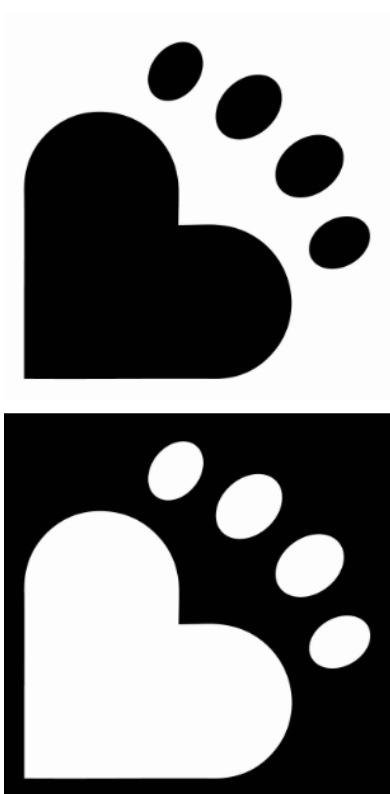


O-642-21

**TRADE MARKS ACT 1994  
IN THE MATTER OF  
TRADE MARK APPLICATION NO. 3447824  
BY DOG ROCKS UK DISTRIBUTION LIMITED  
TO REGISTER**



**(SERIES OF TWO)**

**AS A TRADE MARK  
IN CLASSES 3, 4, 5 & 35  
AND OPPOSITION THERETO (UNDER NO. 420789)  
BY  
INDEPENDENT VETCARE LIMITED**

## Background and pleadings

1. Dog Rocks UK Distribution Limited (“the applicant”) applied for a series of two device marks, as set out on the title page, on 28 November 2019. The marks were published on 17 January 2020 in classes 3, 4, 5 and 35. For the avoidance of doubt, class 4 and some terms in class 35 do not form part of these proceedings. The relevant goods and services will be set out later in this decision.

2. Independent Vetcare Limited (“the opponent”) opposed the application on 28 July 2020 under section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opposition is pleaded against classes 3 and 5 and some services in class 35 of the application. The opponent relies on a single UK registration which is set out below. The goods and services relied on will be set out later in this decision.

UK TM No.3287868



(series of two)

Filing date: 5 February 2018

Registration date: 27 April 2018

3. The opponent claims under section 5(2)(b) that the applicant’s mark is similar to its earlier mark and is applied for in respect of identical or similar goods and services to those in the specifications of the earlier mark. In consequence, there exists a likelihood of confusion.

4. The opponent's trade mark is an earlier mark, in accordance with section 6 of the Act but because it had not been registered for five years or more at the filing date of the applicant's mark, it is not subject to the use requirements, as per section 6A of the Act.

5. The applicant filed a defence and counterstatement on 19 October 2020 in which it admitted that its goods in classes 3 and 5 are identical and/or highly similar to the opponent's goods in the same classes, whereas it denied that that its goods and services were similar to class 44 of the opponent's earlier registration. The applicant also stated that whilst both its application and the earlier registration contained a device resembling an animal paw print, the devices were not similar.

6. In these proceedings the opponent is represented by Elkington and Fife LLP and the applicant is represented by Taylor Vinters LLP. Both sides filed written submissions. A hearing was requested and held before me on 27 July 2021. At the hearing, the applicant was represented by Ms Beth Collett of Counsel, and the opponent was represented by Mr Allister McManus of Elkington and Fife LLP.

### **Preliminary issue**

7. Both sides, in their respective written submissions, sought to provide additional information relating to animal paw print devices used in relation to animal/pet products. The applicant provided examples of existing marks on the register containing animal paw print devices, whilst the opponent provided internet images which were claimed to show that animal paw print devices where the main pad is heart-shaped are unusual. I have considered the additional material provided by both sides but did not find it to be of assistance in my decision.

