

O/795/22

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. UK00003506887
BY BLISS ROCS LIMITED TO REGISTER THE FOLLOWING TRADE MARK:**



IN CLASS 3

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 600001630 BY BLISS PRODUCTS HOLDINGS**

Background and Pleadings

1. On 1 July 2020, Bliss Fragrance House Ltd filed an application to register the mark shown on the front page of this Decision, number UK00003506887. Due to a subsequent change in ownership of the applied-for mark, the Applicant is Bliss ROCS Limited.¹ The application was published for opposition purposes in the *Trade Marks Journal* on 4 December 2020. Registration is sought in respect of the following:

Class 3: *Air fragrance reed diffusers; Reed diffusers; Essential oils for use in air fresheners; Perfume; Perfume oils; Perfume oils for the manufacture of cosmetic preparations; Perfume water; Perfumed body lotions [toilet preparations]; Perfumed creams; Perfumed lotions [toilet preparations]; Perfumed oils for skin care; Perfumed powder [for cosmetic use]; Perfumed sachets; Perfumed soap; Perfumed soaps; Perfumed tissues; Perfumed water; Perfumeries; Perfumery; Perfumery and fragrances; Perfumery products; Perfumery, essential oils; Perfumes; Liquid perfumes; Natural oils for perfumes; Natural perfumery; Oils for perfumes and scents; Room perfume sprays.*

2. On 5 March 2021, the application was opposed by Bliss Products Holdings LLC ('the Opponent') based on section 5(2)(b) of the Trade Marks Act 1994 ('the Act'). The Opposition is directed against all of the Applicant's goods. The Opponent relies on the following earlier registration for its section 5(2)(b) ground, relying on all of the goods in its specification:

UK00003448543

BLISS

¹ The Application to register UK00003506887 was made by Bliss Fragrance House Ltd. On 7 July 2022, the Tribunal was notified of a change of Applicant to Bliss ROCS Limited. On 14 September 2022, Bliss ROCS Limited confirmed via email that: i) it has had sight of the forms filed; ii) it stands by the statement of grounds made and confirms that, where the name of the original applicant appears, this should be read as though it is made in their name; and iii) it accepts the liability for costs for the whole of the proceedings in the event that the opposition is successful.

Filing date: 2 December 2019

Date registration completed: 8 August 2020

Registered for:

Class 3: *Bleaching preparations and other substances for laundry use; cleaning, polishing scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, dentifrices; skincare preparations, moisturizers, lotions, creams, scrubs, serum, balms, masks, gels, cleansers and toners; fragrances; bath salts, cosmetic preparations for baths; shower gels and creams; body firming gels and lotions, nail polishes, lipsticks, makeup, sun block, deodorants; face and body oils.*

3. The Opponent claims that there is a 'close similarity' between the marks and that the parties' respective goods are identical, therefore leading to a likelihood of confusion between the marks.
4. The Applicant filed a Defence and Counterclaim in which it:
 - Denies that the respective parties' class 3 goods are similar;
 - and
 - denies that there is a likelihood of confusion between the parties' marks.
5. The Opponent is represented by HGF Limited. The Applicant represents itself.
6. Rule 6 of the Trade Marks (Fast Track Opposition) (Amendment) Rules 2013, S.I. 2013 2235, disapplies paragraphs 1-3 of Rule 20 of the Trade Marks Rules 2008, but provides that Rule 20(4) shall continue to apply. Rule 20(4) states that:

“(4) The registrar may, at any time, give leave to either party to file evidence upon such terms as the registrar thinks fit.”

7. The net effect of these changes is to require parties to seek leave in order to file evidence in fast track oppositions. No leave was sought in respect of these proceedings.
8. Rule 62(5) (as amended) states that arguments in fast track proceedings shall be heard orally only if (i) the Office requests it or (ii) 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 considered necessary. Written submissions in lieu of a hearing have been filed by the Opponent only.
9. The following decision has been made after careful consideration of the papers before me.

Preliminary issues

10. References to sections 46 and 47 of the Act

The Applicant has made references to sections 46 and 47 of the Act in its Counterstatement.² These provisions do not come into play in these proceedings. The relevant law is set out in this decision at [12].

