

**O/489/21**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION NO. 3541350  
AND THE REQUEST BY EMMA BINNS  
TO REGISTER THE TRADE MARK**

**Izabella Silver**

**IN CLASS 14**

**AND**

**IN THE MATTER OF OPPOSITION THERETO UNDER NO. 600001601  
BY KATE OSWALD**

## Background and pleadings

1. On 6 October 2020 Emma Binns (“the Applicant”) applied to register the trade mark “Izabella Silver,” in Class 14. The application was published for opposition purposes in the Trade Marks Journal on 25 December 2020 for the following goods:

**Class 14:** Jewellery being articles of precious metals; Jewellery being articles of precious stones; Jewellery chain; Jewellery chain of precious metal for anklets; Jewellery chain of precious metal for bracelets; Jewellery chain of precious metal for necklaces; Jewellery chains; Jewellery charms; Jewellery coated with precious metal alloys; Jewellery coated with precious metals; Jewellery containing gold; Jewellery fashioned from non-precious metals; Jewellery fashioned of cultured pearls; Jewellery fashioned of precious metals; Jewellery fashioned of semi-precious stones; Jewellery findings; Jewellery foot chains; Jewellery for personal adornment; Jewellery for personal wear; Jewellery in precious metals; Jewellery in semi-precious metals; Jewellery in the form of beads; Jewellery incorporating diamonds; Jewellery incorporating pearls; Jewellery incorporating precious stones; Jewellery made from silver; Amulets [jewellery, jewelry (Am.)]; Articles of jewellery; Articles of jewellery with precious stones; Beads for making jewellery; Bracelets [jewellery, jewelry (Am.)]; Bracelets [jewellery]; Chains [jewellery]; Charms [jewellery]; Charms for jewellery; Ear ornaments in the nature of jewellery; Fashion jewellery; Items of jewellery; Locketts [jewellery]; Necklaces [jewellery]; Ornaments [jewellery, jewelry (Am.)]; Pendants [jewellery]; Personal jewellery; Pewter jewellery; Jewellery; Jewellery made of glass; Jewellery made of precious metals; Jewellery made of semi-precious materials; Jewellery of precious metals; Jewellery products; Jewellery stones; Precious jewellery; Ring bands [jewellery]; Rings [jewellery, jewelry (Am.)]; Rings [jewellery]; Rings [jewellery] made of precious metal; Rings being jewellery; Silver thread [jewellery, jewelry (Am.)]; Silver thread [jewellery]; Sterling silver jewellery; Synthetic stones [jewellery]; all the aforesaid goods being made of silver.

2. The Application is opposed by Kate Oswald (“the Opponent”) who relies on their UK trade mark, registration number 3282676, for the mark “Isabella Silver” registered for “Silver jewellery” in Class 14.<sup>1</sup>
3. The opposition is brought under the fast track opposition procedure. The Opponent opposes the trade mark application in full, on the basis of section 5(2)(b) of the Trade Marks Act (“the Act”), which concerns similar trade marks and identical or similar goods, resulting in a likelihood of confusion.
4. The Opponent’s trade mark was filed on 15 January 2018 and became registered on 20 April 2018; the mark is therefore an earlier trade mark under section 6(1) of the Act. Since the Opponent’s earlier trade mark had not been registered for more than five years when the Applicant applied for their trade mark, the earlier mark is not subject to the proof of use provisions under section 6A of the Act.
5. Although Rules 20(1)-(3) of the Trade Marks Rules - which are the provisions that deal with evidence rounds - do not apply to fast track oppositions, Rule 20(4) does apply. It reads: “(4) *The registrar may, at any time, give leave to either party to file evidence upon such terms as the registrar thinks fit*”. This implies that parties in fast track oppositions are in general required to seek leave from the registrar if they wish to file evidence. Neither party sought leave to file evidence in these proceedings, although the Applicant did submit evidence in exhibits IZ1 to IZ6 with their Form TM8, Notice of defence and counterstatement, with the Opponent submitting evidence in response on 26 April 2021. On 5 May 2021, the tribunal notified the parties that the Applicant would need to make a formal request for leave for their evidence to be admitted in the case. No such request was made and on 26 May 2021, the parties were informed that the Applicant’s evidence would be disregarded.
6. In the Notice of opposition, the Opponent states that the Applicant’s mark is near identical to their earlier mark and covers identical goods, meaning that the average consumer is likely to be confused, or misled.

