited opportunity for real confusion to occur.”

And:

In *The European Limited v The Economist Newspaper Ltd* [1998] FSR 283 Millett L.J. stated that:

> "Absence of evidence of actual confusion is rarely significant, especially in a trade mark case where it may be due to differences extraneous to the plaintiff's registered trade mark.”

15. As the above case law makes clear and as I explained earlier, the proprietor has not asked the applicant to provide proof of use. As a consequence, it is not necessary for the applicant to demonstrate that it has actually used its trade marks in relation to its services in class 41. In those circumstances, what I must do is compare the words as they appear in the competing specifications on a fair and notional basis, reminding myself that neither of the specifications are limited in any way. That principle also applies to the comparison of the competing trade marks

which I must compare on the basis in which they are registered and not in the manner in which they may actually be used.

Comparison of services

16. The competing services are as follows:

Applicant's services	**Proprietor's services**
Class 41 - Entertainment; sporting activities.	**Class 41** - Organisation of sporting and recreational activities; information, advice and consultancy in relation to all the aforesaid services.

17. In *Gérard Meric v Office for Harmonisation in the Internal Market,* Case T-133/05, the General Court ("GC") stated:

> "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".

18. As the terms "Entertainment" and "sporting activities" in the applicant's specification are broad enough to include the proprietor's "organisation of recreational activities" and "organisation of sporting activities" respectively, the competing services are to be regarded as identical on the *Meric* principle. As the "information, advice and consultancy services" in the proprietor's specification all relates to services which I have found to be identical to those in the applicant's specification, if not identical, such services are similar to those of the applicant to a high degree.

The average consumer and the nature of the purchasing act

19. As the case law above indicates, it is necessary for me to determine who the average consumer is for the services at issue. I must then determine the manner in which these services are likely to be selected by the average consumer in the course of trade. 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."

20. Approached on the fair and notional basis mentioned above, the average consumer of the services at issue is a member of the general public. As such services are most likely to be selected with the average consumer having inspected, for example, information in either hard-copy or on a website, visual considerations are likely to dominate the selection process. However, aural considerations in the form of, for example, word-of-mouth recommendations must not be ignored. As the cost and importance of the various services can vary considerably, so too will the degree of care that will be paid by the average consumer when selecting them. I will return to this point when I consider the likelihood of confusion.

Comparison of trade marks

21. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade 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 trade marks must be assessed by reference to the overall impressions created by them, 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."

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

The applicant's trade mark	**The proprietor's trade mark**
	HR MULTISPORT

23. The applicant's trade mark consists of the well-known prefix "MULTI" and the well-known word "SPORT" presented in upper case in a heavy dark blue slightly stylised but unremarkable font. Between these two words there appears a circular device presented principally in light blue upon which there appears an abstract device presented in dark blue. After the letter "T" in the word "SPORT" there appears the ® symbol. Even if noticed, as to which I have my doubts, the ® symbol has no distinctive character. Notwithstanding the presence of the device between them, the words "MULTI" and "SPORT" will form a unit which creates a meaning in its own right i.e. many sports. The words "MULTI" and "SPORT" and the device (as a totality) will make a roughly equal contribution to the overall impression the trade mark conveys. I will return to the distinctiveness of these various components later in this decision.

24. The proprietor's trade mark consists of the letters "H" and "R" and the word "MULTISPORT" presented in block capital letters. Although "MULTISPORT" is presented as one word, the fact that it consists of the well-known prefix "MULTI" conjoined to the well-known word "SPORT" is unlikely to escape the average consumer's attention. Although both components will contribute to the overall impression conveyed, given their positioning at the beginning of the proprietor's trade mark, the letters "H-R" are, for reasons I will come to shortly, likely to have a higher relative weight in the overall impression conveyed.

Visual Comparison

25. The competing trade marks coincide in that they both contain the words "MULTI" and "SPORT", albeit presented in different ways. As the proprietor's trade mark could be presented in the same colours as the applicant's trade mark, that is not a point that assists the proprietor. However, the device component in the applicant's trade mark and the letters "H-R" in the proprietor's trade mark have no counterparts in the other side's trade mark. Weighing the similarities and differences and in particular the positioning of the letters "H-R" in the proprietor's trade mark, results in what I regard as a medium degree of visual similarity between the competing trade marks.

Aural similarity

26. It is well established that when a trade mark consists of a combination of words and figurative components, it is by the word components that the trade mark is most likely to be referred to. Proceeding on that basis and as the words "MULTI" and "SPORT" and the letters "H-R" will be well known to the average consumer, the manner in which the competing trade marks will be verbalised is predictable i.e. the applicant's trade mark as "MULTI SPORT" and the proprietor's trade mark as "H-R MULTISPORT". Although the letters "H-R will be articulated first in the proprietor's trade mark, the fact that both trade marks contain identical verbal components i.e. "MULTI" and "SPORT", results in a medium degree of aural similarity.

Conceptual similarity

27. As I mentioned above the meanings of the words “MULTI” and “SPORT” will be well-known to the average consumer. In both trade marks these words form a unit, the meaning of which will, I am satisfied, be understood by the average consumer as meaning, broadly speaking, many sports. I am not convinced that either the device component in the applicant’s trade mark or the letters “H-R” in the proprietor’s trade mark will create any concrete conceptual image in the mind of the average consumer. Proceeding on that basis and as the competing trade marks share the concept of many sports, it results in a high degree of conceptual similarity between them.