11. State of the Register

The Applicant has stated³ in its Counterstatement that “The wordname [sic] Bliss in the application or the word “Bliss” would not be considered as significant by the relevant public in light of the fact that many similar brand names already [sic] registered.” The presence, or otherwise, of other marks on the Register containing ‘Bliss’ has no bearing on the instant proceedings. My assessment is concerned only with the particular marks referred to in this opposition.

Decision

Section 5(2)(b) of the Act and related case law

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

² Applicant’s counterstatement, at paragraphs [2] to [8].

³ As above, at paragraph [8], sub-paragraph 4.

“5(2) A trade mark shall not be registered if because –

(a) ...

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

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

13. In accordance with section 6 of the Act, the Opponent’s mark is an earlier mark by virtue of its earlier filing date (2 December 2019) which falls before the filing date of the applied-for mark on 1 July 2020.

14. Section 6A of the Act provides that where the date on which the registration procedure of the earlier mark was completed more than 5 years prior to the application date (or priority date) of the applied-for mark, the Opponent may be required to prove use of the earlier mark. In the instant case, section 6A is not engaged because on the date on which the Applicant filed its application, the registration of the Opponent’s earlier mark was pending. The Opponent is therefore entitled to rely upon all of the goods that it seeks to rely upon.

15. The following principles are derived from the decisions of the Court of Justice of the European Union⁴ (“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;

⁴ Although the UK has left the EU, 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 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.

Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH, Case C120/04; *Shake di L. Laudato & C. Sas v OHIM*, Case C-334/05P; and *Bimbo SA v OHIM*, Case C-591/12P

The principles:

(a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

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

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

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

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

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

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

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

Comparison of goods and services

16. Section 60A of the Act provides:

“(1) For the purpose of this Act goods and services-

(a) are not to be regarded as being similar to each other on the ground that they appear in the same class under the Nice Classification.

(b) are not to be regarded as being dissimilar from each other on the ground that they appear in different classes under the Nice Classification.

(2) In subsection (1), the ‘Nice Classification’ means the system of classification under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, which was last amended on 28 September 1975.”

17. I must therefore be mindful of the fact that the appearance of respective services in the same class is not a sufficient condition for similarity between those services, and neither are they to be found dissimilar simply because some services may fall in a different class.

18. I must also bear in mind the decision of the General Court ('GC') in *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05:

“29. ... the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 *Institut für Lernsysteme v OHIM-Educational Services (ELS)* [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark”.

19. The CJEU in *Canon*, Case C-39/97, stipulates that all relevant factors relating to a parties' goods and services must be taken into account:

“[23] “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”.

20. Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281⁵, identified the following factors for assessing similarity of the respective goods and services:

- (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;

⁵ *British Sugar Plc v James Robertson & Sons Ltd* [1996] R. P. C. 281, pp 296-297.

(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.

21. Goods or services will be found to be in a competitive relationship only where one is substitutable for the other.⁶

22. 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 [or services]. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06, the General Court 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”.

23. The Tribunal may group goods (or services) together for the purposes of assessment:

Separode Trade Mark BL O-399-10 (AP):

“The determination must be made with reference to each of the different species of goods listed in the opposed application for registration; if and to the extent that the list includes goods which are sufficiently comparable to be

⁶ *Lidl Stiftung & Co KG v EUIPO*, Case T-549/14.

assessable for registration in essentially the same way for essentially the same reasons, the decision taker may address them collectively in his or her decision.”