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<sup>1</sup> The notice of opposition, Form TM7F filed on 2 February 2021 did not specify the goods relied upon from the Opponent’s trade mark. As the Opponent’s mark is registered only in respect of “silver jewellery”, I use my discretion to interpret the opposition as being based on *all* of the Opponent’s goods in registration 3282676.

7. In their Notice of defence and counterstatement, the Applicant sets out background information about Izabella Silver and the goods sold under the mark.<sup>2</sup> The Applicant states that they are not aware of any instances of confusion between the Applicant's and Opponent's marks.
8. On 26 April 2021, the Opponent submitted correspondence to the tribunal – together with supporting evidence – disputing the Applicant's claim that the products sold by the parties are completely different and that their paths have not crossed. I take note of the Opponent's comments but, as with the Applicant's evidence, I disregard the supporting evidence submitted by the Opponent, as no formal request was made for leave to submit evidence in this fast track case.
9. No further submissions were provided by the parties.
10. Rule 62(5) states that arguments in fast track proceedings shall be heard orally only if the registry requests it, or if either party to the proceedings requests it and the registrar considers that oral proceedings are necessary to deal with the case justly and at proportionate cost. Otherwise, written arguments will be taken. A hearing was neither requested nor is one considered necessary in the present case.
11. Neither party provided written submissions in lieu of a hearing.
12. Neither party has engaged professional legal representation in these proceedings.

### **Notional nature of the legal considerations**

13. The task of determining a likelihood of confusion under section 5(2)(b) requires an approach based on the perspective of the notional average consumer and on notional fair and ordinary use that either party may make of their respective trade marks. Thus, while background information about the parties' businesses and the types of jewellery that they sell may (quite understandably) be significant in the minds of each party, such matters can have no bearing in the assessment task before me. Any comparison of

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<sup>2</sup> As indicated, the evidence submitted with the Notice of defence and counterstatement is disregarded in this decision.

the marks must be on the basis of how they appear on the register. Likewise, the goods to be compared are those as specified in the list of goods of the respective trade marks and it is therefore of no relevance that the Applicant's mark is only used on bespoke jewellery, nor that the Opponent focuses on selling earrings via trade channels such as Amazon. A trade mark registration gives exclusive protection of the mark in relation to the specified goods, and it would be open to a business to change its particular offerings – for instance, from bespoke to mass production, or to offer the goods via any appropriate channel – so long as the goods remained as specified.

14. In their counterstatement, the Applicant indicated that to overcome the opposition, they were willing to include a clause in their application stating that they would not trade on Amazon. On 15 April 2021, the tribunal informed the Applicant that such restrictions should be agreed between the parties and that Form TM21B is the relevant form to request a limitation to the goods. No request to restrict the application has been filed and therefore this decision is based on the full list of goods as set out in paragraph 1.

## **DECISION**

15. In respect of the UK's departure from the EU, it should be noted that section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the Transition Period. The provisions of the Trade Marks Act 1994 relied on in these proceedings are derived from an EU Directive. This is why this decision continues to make reference to the trade mark case law of EU courts.

### **Relevant legislation and case law**

16. Section 5(2)(b) of the Act states:

“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”.*

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

(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**

18. In considering the extent to which there may be similarity between the goods, I take account of the guidance from relevant case law. Thus, in Canon the Court of Justice of the European Union (“the CJEU”) stated that:

*“In assessing the similarity of the goods or services concerned, ... all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary”.*<sup>3</sup>

19. In *Boston Scientific*, the General Court described goods as “complementary” in circumstances where “... 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”.<sup>4</sup> I also take note that in *Kurt Hesse v OHIM*, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods.<sup>5</sup>

20. The relevant factors identified by Jacob J. (as he then was) in the Treat<sup>6</sup> case for assessing similarity were:

- (a) The respective uses of the respective goods or services;
- (b) The respective users of the respective goods or services;
- (c) The physical nature of the goods or acts of service;
- (d) The respective trade channels through which the goods or services reach the market;
- (e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be, found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;
- (f) The extent to which the respective goods or services are competitive.

