

**O/881/21**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF  
TRADE MARK APPLICATION NO. 3516784  
IN THE NAME OF ROBERT WALKER  
TO REGISTER AS A TRADE MARK**

**Cheap Dream**

**IN CLASS 25**

**AND**

**IN THE MATTER OF OPPOSITION THERETO  
UNDER NO. OP000422066  
BY KTS GROUP LIMITED**

## BACKGROUND AND PLEADINGS

1. On 28 July 2020, Robert Walker (“the applicant”) applied to register **Cheap Dream** as a trade mark in the United Kingdom. The application was accepted and published for opposition purposes on 14 August 2020, in respect of the following goods:

Class 25: *Clothing, footwear and headwear.*

2. The application is opposed by KTS Group Limited (“the opponent”). The opposition was filed on 13 November 2020 and is based upon Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opposition is directed against all of the goods in the application. The opponent relies upon its UK trade mark registration number 2060937<sup>1</sup>, shown below, which has a filing date of 13 March 1996 and for which the registration procedure was completed on 25 October 1996:

## DREAMS

3. The opposition relies upon all of the goods for which the earlier mark is registered, namely:

Class 25: *Articles of clothing; swimwear, footwear and headgear.*

4. The opponent submits that the applicant’s mark is visually, aurally and conceptually highly similar to the opponent’s mark and that the competing goods are identical, resulting in a likelihood of confusion. The opponent requests that the contested application be refused for all goods and that an award of costs be made in favour of the opponent.

5. The applicant filed a counterstatement denying the claims and requested proof of use in Class 25 of earlier mark UK2216417.<sup>2</sup> In its written submissions, the applicant

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<sup>1</sup> The initial filing of the opposition was based upon two earlier marks, being UK2060937 and UK2216417, respectively. However, in its letter to the Registry dated 5 May 2021, the opponent requested that the latter mark be withdrawn, relying on UK2060937 only in these proceedings.

<sup>2</sup> See footnote 1.

admits identity of goods between its application and the opponent's earlier mark UK2060937, but submits that the identity of goods notwithstanding, there is no likelihood of confusion and requests that an award of costs be made in its favour.

6. Both parties filed written submissions which will not be summarised. Neither party elected to file evidence and neither party requested a hearing, although the applicant also filed written submissions in lieu of a hearing. This decision is taken following a careful perusal of the papers.

7. In these proceedings, the opponent is represented by Stratagem Intellectual Property Management Limited and the applicant is represented by Ladas & Parry LLP.

### **Preliminary Issues**

8. At the time of filing form TM7, the opponent relied upon two earlier marks, being UK2060937 and UK2216417, both of which had completed the registration process more than five years before the application date of the contested mark, and, as a result, both of which are subject to proof of use provisions. In filing his Notice of Defence and Counterstatement, the applicant requested the opponent provide proof of use of UK2216417 for all the goods on which it relies, however, that mark was subsequently withdrawn, leaving just UK2060937 to be considered.

9. At the time of filing his defence, the applicant was unrepresented. Form TM33 appointing Ladas & Parry LLP as representatives to the applicant was filed on 01 July 2021. No evidence has been submitted by the opponent in these proceedings.<sup>3</sup> In an email to the Registry dated 07 July 2021, the applicant's representatives submitted that the submissions made on behalf of the opponent "contain statements of fact that are not supported by evidence when they need to be, or are incorrect when not supported by any evidence". It acknowledges that the applicant made no request for proof of use in respect of UK2060937, but states that failure to do so does not allow

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<sup>3</sup> In its email dated 3 August 2021, the opponent requested a new deadline in order to submit evidence in reply to the applicant's submissions. The preliminary view of the Registry was to allow evidence in reply to be filed, which was challenged by the applicant in an email dated 11 August 2021. Although the preliminary view was maintained, the opponent elected to file further written submissions and no evidence was filed.

the opponent to do more than rely upon the full specification of the registration for the purposes of opposition, and it does not mean that the applicant accepts that the opponent's mark has been used. It further submits that in previous proceedings, where the opponent relied upon its registration for the word mark "DREAMS", the only evidence of use submitted was for a stylised form of the mark.