24. The goods to be compared are as follows:

<p>Opponent's (earlier) mark UK00003448543:</p> <p>Class 3 <i>Bleaching preparations and other substances for laundry use; cleaning, polishing scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, dentifrices; skincare preparations, moisturizers, lotions, creams, scrubs, serum, balms, masks, gels, cleansers and toners; fragrances; bath salts, cosmetic preparations for baths; shower gels and creams; body firming gels and lotions, nail polishes, lipsticks, makeup, sun block, deodorants; face and body oils.</i></p>	<p>Applicant's (contested) mark UK00003506887:</p> <p>Class 3 <i>Air fragrance reed diffusers; Reed diffusers; Essential oils for use in air fresheners; Perfume; Perfume oils; Perfume oils for the manufacture of cosmetic preparations; Perfume water; Perfumed body lotions [toilet preparations]; Perfumed creams; Perfumed lotions [toilet preparations]; Perfumed oils for skin care; Perfumed powder [for cosmetic use]; Perfumed sachets; Perfumed soap; Perfumed soaps; Perfumed tissues; Perfumed water; Perfumeries; Perfumery; Perfumery and fragrances; Perfumery products; Perfumery, essential oils; Perfumes; Liquid perfumes; Natural oils for perfumes; Natural perfumery; Oils for perfumes and scents; Room perfume sprays.</i></p>
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25. The Opponent has provided a table⁷ setting out its claims in respect of the comparison of the parties' respective goods:

Opposed goods	Opponent's goods claimed as identical/similar	Opponent's submissions
Class 3:		
<p><i>Air fragrance reed diffusers; Reed diffusers; Essential oils for use in air fresheners; Perfume; Perfume oils; Perfume oils for the manufacture of cosmetic preparations; Perfume water; Perfumed water; Perfumeries; Perfumery; Perfumery and fragrances; Perfumery products; Perfumery, essential oils; Perfumes; Liquid perfumes; Natural perfumery; Oils for perfumes and scents; Room perfume sprays; Perfumed sachets.</i></p>	<p><i>perfumery, essential oils; fragrances.</i></p>	<p><i>The two sets of goods are clearly identical, both being fragrance preparations and essential oils</i></p> <p><i>It is submitted that the opposed goods are encompassed by the Opponent's goods and the respective terms are identical.</i></p>
<p><i>Perfumed body lotions [toilet preparations]; Perfumed creams; Perfumed lotions [toilet preparations]; Perfumed</i></p>	<p><i><u>Soaps, cosmetics,</u> skincare preparations, moisturizers, <u>lotions,</u> <u>creams, scrubs, serum,</u> balms, masks, gels,</i></p>	<p><i>The two sets of goods are clearly identical, both comprising lotions, creams, oils, soaps and cosmetic preparations.</i></p>

⁷ Opponent's written submissions in lieu of a hearing, Annex 1. I have simplified the structure of the table, but the text therein remains unchanged.

<p><i>oils for skin care;</i> <i>Perfumed powder [for cosmetic use];</i> <i>Perfumed sachets;</i> <i>Perfumed soap;</i> <i>Perfumed soaps.</i></p>	<p><i>cleansers and toners;</i> <i>face and body <u>oils</u>.</i></p>	<p><i>The perfumed nature of the Applicant's goods does not distinguish them from the Opponent's goods and the parties' terms are either self-evidently or ostensibly identical.</i></p>
<p><i>Natural oils for perfumes.</i></p>	<p><i>Perfumery, essential oils; fragrances.</i></p>	<p><i>It is submitted that despite any differences in their nature, natural and essential oils coincide in their users and purpose, both being used for perfumery.</i></p> <p><i>Further, considering that the contested goods are clearly for intended use in perfumery, they are also similar to the Opponent's "Perfumery" considering the complementarity between the two sets of goods.</i></p> <p><i>The Opponent submits that the goods are similar at least to a medium degree.</i></p>

<i>Perfumed tissues</i>	<i>Perfumery, fragrances.</i>	<p><i>It is submitted that the contested goods have the same purpose as the Opponent's "perfumery; fragrances" as they are destined to release a pleasant scent. The Opponent's terms are broad and extend to any perfumed goods in Class 3. Also, the parties' goods may also coincide in their manufacturers.</i></p> <p><i>The Opponent submits that the goods are at the very least similar, if not identical.</i></p>
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26. The Applicant's specification includes the terms *Perfumeries* and *Perfumery*. I consider these terms to refer to the same thing, the only difference being that the former is the plural of 'perfumery'. Both parties' specifications contain the term *perfumery*. These goods are self-evidently identical.

27. The Opponent's broad term [...] *perfumery* [...] will encompass the Applicant's *Natural perfumery*. These goods are therefore 'Merici' identical.