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<sup>3</sup> Case C-39/97, at paragraph 23.

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

<sup>5</sup> Case C-50/15 P

<sup>6</sup> *British Sugar PLC v James Robertson & Sons Ltd.*, 1996 R.P.C. 281.



21. In *Gérard Meric v Office for Harmonisation in the Internal Market (OHIM)*, the General Court of the European Union stated that goods can be considered as identical when the goods designated by the trade mark application are included in a more general category designated by the earlier mark (and vice versa).<sup>7</sup>
22. The earlier mark is registered for “*silver jewellery*”. A comparison must therefore be made between “*silver jewellery*” and each of the Applicant’s Class 14 goods listed in paragraph 1, which I note are all defined as being made of silver. I restate the point here, that how the Applicant’s and Opponent’s marks are currently in use, is of no relevance to this comparison, which must be based on the list of goods in the respective marks.
23. ***Jewellery being articles of precious metals; jewellery in precious metals; jewellery made from silver; articles of jewellery; items of jewellery; jewellery; jewellery made of precious metals; jewellery of precious metals; jewellery products; all of the aforesaid goods being made of silver.*** Each of these goods, although worded differently, are plainly identical to the Opponent’s *silver jewellery*.
24. ***Jewellery being articles of precious stones; Jewellery chain; Jewellery chain of precious metal for anklets; Jewellery chain of precious metal for bracelets; Jewellery chain of precious metal for necklaces; Jewellery chains; Jewellery charms; Jewellery coated with precious metals; Jewellery fashioned of cultured pearls; Jewellery fashioned of precious metals; Jewellery fashioned of semi-precious stones; Jewellery foot chains; Jewellery for personal adornment; Jewellery for personal wear; Jewellery in the form of beads; Jewellery incorporating diamonds; Jewellery incorporating pearls; Jewellery incorporating precious stones; Amulets [jewellery, jewelry (Am.)]; Articles of jewellery with precious stones; Bracelets [jewellery, jewelry (Am.)]; Bracelets [jewellery]; Chains [jewellery]; Charms [jewellery]; Ear ornaments in the nature of jewellery; Fashion jewellery; Locketts [jewellery]; Necklaces [jewellery]; Ornaments [jewellery, jewelry (Am.)]; Pendants [jewellery]; Personal jewellery; Precious jewellery; Ring bands [jewellery]; Rings [jewellery, jewelry (Am.)];***

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<sup>7</sup> *Gérard Meric v Office for Harmonisation in the Internal Market (OHIM)*, case T-133/05 at paragraph 29. See Case T-388/00 *Institut für Lernsysteme v OHIM — Educational Services (ELS)* at paragraph 53 for this principle applied to services.

**Rings [jewellery]; Rings [jewellery] made of precious metal; Rings being jewellery; Silver thread [jewellery, jewelry (Am.)]; Silver thread [jewellery] Synthetic stones [jewellery]; all of the aforesaid goods being made of silver.** Each of these goods would fall within the category of the Opponent's *silver jewellery*. The goods are therefore identical within the principle set out in the *Gérard Meric* case mentioned at paragraph 21.

25. **Jewellery coated with precious metal alloys; Jewellery containing gold; Jewellery fashioned from non-precious metals; Jewellery in semi-precious metals; Pewter jewellery; Jewellery made of glass; Jewellery made of semi-precious materials; Sterling silver jewellery; all the aforesaid goods being made of silver.** Each of the Applicant's goods listed here is described in terms indicating that they are produced from substances other than silver. The terms are followed by the limitation "*all the aforesaid goods being made of silver.*" I do not consider the limitation to stipulate that the listed goods consist *only* of silver and understand the goods as *including* silver, for example, jewellery made of pewter that has a silver content; or glass jewellery with a silver clasp or setting. It is possible therefore that these goods are identical to the Opponent's *silver jewellery*. However, if I am incorrect in this assessment, the Applicant's and Opponent's goods are nevertheless items of jewellery, sharing the same intended purpose – to adorn the wearer – users, method of use and trade channels. The goods will also be in competition with each other. As a result, I find these goods to be similar to the Opponent's goods to a high degree.