10. In response, the opponent submits that since proof of use has not been requested, it must be acknowledged that the mark has been used in connection with the registered goods for the purpose of the opposition proceedings.<sup>4</sup> In regard to its mark being registered in plain text, it refers to the appeal decision O/596/18, which found that the stylised presentation of its mark was considered as no more than a cursive typeface.

11. The opponent refutes the inference by the applicant in its written submissions of 07 July 2021 that it is being disingenuous to suggest that it has a history of entirely successful challenges to marks based on its "DREAMS" registration. The opponent points out that it has been successful in its challenges against several marks comprising DREAM/DREAMS which it says confirms the strong rights it holds in its earlier mark.

12. In making my decision, I shall take no account of any evidence as presented in previous proceedings by the opponent. I will therefore only consider the likelihood of confusion based on the similarity of the competing marks in these proceedings in relation to the goods at hand. I will consider the written submissions of both parties which I will refer to as and where appropriate during my considerations.

## **DECISION**

13. Although the UK has left the European Union, 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 Act relied on in these proceedings are derived from an EU Directive. Therefore, this decision contains references to the trade mark case-law of the European courts.

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<sup>4</sup> See opponent's letter in response dated 4 October 2021; and paragraph 15 of this decision.

14. An earlier trade mark is defined in section 6 of the Act, the relevant parts of which state:

“6.- (1) In this Act an “earlier trade mark” means –

(a) a registered trade mark, international trade mark (UK), European Union trade mark or international trade mark (EC) which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks,

...”

15. Given its filing date, the trade mark upon which the opponent relies qualifies as an earlier trade mark under the above provisions. The earlier mark was registered more than 5 years before the date of application of the contested mark and so the applicant could have required the opponent to provide proof of use of the mark under section 6A of the Act. As it did not do so, the opponent is able to rely on all the goods for which the earlier mark is registered.

#### **Section 5(2)(b) –**

16. I am guided by the following principles which are gleaned from the decisions of the EU courts 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 Office for Harmonisation in the Internal Market (Trade Marks and Designs) (“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 to mind the earlier mark, is not sufficient;

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

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

### **Comparison of goods**

17. The goods to be compared are set out in paragraphs 1 and 3 of this decision, respectively.

18. In its written submissions dated 7 July 2021, and again in its written submissions dated 9 November 2021, the applicant admits that there is an identity of goods between the respective marks. As a result of the concession made, I need make no further comparison of the competing goods.

### **The average consumer and the nature of the purchasing act**

19. 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. (as he was then) described the average consumer in these terms:

“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”.<sup>5</sup>

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<sup>5</sup> Paragraph 60

20. 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.

21. The applicant submits that the average consumer of the Class 25 goods is a member of the general public who is likely to pay an average level of attention to such goods. I agree with the applicant that the average consumer for the competing goods will predominantly be a member of the general public.

22. The goods are sold through a range of channels, including retail premises such as high street stores, specialist clothing stores, department stores, as well as by mail order and online. The act of purchasing will be based on aesthetics and functionality and will be a primarily visual process. In retail stores, the clothing may be displayed on racks and shelves, where they will be viewed and self-selected by the consumer. A similar process will apply to mail order purchases and those made via a website, where the consumer will select the goods having viewed an image displayed in a catalogue or on a web page.

23. In *New Look Limited v OHIM*, joined cases T-117/03 to T-119/03 and T-171/03, the General Court stated that:

“49. However, it should be noted that in the global assessment of the likelihood of confusion, the visual, aural or conceptual aspects of the opposing signs do not always have the same weight. It is appropriate to examine the objective conditions under which the marks may be present on the market (*BUDMEN*, paragraph 57). The extent of the similarity or difference between the signs may depend, in particular, on the inherent qualities of the signs or the conditions under which the goods or services covered by the opposing signs are marketed. If the goods covered by the mark in question are usually sold in self-service stores where consumer choose the product themselves and must therefore rely primarily on the image of the trade mark applied to the product, the visual similarity between the signs will as a general rule be more important. If on the other hand the product covered is primarily sold orally, greater weight will usually be attributed to any aural similarity between the signs.”