### **Section 5(2)(b)**

8. Section 5(2)(b) of the Act is 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”.

9. The following principles are gleaned from the decisions of the EU courts<sup>1</sup> 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

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<sup>1</sup> Although the UK has left the EU, section 6(3)(a) of the European (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 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.

all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;

(f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

(g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;

(h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;

(i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;

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

(k) if the association between the marks creates a risk that the public 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 and services**

10. In the judgment of the Court of Justice of the European Union (“CJEU”) in *Canon*<sup>2</sup>, the court stated at paragraph 23 of its judgment that:

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<sup>2</sup> C-39/97

“In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, 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”.

11. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case<sup>3</sup> 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. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

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<sup>3</sup> [1996] R.P.C. 281

12. The following case law is also applicable in relation to the contested goods in these proceedings when in *Gérard Meric v Office for Harmonisation in the Internal Market*<sup>4</sup>, the General Court (“GC”) stated that:

“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 fur 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”.

13. With regard to the applicant’s retail services, in *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06, the GC stated that “complementary” means:

“...there is a close connection between them, 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”.

14. I also find the following case law to be helpful in these proceedings: in *Oakley, Inc v OHIM*<sup>5</sup>, the GC held that although retail services are different in nature, purpose and method of use to goods, retail services for particular goods may be complementary to those goods, and distributed through the same trade channels, and therefore similar to a degree.

15. Furthermore in *Tony Van Gulck v Wasabi Frog Ltd*<sup>6</sup>, Mr Geoffrey Hobbs Q.C. as the Appointed Person reviewed the law concerning retail services v goods. He said (at paragraph 9 of his judgment) that:

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<sup>4</sup> Case T- 133/05

<sup>5</sup> Case T-116/06, at paragraphs 46-57

<sup>6</sup> Case BL O/391/14

“9. The position with regard to the question of conflict between use of **BOO!** for handbags in Class 18 and shoes for women in Class 25 and use of **MissBoo** for the Listed Services is considerably more complex. There are four main reasons for that: (i) selling and offering to sell goods does not, in itself, amount to providing retail services in Class 35; (ii) an application for registration of a trade mark for retail services in Class 35 can validly describe the retail services for which protection is requested in general terms; (iii) for the purpose of determining whether such an application is objectionable under Section 5(2)(b), it is necessary to ascertain whether there is a likelihood of confusion with the opponent’s earlier trade mark in all the circumstances in which the trade mark applied for might be used if it were to be registered; (iv) the criteria for determining whether, when and to what degree services are ‘similar’ to goods are not clear cut.”

16. However, on the basis of the European courts’ judgments in *Sanco SA v OHIM*,<sup>7</sup> and *Assembled Investments (Proprietary) Ltd v. OHIM*<sup>8</sup>, upheld on appeal in *Waterford Wedgwood Plc v. Assembled Investments (Proprietary) Ltd*<sup>9</sup>, Mr Hobbs concluded that:

- i) Goods and services are not similar on the basis that they are complementary if the complementarity between them is insufficiently pronounced that, from the consumer’s point of view, they are unlikely to be offered by one and the same undertaking;
  
- ii) In making a comparison involving a mark registered for goods and a mark proposed to be registered for retail services (or vice versa), it is necessary to envisage the retail services normally associated with the opponent’s goods and then to compare the opponent’s goods with the retail services covered by the applicant’s trade mark;

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<sup>7</sup> Case C-411/13P

<sup>8</sup> Case T-105/05, at paragraphs [30] to [35] of the judgment

<sup>9</sup> Case C-398/07P



iii) It is not permissible to treat a mark registered for ‘retail services for goods X’ as though the mark was registered for goods X;

iv) The General Court’s findings in *Oakley* did not mean that goods could only be regarded as similar to retail services where the retail services related to exactly the same goods as those for which the other party’s trade mark was registered (or proposed to be registered).