28. The Applicant's terms *Essential oils for use in air fresheners* and *Perfumery, essential oils* are encompassed by the Opponent's term [...] *essential oils* [...]. The respective goods are therefore 'Merici' identical.

29. Both parties' specifications contain the term *fragrances* (albeit 'fragrances' appears within the Applicant's broad term *Perfumery and fragrances*). These

goods are self-evidently identical.

30. I group together the following of the Applicant's goods, all being perfumes and fragrances that are 'ready to be used' (as opposed to ingredients used to make perfumes): *Air fragrance reed diffusers; Reed diffusers; Perfume; Perfume oils; Perfume water; Perfumed water; Perfumes; Liquid perfumes; Room perfume sprays*. In my view, all of these terms will be encompassed by both [...] *perfumery* [...] and *fragrances*. The parties' respective goods are therefore 'Merici' identical.
31. The Applicant's terms *Perfumed soap* and *Perfumed soaps* will be encompassed by the Opponent's term *soaps*. These goods are therefore 'Merici' identical.
32. The Applicant's terms *Perfumed body lotions [toilet preparations]* and *Perfumed lotions [toilet preparations]* will be encompassed by the Opponent's broader term [...] *lotions* [...]. These goods are therefore 'Merici' identical.
33. The Applicant's *Perfumed creams* will be encompassed by the Opponent's broader term *creams*. These goods are therefore 'Merici' identical.
34. The Applicant's *Perfumed oils for skin care* will be encompassed by the Opponent's broader term *face and body oils*. These goods are therefore 'Merici' identical.
35. The Applicant's *Perfumed powder [for cosmetic use]* will be encompassed by each of the Opponent's broader terms [...] *cosmetics* [...] and [...] *makeup* [...]. These goods are therefore 'Merici' identical.
36. The Opponent's *perfumery* [...] is self-evidently identical to the Applicant's term *perfumery products*.
37. I now compare the Applicant's *Natural oils for perfumes* and *Oils for perfumes and scents* against the Opponent's term *essential oils*. The Applicant's goods are intended as ingredients in perfumes or fragrances, whereas the Opponent's

goods are standalone goods capable of immediate use as they are, although I recognise that essential oils can also be used to create perfumes. The specific purposes of the respective goods will therefore overlap somewhat. Users of the Opponent's *essential oils* will be both the general and professional public. The general public will purchase these goods for home use, whereas the professional public e.g. aromatherapists and massage therapists will purchase these goods for their businesses. The Applicant's goods, in my view, will be purchased predominantly by the professional public, typically manufacturers of perfumes. Trade channels will overlap somewhat; both sets of goods may be purchased from the same wholesalers or suppliers. The respective goods are similar in nature to the extent that both parties' goods are oils. In my view, the goods are in a competitive relationship. The consumer might deliberate over whether to purchase the Applicant's goods or the Opponent's *essential oils* as ingredients for perfume. I do not find complementarity; although the average consumer may presume both sets of goods to derive from the same undertaking, neither parties' goods are necessary or important for the other. I therefore find the respective goods to be highly similar.

38. I now compare the Applicant's *Perfume oils for the manufacture of cosmetic preparations* against the Opponent's *essential oils*. The Applicant's goods are intended as ingredients used to make cosmetic preparations. The Opponent's *essential oils* can also be used as ingredients in cosmetic preparations, although, as noted above, they are often used as standalone goods. The respective goods will therefore overlap in purpose somewhat. As already noted, users of *essential oils* will comprise both the general and professional public. In my view, users of the Applicant's goods will be predominantly professional purchasers, typically manufacturers of cosmetic preparations. Trade channels will overlap somewhat; both sets of goods may be purchased from the same wholesalers or suppliers. The respective goods are similar in nature to the extent that both parties' goods are oils. In my view, the goods are in a competitive relationship. The consumer might deliberate over whether to purchase the Applicant's goods or the Opponent's *essential oils* as ingredients for cosmetic preparations. I do not find complementarity; although the average consumer may presume both sets of goods to derive from the same undertaking, neither parties' goods are necessary

or important for the other. I therefore find the respective goods to be highly similar.