And

“50..... Generally in clothes shops customers can themselves either choose the clothes they wish to buy or be assisted by the sales staff. Whilst oral communication in respect of the product and the trade mark is not excluded, the choice of the item of clothing is generally made visually. Therefore, the visual perception of the marks in question will generally take place prior to purchase. Accordingly the visual aspect plays a greater role in the global assessment of the likelihood of confusion.”

24. Considered overall, the selection process by the general public will be a predominantly visual one, although aural considerations will play their part and may include verbal recommendations from sales staff. The value of the goods will vary from relatively inexpensive for casual/everyday wear, which may be bought on a semi-regular basis, to comparatively expensive for designer wear and/or goods being purchased for a special event which will be purchased less frequently. In my view, a medium level of attention will be paid during the purchasing process.<sup>6</sup>

### **Comparison of marks**

25. 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 in *Bimbo SA v OHIM* Case C-591/12P, 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

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<sup>6</sup> See paras 30-34 *Zoo Sport Ltd v OHIM* Case T-453/12, where the GC maintained the findings of the Board of Appeal in that the level of attention in relation to the relevant items of clothing will not increase above average, even where the goods are more expensive.

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.”<sup>7</sup>

26. 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.

27. The respective trade marks are shown below:

<b>Opponent’s trade marks</b>	<b>Applicant’s trade mark</b>
<b>DREAMS</b>	<b>Cheap Dream</b>

28. The opponent submits that the competing signs are visually similar due to the common element “DREAM” which is easily picked out from the applicant’s mark and will be considered as a dominant and distinctive element of that mark. It further submits that the additional word “Cheap” in the applicant’s mark will affect the aural impression slightly, but that the words “DREAMS” and “Dream” will be pronounced identically and that the similarities outweigh the differences. Regarding the conceptual comparison of the marks, it submits that the meaning of the shared word “DREAM” creates a high level of conceptual similarity, providing a common dominant link between the signs, and in applying the judgment in case T-43/05 (*Camper, SL v OHIM*) to these proceedings, the public cannot be expected to distinguish between the marks for the same goods. However, the marks in that case were “BROTHERS” and “BROTHERS by CAMPER” (both figurative), and so I do not consider it to be on all fours with the current case.

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<sup>7</sup> Paragraph 34

29. The applicant submits that visually, one mark comprises two words in upper and lower case compared with a one word mark, and while there is some similarity between the marks because of the element “DREAM” that features in both marks, its mark is qualified by the word “Cheap”, and that the difference between singular and plural in the element “Dream” against the opponent’s “DREAMS” is obvious and significant. It submits that aurally, there is a distinct difference between the respective marks and particularly because the application consists of two separate words, while conceptually, “Cheap Dream” is an entirely different concept to “DREAMS”, with no reason to conclude that the word “Dream” is the dominant element of the applicant’s mark.

### **Overall impression**

30. The opponent’s mark consists of the single word “DREAMS”, presented in a standard font without any other elements to contribute to the overall impression. The overall impression conveyed by the mark therefore rests in the word itself.

31. The applicant’s mark consists of two words, “Cheap” and “Dream”, presented equally in a standard font in Title Case. The word “Cheap” qualifies the subsequent word “Dream”, resulting in the words hanging together as a unit. The overall impression conveyed by the mark therefore rests in the unit created by the combination of the words it comprises.

### **Visual comparison**

32. The opponent’s mark consists of the single word “DREAMS”, the singular form of which is contained in the applicant’s mark “Cheap Dream”, with the additional word “Cheap” in the later mark being a point of differentiation between the two. I do not consider the difference in capitalisation/title case is relevant to the visual impact, as the registration of a word mark gives protection irrespective of capitalisation: see *Bentley Motors Limited v Bentley 1962 Limited*, BL O/158/17. In my view, the marks are visually similar to a medium degree.