26. **Jewellery findings; Beads for making jewellery; Charms for jewellery; Jewellery stones; all the aforesaid goods being made of silver.** *Jewellery findings* refer to the jewellery making elements that are used to hold items of jewellery together. As such, the goods listed here are all items that are used to make jewellery. The goods therefore align with the Opponent's *silver jewellery* in that they are complementary, with *findings, beads, charms and stones* being important for the creation of items of jewellery and with consumers being likely to think that the goods came from the same undertaking.<sup>8</sup> The goods also align in their channels of trade. I therefore find these

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<sup>8</sup> See *Boston Scientific* above.

goods to be similar to the Opponent's goods to a degree that is somewhere between medium and high.

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

27. It is necessary to determine who is the average consumer for the goods at issue and how the goods are likely to be selected in the purchasing process.

28. In *Hearst Holdings Inc*,<sup>9</sup> Birss J. explained that "... 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 ..."

29. The average consumer for jewellery will be the general public at large. Items of jewellery are usually worn on the body and tend to serve a decorative function. In selecting and buying these goods, the average consumer will take account of the shape, colour, design, and materials from which they are constructed. These goods vary greatly in price from low cost, to very expensive. Whichever end of the price scale the goods are, the average consumer will pay a reasonably high (between medium and high) level of attention, as this is an infrequent purchase and one where the appearance of the product is a key factor in the purchasing decision. These goods will be bought in shops or via the internet or a catalogue. The consumer will see the marks used on goods as labelling or branding or in advertising, where a consumer will peruse displays and browse the internet or promotional publications to select the goods. In a retail setting, these goods will often be stored in locked cabinets, with a salesperson showing the goods to the customer, on request. Therefore, I consider the purchase to be a visual one, but aural considerations may also play a part, including on the basis of word of mouth recommendations and in conversation with salespersons.

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<sup>9</sup> *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*, case [2014] EWHC 439 (Ch), at paragraph 60.

30. The average consumer of jewellery findings, beads and charms for jewellery and jewellery stones will be a professional public, working in the jewellery trade, making, and repairing jewellery. The professional purchaser of these goods will be concerned with the nature and quality of the goods and the level of attention when purchasing the goods will be at a level between medium and high. The goods will generally be bought via the internet, catalogue or by telephone and, in the case of jewellery stones in particular, may also be bought via trade fairs. I consider the purchase to be a visual one, but aural considerations may also play a part on the basis of word of mouth recommendations, or where the goods are ordered by telephone.

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

31. The distinctive character of the earlier mark must be assessed, as the more distinctive the earlier mark, either inherently or through use, the greater the likelihood of confusion (*Sabel* at [24]). In *Lloyd Schuhfabrik*<sup>10</sup>, 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...

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...”

32. The Opponent’s mark consists of the forename “Isabella”, together with the word “Silver” which describes the nature of the goods sold under the trade mark, i.e. jewellery made from silver. The word “Silver” is therefore non-distinctive within the

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<sup>10</sup> *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97

Opponent's registration. "Isabella" neither describes, nor alludes to jewellery and I find the Opponent's earlier mark to be inherently distinctive to an average degree.

### Comparison of the marks

33. It is clear from *Sabel BV v. Puma AG*<sup>11</sup> (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 *Bimbo SA v OHIM*,<sup>12</sup> that:

*".....it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion."*

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

35. The respective trade marks are shown below:

<b>Isabella Silver</b>	<b>Izabella Silver</b>
Earlier trade mark	Contested trade mark

<sup>11</sup> Case C-251/95.  
<sup>12</sup> Case C-591/12P.

36. The overall impression of the Opponent's mark derives from the words "Isabella Silver." The average consumer in the UK would find "Isabella" in the Opponent's mark to have no particular meaning in English (since it has none) and would recognise it as a forename for a girl. The average consumer in the UK would understand the word "Silver" as referring to a precious metal.

37. The overall impression of the Applicant's mark derives from the words "Izabella Silver." The average consumer in the UK would find "Izabella" in the Applicant's mark to have no particular meaning in English (since it has none) and would recognise it as a forename for a girl. The average consumer in the UK would understand the word "Silver" as referring to a precious metal.