17. The goods and services to be compared are set out below.

Opponent’s goods and services	Applicant’s goods and services
<p><b>Class 3:</b> Cleaning and grooming preparations for animal care; shampoos for pets.</p>	<p><b>Class 3:</b> Cleaning, polishing, scouring and abrasive preparations; non medicated animal grooming preparations; animal care products; cosmetics for animals; bath preparations for animals; toiletries, soaps, perfumery, essential oils, balms, lotions, dentifrices, shampoos, conditioners and deodorants for animals; animal stain removers; room fragrance preparations; odour fresheners for animals; fragrance emitting wicks for room fragrance; conditioning sprays for animals; sun creams for animals.</p>
<p><b>Class 5:</b> Veterinary preparations and substances; medicines for animals; dietary supplements and vitamins for animals; nutraceuticals for animals; flea powders and flea control products.</p>	<p><b>Class 5:</b> Pharmaceutical and veterinary products and preparations for animals; medicated animal grooming preparations; medicated creams, soaps, shampoos, conditioners, lotions and balms for animals; repellents for animals; insect repellents; flea control</p>

	<p>products; flea collars; flea sprays; flea powders; preparations for destroying vermin; insecticides; parasiticides; vitamin and mineral supplements for animals; animal washes.</p>
	<p><b>Class 35:</b> The bringing together, for the benefit of others, of a variety of cleaning, polishing, scouring and abrasive preparations, animal grooming preparations, pharmaceutical and veterinary products and preparations for animals, medicated animal preparations, animal care products, sunscreen for animals, toiletries for animals, cosmetics for animals, room fragrance preparations, odour fresheners, animal repellents, animal supplements, enabling customers to conveniently view and purchase those goods in a retail store, from a catalogue by mail order, by means of telecommunications or from an Internet website; information, advisory and consultancy services relating to all the aforesaid services.</p>
<p><b>Class 44:</b> Veterinary assistance and advice; veterinary services; animal health care services; animal pharmacy services; care services for animals; hygienic and beauty care services for animals; veterinary diagnostic testing and examination services; pet care</p>	

advice; consulting services relating to all the aforesaid.	
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18. In its counterstatement and again at the hearing, the applicant agreed that its classes 3 and 5 contained goods which were identical and highly similar to the opponent's goods in the same classes.

19. With regard to the applicant's retail services in class 35 and taking account of the guidance outlined above, I note that retail services for particular goods may be considered complementary to those goods if such goods would normally be distributed via the services. The applicant's specification in class 35 concerns the retail of identical and highly similar goods found in class 3 and 5 of the opponent's registration, in particular *the bringing together of cleaning preparations, animal grooming preparations, pharmaceutical and veterinary products and preparations for animals, medicated animal preparations, animal care products, toiletries for animals, animal supplements*. I find that there is a relevant complementary relationship between the applicant's services and the opponent's goods resulting in a medium degree of similarity between them.

20. I do not need to make a finding in relation to the opponent's class 44 services as they do not put the opponent in any stronger a position.

### **The average consumer and the purchasing process**

21. I next consider who the average consumer is for the contested goods and how they are purchased. It is settled case law that the average consumer is deemed to be reasonably well informed and reasonably observant and circumspect.<sup>10</sup> 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<sup>11</sup>.

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<sup>10</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*, [2014] EWHC 439 (Ch)

<sup>11</sup> *Lloyd Schuhfabrik Meyer*, Case C-342/97.

22. The average consumer for the contested goods and services will be a member of the general public who is a pet or animal owner as well as vets and other animal health professionals. It was submitted at the hearing that the level of attention paid by a consumer would be at least medium. I think this is correct for class 3 goods, but for class 5 goods, which include pharmaceutical, insecticide and parasiticide products, I think the level of attention is likely to be higher given that these goods will have a direct impact on an animal's health. Vets and other animal health professionals are equally likely to pay a higher degree of attention as although they will be more familiar with such products, they will also have the animal's health considerations in mind. The purchasing process is likely to be predominantly visual with consumers self-selecting products from physical retail stores or after perusing images online, although I do not discount an aural element such as word of mouth recommendations or if a consumer seeks advice from a vet or other animal health professional.

### **Mark comparisons**

23. 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 the trade 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:


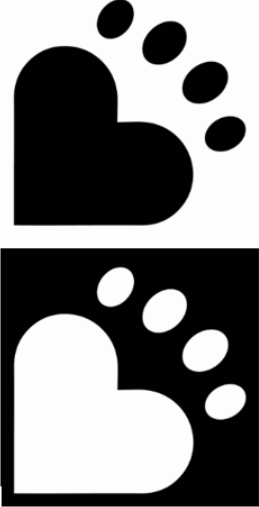
“... it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in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

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<sup>12</sup> Case C-591/12P

24. 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.