### **Aural comparison**

33. The common element of the competing marks is the word “DREAM”, albeit that in the opponents mark it has been pluralised and the letter “S” would be articulated, the whole being pronounced as “DREEMS” [dri:ms]. Both words of the applicant’s mark would be voiced, the whole being pronounced as “CHEEP DREEM” [tʃi:p dri:m]. Consequently, I find there to be a medium degree of aural similarity between the marks.

### **Conceptual comparison**

34. To my mind, the common word DREAM(S) in the competing marks will be perceived by the average consumer as referring to images or thoughts which may be experienced either during sleep, or whilst awake (daydream/s). However, the message being sent by the opponent’s mark is somewhat elusive: some consumers will immediately think of daydreams, which may be big or ambitious dreams, or no more than wishful thinking, while other consumers will think of the unconscious or subconscious thoughts they have while they are asleep. A “cheap dream” is more tangible and is likely to be perceived as a daydream on a small scale, relating to something that comes easily at little cost or which holds less value. I accept that the difference between a plural noun or one in the singular does not always alter the distinctive character of the word, or make for a conceptual distinction.<sup>8</sup> However, in this case, I find the qualifying word “Cheap” in the contested mark, together with the word “Dream” in the singular, to evoke a different impression to the word “DREAMS” alone, albeit that there is an overlap whereby both marks will trigger the notion of images or thoughts in the mind of the consumer. Overall, I consider there to be no more than a medium degree of conceptual similarity.

### **Distinctive character of the earlier marks**

35. The distinctive character of a trade mark can be appraised only, first, by reference to the goods in respect of which registration is sought and, secondly, by reference to

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<sup>8</sup> See *DREAMERS CLUB* trade mark appeal decision, case O/091/19, para 18.

the way it is perceived by the relevant public – *Rewe Zentral AG v OHIM (LITE)* [2002] ETMR 91.

36. 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).”

37. Registered trade marks can possess varying degrees of inherent distinctive character, being low where they are allusive or suggestive of a character of the goods and services, whereas invented words usually have the highest degree of distinctive character. The distinctiveness of a mark can be enhanced by virtue of the use made of it. The opponent has stated that it is not claiming an enhanced reputation for the purposes of these opposition proceedings. Consequently, I have only the inherent characteristics of its trade mark to consider.

38. The opponent submits that having successfully opposed a number of other applications for a variety of DREAM/DREAMS combination marks, its earlier mark is clearly capable of functioning as a trade mark of at least normal distinctiveness in relation to the goods in Class 25.

39. The applicant submits that the earlier mark has only a low degree of inherent distinctiveness.

40. While the earlier mark cannot be said to be descriptive of *swimwear, footwear and headgear*, the specification has also been registered for *Articles of clothing*, which may include items of nightwear. As such, to a significant proportion of consumers, the word DREAMS is likely to be seen as allusive when considered within the context of articles of nightwear. Consequently, I find the earlier mark to be inherently distinctive to a low to medium degree for articles of clothing relating specifically to nightwear, and inherently distinctive to a medium degree for non-nightwear related articles of clothing and for swimwear, footwear and headgear.

### **Likelihood of confusion**

41. There is no simple formula for determining whether there is a likelihood of confusion. In determining whether there is a likelihood of confusion, a number of factors need to be borne in mind.

42. It is clear then that I must make a global assessment of the competing factors (*Sabel* at [22]), keeping in mind the interdependency between them i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and vice versa (*Canon* at [17]). In making my assessment, I must consider the various factors from the perspective of the average consumer, bearing in mind 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 (*Lloyd Schuhfabrik* at [26]).