#### *Visual similarity*

38. Visually, the Applicant's and Opponent's marks align in that they consist of two words, the first of which consists of eight letters and the second of five letters. The second word in the marks – Silver – is the same in both marks and there is one letter of difference in the first word. The letter that differs between the marks is the second letter of the first word, and it is noted that, as a general rule, the beginnings of a word tend to have more visual impact than the ends.<sup>13</sup>

39. While keeping in mind the point of difference in the marks appears towards the beginning of the marks, I nevertheless find the Applicant's mark to be visually similar to the Opponent's mark to a high degree as the visual difference between the marks is restricted to a single letter.

#### *Aural similarity*

40. The letter "s" in Isabella and the letter "z" in Izabella will usually be spoken in the same way and I therefore find the Applicant's mark to be aurally similar to the Opponent's mark to a very high degree, with the marks possibly being aurally identical.

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<sup>13</sup> El Corte Inglés, SA v OHIM, Cases T-183/02 and T-184/02

### *Conceptual similarity*

41. Conceptually, both the Applicant's and Opponent's marks refer to an almost identical girl's forename, together with a type of precious metal. Isabella and Izabella are alternative spellings of the same name and I therefore find the Applicant's mark to be similar to the Opponent's mark to a high degree.

### **Likelihood of confusion**

42. I have so far considered the factors that need to be taken into account when assessing the likelihood of confusion and I now come to make a global assessment of these factors. In making this global assessment, I take stock of my findings in the foregoing sections of this decision and the authorities and principles that I have set out, in particular, at paragraph 17.

43. I also take note of the Applicant's argument that the parties "*paths have not crossed*" and in this respect, I highlight that case law has established that although evidence of actual confusion may assist an opponent in showing that there is a likelihood of confusion between marks, the absence of such confusion is less significant:

*"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."*<sup>14</sup>

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<sup>14</sup> *Roger Maier and Another v ASOS*, [2015] EWCA Civ 220

44. There are two types of confusion that I may find. The first type is direct confusion which occurs where the consumer mistakes one mark for another. The second type is indirect confusion, where the consumer notices the differences between the marks, but due to the similarities between the common elements, they believe that the goods or services derive from the same, or a related economic undertaking.<sup>15</sup>
45. In this decision I have found the goods in the Applicant's and Opponent's marks to be identical, or similar to at least a degree somewhere between medium and high. I have identified the average consumer as either the general public at large, or a professional public, who will pay a level of attention between medium and high. I have found the Opponent's mark to be distinctive to an average degree. I have found a high degree of visual and conceptual similarity, with the marks being aurally similar to a very high degree, possibly even aurally identical.
46. Taking a global assessment of these factors, I find that the average consumer would directly confuse the marks, meaning that due to the similarities between the marks, consumers would mistake one mark for the other. I find that this would be the case, even in respect of the professional public, paying between a medium and high level of attention in respect of jewellery components (findings, beads and charms for jewellery and jewellery stones) that are similar to the Opponent's goods to a degree that is somewhere between medium and high. For the general public, seeing the mark used on identical goods, there would be an even higher likelihood of confusion between the Applicant's and Opponent's marks.

## **Conclusion**

47. The opposition has succeeded in full and subject to any appeal, the application by Emma Binns will be refused.

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<sup>15</sup> L.A. Sugar Limited v Back Beat Inc, BL O/375/10.



## **Costs**

48. The Opponent has been successful. Having forewarned the Applicant, by serving a Notice of threatened opposition before commencing these opposition proceedings, the Opponent is entitled to a contribution to its costs. As the Opponent is representing themselves, the tribunal invited them to complete and return a proforma indicating the time spent on various activities associated with the proceedings. The Opponent did not return the form and therefore costs are awarded only in respect of the official fees arising from the action. I therefore award costs to the Opponent on the following basis:

### **Reimbursement of the official fee for Notice of fast track opposition:**

£100 (one hundred pounds)

49. I order Emma Binns to pay Kate Oswald the sum of £100 (one hundred pounds). The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

**Dated this 29<sup>th</sup> day of June 2021**

**Charlotte Champion  
For the Registrar  
The Comptroller-General**