39. I now compare the Applicant's *Perfumed sachets* against the Opponent's *fragrances*. The general purposes of the respective goods coincide to the extent that both are intended to create a fragrant aroma. In my view, *Perfumed sachets* will include, *inter alia*, sachets containing dried herbs, flowers, or fabric impregnated with fragrance, placed in drawers/wardrobes/linen presses to impart a pleasant scent to clothing or linen. The nature of the respective goods will differ; the term *fragrances* will encompass scents i.e. perfumes, oils, perfumed water etc, which would be in liquid form, whereas the Applicant's sachets (to which the Opponent's goods might be added) are in the form of 'sachets'. Users will overlap; users of fragrances in general may also use perfumed sachets. Trade channels may overlap; *perfumed sachets* and *fragrances* may be sold in the same outlets or online shops. There will be competition between the goods in instances where one might deliberate over whether to purchase a *perfumed sachet* or a bottle of perfumed 'linen water' (encompassed by *fragrances*) to impart a scent to linen or clothing. I also find complementarity; the Opponent's *fragrances* may be used in the making of the Applicant's *perfumed sachets* and the average consumer may presume that both sets of goods originate from the same undertaking. I therefore find the respective goods to have a medium-high level of similarity.

40. I now compare the Applicant's *perfumed tissues* against the Opponent's *fragrances*. The purposes of the respective goods will overlap to the broad extent that both are intended to create a fragrant aroma. However, the specific purposes of the goods will differ. In my view, the primary purpose of tissues, whether scented or not, is to wipe or clean (the face, body or an object). To my mind, the Applicant's goods are intended to perform this function while imparting a pleasant aroma. Users may overlap; a consumer of fragrances in general may also purchase perfumed tissues. Trade channels may overlap; *perfumed tissues* and *fragrances* may be sold in the same outlets or online shops. The goods will be very different in nature; the Opponent's *fragrances* being in liquid form as compared to the Applicant's *perfumed tissues*. There is no competition between

the goods; neither is substitutable for the other. I do not find the goods to be complementary; in my view, the average consumer would not presume both sets of goods to originate from the same undertaking. I find the respective goods to have a low level of similarity.

Average consumer and the purchasing act

41. In *Hearst Holdings Inc*⁸ Birss J. (as he then was) described the average consumer thus:

“60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The word “average” denotes that the person is typical. The term “average” does not denote some form of numerical mean, mode or median.”

42. In my view, the average consumer of the following goods will be predominantly the general public, with a smaller number of purchases made by professional consumers:

Air fragrance reed diffusers; Reed diffusers; Essential oils for use in air fresheners; Perfume; Perfume oils; Perfume water; Perfumed body lotions [toilet preparations]; Perfumed creams; Perfumed lotions [toilet preparations]; Perfumed oils for skin care; Perfumed powder [for cosmetic use]; Perfumed sachets; Perfumed soap; Perfumed soaps; Perfumed tissues; Perfumed water; Perfumeries; Perfumery; Perfumery and fragrances; Perfumery products; Perfumery, essential oils; Perfumes; Liquid perfumes; Natural perfumery; Room perfume sprays.

43. The goods are fairly frequent purchases which will be made from both physical and online shops. The purchasing act will be primarily visual, the goods being self-selected from shelves/displays in physical shops, or ‘clicked on’ in the case

⁸ *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).


of goods online. There will also be an aural aspect to the purchasing process where the purchaser makes oral requests to staff e.g. in the case of a bottle of perfume or lotion, one might ask to have a test spray or 'dab' of the product to find out whether it is agreeable before committing to a purchase. Where the goods are purchased from physical shops, I consider that they would typically be located in 'toiletries' or 'fragrance' sections. The average consumer will, in my view, pay a medium level of attention when purchasing the majority of these goods, although I accept this may be slightly lower sitting at a low to medium level for those goods such as fragranced soaps, which will be purchased more frequently and tend to sit at a lower price point generally. Factors considered during the purchasing process will be, *inter alia*: how the product smells; the ingredients; whether the goods have been tested on animals.