43. There are two types of possible confusion: direct, where the average consumer mistakes one mark for the other, or indirect, where the average consumer realises the marks are not the same but puts the similarity that exists between the marks/goods down to the responsible undertakings being the same or related. The distinction between these was explained by Mr Iain Purvis Q.C., sitting as the Appointed Person, in *L.A. Sugar Limited v Back Beat Inc*, Case BL-O/375/10. He said:

“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.

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

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

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

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

44. The above are examples only which are intended to be illustrative of the general approach and which provide a helpful focus.

45. The applicant admits that there is an identity of goods between the respective marks. Earlier in this decision, I found that:

- The level of attention of the general public as the average consumer will be medium;
- The goods at issue will be selected by predominantly visual means;
- The competing trade marks are visually and aurally similar to a medium degree, with no more than a medium degree of conceptual similarity;
- The earlier mark is inherently distinctive to a low to medium degree for articles of clothing related to nightwear; and inherently distinctive to a medium degree for the remaining class 25 goods.

46. Considering the visual nature of the selection process, taking into account the guidance of Mr Iain Purvis Q.C. on the likelihood of confusion, while bearing in mind that the average consumer is unlikely to see the marks side-by-side and will therefore be reliant on the imperfect picture of them they have kept in their mind, I consider it unlikely that they would mistake one mark for the other. To my mind, the average consumer will notice the differences between the marks. I therefore find that there is no likelihood of direct confusion.

47. Having found no likelihood of direct confusion, I will consider whether there might be a likelihood of indirect confusion. Here the average consumer recognises that the marks are different but assumes that the goods are the responsibility of the same or connected undertakings. In *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17,



Mr James Mellor Q.C. (as he then was), 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.

48. The opponent submits that goods bearing the sign “Cheap Dream” would be perceived by the relevant public as originating from the same commercial origin as the goods covered by its own earlier mark.

49. In *Liverpool Gin Distillery Ltd and others v Sazerac Brands, LLC and others* [2021] EWCA Civ 1207, the Court of Appeal dismissed an appeal against a ruling of the High Court that trade marks for the words EAGLE RARE registered for whisky and bourbon whiskey were infringed by the launch of a bourbon whiskey under the sign “American Eagle”. In his decision, Lord Justice Arnold stated that:

“13. As James Mellor QC sitting as the Appointed Person pointed out in *Cheeky Italian Ltd v Sutaria* (O/219/16) at [16] “a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion”. Mr Mellor went on to say that, if there is no likelihood of direct confusion, “one needs a reasonably special set of circumstances for a finding of a likelihood of indirect confusion”. I would prefer to say that there must be a proper basis for concluding that there is a likelihood of indirect confusion given that there is no likelihood of direct confusion.”

50. I acknowledge that the categories listed by Mr Iain Purvis Q.C. in *L.A. Sugar* are not exhaustive, but I cannot agree with the applicant that the average consumer would perceive the competing goods as originating from the same commercial origin. I do not consider the common word element “DREAM” to be so strikingly distinctive that only one undertaking would use it in a trade mark, and although the contested mark may bring to mind the earlier mark, or vice-versa, to my mind, the sign “Cheap Dream” is not a logical brand extension of the sign “DREAMS”. I consider it unlikely that the average consumer would assume that there is an economic connection between the parties. Consequently, I find that there is no likelihood of indirect confusion.

51. The opposition under section 5(2)(b) fails.

## **Conclusion**

52. The opposition by KTS Group Limited has failed. Subject to any successful appeal, the application by Robert Walker may proceed to registration.

## **Costs**

53. The applicant has been successful, and is therefore entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice (“TPN”) 2/2016. Applying the guidance in that TPN, I award the applicant the sum of £800, which is calculated as follows:

Considering the notice of opposition and preparing a counterstatement:	£300
Preparing written submissions in lieu of a hearing:	£500
<b>Total:</b>	<b>£800</b>

54. I therefore order KTS Group Limited to pay Robert Walker the sum of £800. 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 3rd day of December 2021**

**Suzanne Hitchings**  
**For the Registrar,**  
**the Comptroller-General**