25. The respective trade marks to be compared are shown below:

Opponent's earlier registration	Applicant's mark
 <p>(series of two)</p>	 <p>(series of two)</p>

26. The opponent's registration is a series of two composite marks, each containing words and a figurative element. The difference between the marks in the series is that the first mark is in colour and the second is rendered in greyscale. The mark consists of the words **My Family**, positioned above the word **Vets**, which itself is positioned above the slogan **Putting care into practice**. The word **Vets** is the largest word by scale among the verbal elements and is approximately the same size as the paw print device which is positioned to its right. The device resembles an animal paw print, with the main pad shaped like a heart and the four toe pads shaped as circles. Because of the scale and visual impact of the device element, I find it to be the dominant and distinctive element in the overall impression of the mark. Whereas I find the verbal elements, namely **My Family Vets** and **Putting care into practice**, to be descriptive or at least non-distinctive elements despite

**Vets** being in on an approximate scale and same colour with the device. I find the words play a subordinate role.

27. The application is a series of two figurative marks. The difference between the marks is that the first is a back device on a white background and the second mark is the reverse of that. There are no verbal elements to the mark. The device resembles an animal paw print, with the main pad shaped like a heart and the four toe pads shaped as ovals. As the mark is figurative then the overall impression resides solely in its presentation.

28. In a visual comparison, there is a clear difference in that the opponent's mark has verbal elements whereas the applicant's mark does not. Both device elements share a resemblance of an animal paw print with both having a heart shaped main pad element and four toe pad elements. Both device elements are tilted to the right. The opponent's device is somewhat rounder in outline and lacks the sharper 90° right angle at the base of the heart which is found in the applicant's device. However taking all of these factors into account, especially given one mark has verbal elements and the other does not, I find there is a medium degree of visual similarity.

29. Clearly as the applicant's mark is purely figurative, there is no aural comparison to be made so I shall move directly to the conceptual comparison. The verbal elements of opponent's mark, namely **My Family Vets** and **Putting care into practice**, will bring to mind the concept of a family friendly or family run veterinary practice with a slogan outlining a particular qualitative ethos. The opponent's device element will give a concept of an animal paw print with four toe pads with the main pad having the shape of a heart. This concept is shared by the applicant's mark. As such I find the device elements are conceptually identical. However the opponent's mark has a more specific and detailed conceptual hook because of its verbal element, so I find that overall the marks are conceptually similar to a medium degree.

#### **Distinctiveness of the earlier mark**

30. The degree of distinctiveness of the earlier registrations must be assessed. This is because the more distinctive the earlier registrations, based either on inherent

qualities or because of the use made of them, the greater the likelihood of confusion. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*<sup>13</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 (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

31. As there was no evidence filed in this case, I need only to consider the inherent distinctiveness of the earlier registration. The registration consists of the words **My Family Vets** and **Putting care into practice**, which are descriptive and non-distinctive elements in and of themselves in relation to the goods and services. However the mark as a whole includes the animal paw device which I find elevates the mark to a medium degree of inherent distinctiveness.

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<sup>13</sup> C-342/97

## Likelihood of confusion

32. There is no scientific formula to apply in determining whether there is a likelihood of confusion. It is a global assessment where 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 goods and services and vice versa. It is necessary for me to keep in mind the distinctive character of the opponent's mark, the average consumer and the nature of the purchasing process for the contested goods and services. In doing so, I must be aware 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 that they have retained in their mind.

33. In *Kurt Geiger v A-List Corporate Limited*<sup>14</sup>, Mr Iain Purvis Q.C. sitting 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 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 mark is not enough. It is important to ask 'in what does the distinctive

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<sup>14</sup> BL O-075-13



character of the earlier mark lie?’ Only after that has been done can a proper assessment of the likelihood of confusion be carried out.

35. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods and services down to the responsible undertakings being the same or related. In terms of indirect confusion, this was dealt with by Mr Iain Purvis QC, again sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*<sup>15</sup>, where he noted that:

“16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually 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”.