44. The following goods will, in my view, be purchased predominantly by members of the professional public (e.g. manufacturers of fragrances), with a smaller number of purchases made by the general public (e.g. with an interest in crafting their own fragrances):

Natural oils for perfumes; Oils for perfumes and scents

45. In my view, the purchasing act will be visual to the extent that the purchaser will first encounter the goods online or in a physical shop/warehouse. Aside from the visual aspect of the purchasing process, I consider that most purchases would be made only after having tested the aroma of the product. The professional purchaser (e.g. a manufacturer of fragrances), in my view, would purchase these goods from a wholesaler and would pay a high level of attention when making a purchase. Factors considered would include: business needs; the concentration of the oils; the ingredients; how the goods smell. Purchasers from the general public would, to my mind, pay at least a medium level of attention when purchasing these goods for home use. They would likely bear all of the above-mentioned factors in mind bar 'business needs' when making their purchase.

Comparison of the marks

Opponent's (earlier) mark: BLISS	Applicant's (contested) mark: 
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46. It is clear from *Sabel BV v Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

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

47. 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.

48. The Opponent's mark is a word mark⁹ consisting of the single word 'BLISS', all characters rendered in a plain sans-serif font and in upper case. The overall

⁹ In *LA Superquimica v EUIPO*, Case T-24/17, at paragraph [39] it was held that:

‘[...] it should be noted that a word mark is a mark consisting entirely of letters, words or groups of words, without any specific figurative element. The protection which results from registration of a word mark thus relates to the word mentioned in the application for registration and not the specific

impression of the mark resides in the mark in its entirety.

49. The Applicant's mark comprises the word 'Bliss' rendered in a plain font, with a device in place of the tittle¹⁰ usually seen in a lower case 'i'. The device comprises a gold-coloured 'flourish' composed of three wavy lines which are parallel to each other but converge at each end to almost form points. The device, in my view, may be seen as a flame. The overall impression resides in the mark in its entirety, with the word element playing the most dominant role by virtue of its relative size and the fact that it can be read and articulated.

50. Visual comparison

The Opponent has submitted¹¹ that the parties' marks are 'visually similar to a high degree'.

51. The respective marks share the element 'Bliss'. The only real point of visual difference is the presence of the 'flame' in the Applicant's mark, which is absent from the Opponent's mark. I therefore find the respective marks to be visually similar to a high degree.

52. Aural comparison

The device in the Applicant's mark is not capable of being articulated. Both marks will be articulated as 'BLISS'. The respective marks are aurally identical.

53. Conceptual comparison

The word 'bliss' is an English dictionary word with which the average consumer will be familiar. It is defined as 'a state of complete happiness'.¹² In the context of the goods and services in respect of which the Opponent's mark is registered,

figurative or stylistic aspects which that mark might have. As a result, the font in which the word sign might be presented must not be taken into account. It follows that a word mark may be used in any form, in any colour or font type (see judgment of 28 June 2017, *Josel v EUIPO — Nationale-Nederlanden Nederland (NN)*, T-333/15, not published, EU:T:2017:444, paragraphs 37 and 38 and the case-law cited).'

¹⁰ A 'tittle' is the dot above the stem in the character 'i'.

¹¹ Opponent's written submissions in lieu of a hearing, paragraph [22].

¹² [Bliss definition and meaning | Collins English Dictionary \(collinsdictionary.com\)](https://www.collinsdictionary.com), accessed 3 August 2022 at 15:26.

'BLISS' may allude to the goods bringing about a state of happiness in the user. The device present in the Applicant's mark might, for some, invoke the idea of a flame. I find the respective marks to be conceptually highly similar.

Distinctive character of the earlier mark

54. *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).

55. Registered trade marks possess varying degrees of inherent distinctive character from the very low, because they are suggestive of, or allude to, a characteristic of the goods or services, to those with high inherent distinctive character, such as

invented words which have no allusive qualities.

56. 'Bliss' is a well-known word which appears in the English dictionary. I do not consider it to be descriptive of the goods in respect of which the earlier mark is registered. However, it may be very mildly allusive of the goods to the extent that it suggests that induce a state of happiness in the user. I find the Opponent's mark to have a slightly below medium level of inherent distinctive character.