Distinctive character of the earlier trade mark

28. The distinctive character of a trade mark can be appraised only, first, by reference to the services in respect of which registration is sought and, secondly, by reference to the way it is perceived by the relevant public – *Rewe Zentral AG v OHIM (LITE)* [2002] ETMR 91. In determining the distinctive character of a trade mark and, accordingly, in assessing whether it is highly distinctive, it is necessary to make an overall assessment of the greater or lesser capacity of the trade mark to identify the services for which it has been registered as coming from a particular undertaking and thus to distinguish those services from those of other undertakings - *Windsurfing Chiemsee v Huber and Attenberger* Joined Cases C-108/97 and C-109/97 [1999] ETMR 585.

29. As the applicant has filed no evidence of any use it may have made of its earlier trade mark, I have only its inherent characteristics to consider. The applicant’s trade mark is protected for “Entertainment; sporting activities” in class 41. Considered in relation to entertainment and sporting activities which offer the average consumer access to a range of sports, any distinctive character the unit the words “MULTI” and “SPORT” may possess is, in my view, at best, very low. However, as the device component is centrally placed and distinctive, considered overall the applicant’s trade mark is inherently distinctive to a between low and medium degree. It is, of

course, the distinctiveness of the common element which is key and it is to that point I will return shortly.

Likelihood of confusion

30. In determining whether there is a likelihood of confusion, a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective services and vice versa. As I mentioned above, it is also necessary for me to keep in mind the distinctive character of the applicant'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 services, the nature of the purchasing process and the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them he has retained in his mind.

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

32. Earlier in this decision I concluded that:

- My initial comparison would be based upon IRUK no. 774686;

- Where not identical, the competing services are similar to a high degree;

- The average consumer is a member of the general public who, whilst not ignoring aural considerations, will select the services at issue by predominantly visual means whilst paying a variable degree of attention during that process;

- The competing trade marks are visually and aurally similar to a medium degree and conceptually similar to a high degree;

- Although when considered as a whole the applicant's trade mark is possessed of a between low and medium degree of inherent distinctive character, the unit created by the words "MULTI" and "SPORT" are possessed of, at best, a very low degree of inherent distinctive character.

33. In *Kurt Geiger v A-List Corporate Limited*, BL O-075-13, Mr Iain Purvis Q.C. as the Appointed Person pointed out that the level of 'distinctive character' is only likely to increase the likelihood of confusion to the extent that it resides in the element(s) of the trade marks that are identical or similar. He said:

> "38. The Hearing Officer cited Sabel v Puma at paragraph 50 of her decision for the proposition that 'the more distinctive it is, either by inherent nature or by use, the greater the likelihood of confusion'. This is indeed what was said in Sabel. However, it is a far from complete statement which can lead to error if applied simplistically.
>
> 39. It is always important to bear in mind what it is about the earlier mark which gives it distinctive character. In particular, if distinctiveness is provided by an aspect of the mark which has no counterpart in the mark alleged to be confusingly similar, then the distinctiveness will not increase the likelihood of confusion at all. If anything it will reduce it."

34. In other words, simply considering the level of distinctive character possessed by the earlier trade mark is not enough. It is important to ask "in what does the distinctive character of the earlier trade mark lie?". Only after that has been done can a proper assessment of the likelihood of confusion be carried out.

35. I begin by reminding myself of my conclusions at paragraph 32 above. The fact that the competing services are identical or highly similar together with the medium degree of visual and aural similarity and the high degree of conceptual similarity between the competing trade marks are all points in the applicant's favour. Insofar as the average consumer is concerned, in reaching a conclusion, I shall proceed on the

basis most favourable to the applicant i.e. that such a consumer will pay a low degree of attention during the selection process, thus making him/her more prone to the effects of imperfect recollection. However, even proceeding on that basis, the at best very low degree of distinctiveness possessed by the common element is, given the various visual and aural differences between the competing trade marks, most unlikely to result in direct confusion.

36. That leaves indirect confusion to be considered. 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."

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

38. Given the at best very low degree of inherent distinctiveness in the common element, I see no reason why an average consumer who has noticed the competing trade marks are different would assume that the proprietor's trade mark is connected to the applicant or an undertaking linked to the applicant. Much more likely, in my

view, is that such a consumer will notice that the applicant's trade mark contains a distinctive device and the proprietor's trade mark the distinctive letters "H-R". Having done so, they will, in my view, assume that the trade marks at issue are from unrelated commercial undertakings and the inclusion of the unit created by the words "MULTI" and "SPORT" in the competing trade marks is merely to indicate to them that both undertakings provide services in relation to a range of sports. There is, in my view, no likelihood of indirect confusion and, as a consequence, the application based upon IRUK no. 774686 fails.

The applicant's trade mark IRUK no. 775479

39. As this trade mark is self-evidently less similar to the proprietor's trade mark than IRUK no. 774686, it follows that the application based upon this trade mark also fails.

Overall conclusion

40. The application has failed and, subject to any successful appeal, the proprietor's registration will remain registered.

Costs

41. Awards of costs in proceedings are governed by Annex A of Tribunal Practice Notice ("TPN") 2 of 2016. In the official letter of 8 April 2020 sent to the proprietor at the conclusion of the evidence rounds, the Tribunal stated:

> "If you intend to make a request for an award of costs you must complete and return the attached pro-forma and send a copy to the other party. Please send these by e-mail to tribunalhearings@ipo.gov.uk.
>
> If the pro-forma is not completed and returned, costs, other than official fees arising from the action (excluding extensions of time), may not be awarded. You must include a breakdown of the actual costs, including accurate estimates of the number of hours spent on each of the activities listed and any travel costs. Please note that The Litigants in Person (Costs and Expenses)

Act 1975 (as amended) sets the minimum level of compensation for litigants in person in Court proceedings at £19.00 an hour."

42. As the proprietor did not respond to that invitation by the extended deadline of 27 August 2020 and as she incurred no official fees in the defence of her registration, I make no order as to costs.

Dated this 16th day of September 2020

C J BOWEN
For the Registrar