36. In the course of this decision I have found that,

- The goods are identical, and the services are similar to a medium degree.
- The average consumer will be paying a medium to high degree of attention in a primarily visual purchasing process.
- The respective marks are visually similar to a medium degree.
- The device elements of the respective marks are conceptually identical whereas the marks overall I found to be conceptual similar to a medium degree.

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<sup>15</sup> BL-O/375/10

- The earlier registration is inherently distinctive to a medium degree.

37. Taking these factors into account, I do not find that there is direct confusion between the applicant's mark and the opponent's registration. The differences are such, being a mark with a verbal element and a mark without, that I do not think that an average consumer would mistake one mark for another even on goods and services which are identical and similar.

38. I next consider the question of indirect confusion. I am reminded of the guidance given in *L.A.Sugar* that indirect confusion requires a consumer to undertake a mental process whereby it acknowledges the differences between the marks yet attributes the common element to a shared undertaking. The common element shared by the respective marks here is a device of an animal paw print, which is tilted to the right, has a main pad shaped like a heart and four toe pads. As per *Kurt Geiger*, it is this device element which elevates the earlier registration to its medium level of distinctiveness, and this is the shared element between the respective marks. Therefore, I find consumers are likely to assume that both marks are connected to the same economic undertaking and I find there is a likelihood of indirect confusion.

### **Conclusion**

39. The opposition brought under section 5(2)(b) of the Act has succeeded. The application should be refused for the following goods and services:

**Class 3:** Cleaning, polishing, scouring and abrasive preparations; non medicated animal grooming preparations; animal care products; cosmetics for animals; bath preparations for animals; toiletries, soaps, perfumery, essential oils, balms, lotions, dentifrices, shampoos, conditioners and deodorants for animals; animal stain removers; room fragrance preparations; odour fresheners for animals; fragrance emitting wicks for room fragrance; conditioning sprays for animals; sun creams for animals.

**Class 5:** Pharmaceutical and veterinary products and preparations for animals; medicated animal grooming preparations; medicated creams, soaps, shampoos,

conditioners, lotions and balms for animals; repellents for animals; insect repellents; flea control products; flea collars; flea sprays; flea powders; preparations for destroying vermin; insecticides; parasiticides; vitamin and mineral supplements for animals; animal washes.

**Class 35:** The bringing together, for the benefit of others, of a variety of cleaning, polishing, scouring and abrasive preparations, animal grooming preparations, pharmaceutical and veterinary products and preparations for animals, medicated animal preparations, animal care products, sunscreen for animals, toiletries for animals, cosmetics for animals, room fragrance preparations, odour fresheners, animal repellents, animal supplements, enabling customers to conveniently view and purchase those goods in a retail store, from a catalogue by mail order, by means of telecommunications or from an Internet website; information, advisory and consultancy services relating to all the aforesaid services.

40. The application should proceed to registration for the following goods and services which did not form part of these proceedings:

**Class 4:** Candles; scented candles; wicks for candles; odour eliminating candles.

**Class 35:** The bringing together, for the benefit of others, of a variety of candles enabling customers to conveniently view and purchase those goods in a retail store, from a catalogue by mail order, by means of telecommunications or from an Internet website; information, advisory and consultancy services relating to all the aforesaid services.

### **Costs**

41. As the opponent has been successful, it is entitled to a contribution towards its costs incurred in these proceedings. Both parties addressed me on costs at the hearing, but neither side identified any off-scale considerations. Awards of costs are

set out in Tribunal Practice Notice 2/2016. Using that guidance, I make the following award:

£100 Official fee for filing the Notice of Opposition

£300 Preparing the Notice of Opposition & considering the other side's statement

£400 Preparing & considering written submissions

£900 Preparing for & attending a hearing

**£1700 Total**

42. I order Dog Rocks UK Distribution Limited to pay Independent Vetcare Limited the sum of £1700. This sum is to be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

**Dated this 31st day of August 2021**

**June Ralph**

**For the Registrar,**

**The Comptroller General**