57. The Opponent has not adduced any evidence. There is therefore no basis upon which the Tribunal may make a finding as to whether or not the earlier mark enjoys an enhanced level of inherent distinctive character.

Likelihood of confusion

58. Confusion can be direct or indirect. Mr Iain Purvis Q. C., as the Appointed Person, explained the difference in the decision of *L.A. Sugar Limited v Back Beat Inc*¹³. Direct confusion occurs when one mark is mistaken for another. In *Lloyd Schuhfabrik*¹⁴, the CJEU recognised that the average consumer rarely encounters the two marks side by side but must rely on the imperfect picture of them that they have kept in mind. Direct confusion can therefore occur by imperfect recollection when the average consumer sees the later mark but mistakenly matches it to the imperfect image of the earlier mark in their 'mind's eye'. Indirect confusion occurs when the average consumer recognises that the competing marks are not the same in some respect, but the similarities between them, combined with the goods/services at issue, leads them to conclude that the goods/services are the responsibility of the same or economically linked undertaking.

59. I must keep in mind that a global assessment is required taking into account all of the relevant factors, including the principles a) – k) set out above at [12]. When

¹³ Case BL O/375/10 at [16].

¹⁴ *Lloyd Schuhfabrik Meyer and Co GmbH v Klijsen Handel BV* (C-34297) at [26].

considering all relevant factors 'in the round', I must bear in mind that a greater degree of similarity between goods/services *may* be offset by a lesser degree of similarity between the marks, and vice versa.

60. In my view, a significant proportion of average consumers would confuse the marks. With the exception of *perfumed tissues*, I have found the levels of similarity between the parties' respective goods to range from a medium-high level of similarity to identical. I have found the marks to be visually and conceptually similar to a high degree, and aurally identical. The only point of visual difference between the respective marks is the device. Whilst I acknowledge that the earlier mark has only a slightly below medium level of distinctive character, the device aspect of the applied-for, in my view, also holds only a low level of distinctiveness, and plays a secondary role to the word element BLISS. It is my view that the average consumer may mistake the earlier mark for the Applicant's mark (or vice versa) because the mind's eye has failed to register the presence or absence of the device element. I find that there is a likelihood of direct confusion in respect of all goods except *perfumed tissues*. I find this to be the case even where the goods are purchased with a high level of attention.

61. In case I am wrong in my finding, I now consider whether there is a likelihood of indirect confusion. Mr Purvis Q. C., as the Appointed Person, identified the following categories in *L.A. Sugar Limited v Back Beat Inc*¹⁵ where a finding of indirect confusion might be made:

(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).

¹⁵ Case BL O/375/10

(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)”.

62. In this instance, it is my view that none of the categories above apply directly to this case. However, I bear in mind that the above list of categories is not exhaustive. I consider, therefore, whether there may be another basis upon which there is indirect confusion. In my view, bearing in mind all of the factors, if the average consumer *does* notice the presence of the device element in the Applied-for mark, it is likely that the parties’ marks might be seen as variant marks relating to the same undertaking. I therefore find that there is a likelihood of indirect confusion in respect of all goods *except perfumed tissues* in class 3.

Conclusion

63. The Opposition has been partially successful and, subject to any successful appeal against this Decision, the Application is refused in respect of all goods **except** *perfumed tissues* in class 3.

COSTS

64. I award the Opponent the sum of **£500** as a contribution towards its costs, calculated as follows¹⁶:

Preparation of statement and consideration of the Applicant’s statement:	£200	
Official fee for 5(2)(b) only:	£100	

¹⁶ <https://www.gov.uk/government/publications/tribunal-practice-notice-22015/tribunal-practice-notice-22015>. Costs awarded in fast track opposition proceedings are capped at £500, excluding official fees.

Preparation of written submissions in lieu of a hearing	£200	
Total:	£500	

65. I therefore order Bliss ROCS Limited to pay to Bliss Products Holdings the sum of £500. 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 14th day of September 2022

N. R. Morris
For the Registrar,
the Comptroller-General