

O-440-15

TRADE MARK ACT 1994

**IN THE MATTER OF APPLICATION NO. 3058949
BY DREW WEYMONT**

TO REGISTER THE TRADE MARK:

BUNTY LONDON

IN CLASS 25

AND


**IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 403077
BY D.C. THOMPSON & CO. LIMITED**

BACKGROUND

1. On 9 June 2014, Drew Weymont applied to register the mark BUNTY LONDON for the following goods in class 25:

Articles of clothing; footwear; boots, shoes, slippers, sandals, trainers, socks and hosiery; headgear; hats; caps; berets; scarves; gloves; mittens; belts (being articles of clothing); shirts, blouses, casual shirts, T-shirts, vests, camisoles, bodysuits, polo shirts, sports shirts, football and rugby shirts; trousers, jeans, shorts, sports shorts, swimwear; underwear; lingerie; tracksuits; articles of outerwear, coats, jackets, ski jackets, casual jackets, waterproof and weatherproof jackets and coats, parkas, body warmers, ski wear; suits; dresses; skirts; culottes; jumpsuits, playsuits; sweatshirts; jumpers, shrugs and cardigans; knitwear; leggings; neckties; pyjamas; waistcoats; headbands and wristbands; legwarmers; menswear; womenswear; childrenswear.

2. Following publication of the application on 18 July 2014, D.C. Thomson & Co. Limited (the opponent) filed notice of opposition on the basis of Section 5(2)(b) of the Trade Marks Act 1994 (the Act). The opponent relies upon the two earlier marks shown below:

Mark details	Goods relied on
<p>Community Trade Mark (CTM) 10444222</p> <p>BUNTY</p> <p>Filing date: 24 November 2011</p> <p>Date of entry in the register: 24 December 2014</p>	<p>Class 25</p> <p>Clothing, footwear, headgear; shirts; T-Shirts; sweatshirts; skirts; jogging suits; trousers; jeans; pants; shorts; rainwear; cloth bibs; blouses; sweaters; jackets; coats; jumpers; gloves; socks; vests; leggings; neckties; scarves; night clothes; bathing clothes; sports clothes; bath robes; costumes; dress-up costumes; jodhpurs; boys underwear; girls underwear; men's underwear; women's underwear; casual sportswear; sweatshirts; hosiery; socks; tights; hats; caps; sun visors; boots; slippers; bibs; sneakers; sandals; shoes; parts and fittings for all the aforesaid goods.</p>
<p>Community Trade Mark (CTM) 10501906</p>  <p>Colours claimed: Blue, Black, White</p> <p>Filing date: 16 December 2011</p> <p>Date of entry in the register: 23 December 2014</p>	<p>As above</p>

3. The opposition is directed against all of the goods in the application.

4. Mr Weymont filed a counterstatement, subsequently amended, in which he denies the basis of the opposition. Although neither party filed evidence or asked to be heard, the opponent filed written submissions in lieu of attendance at a hearing. I give this decision following a review of all the material before me.

DECISION

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

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

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

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

6. An earlier trade mark is defined in Section 6 of the Act, which states:

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

(a) a registered trade mark, international trade mark (UK) or Community 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.

(2) Reference in this Act to an earlier trade mark include a trade mark in respect of which an application for registration has been made and which, if registered, would be an earlier trade mark by virtue of subsection (1)(a) or (b), subject to its being so registered.”

7. Given their dates of filing, the opponent’s marks constitute earlier marks in accordance with Section 6 of the Act. The earlier marks had not been registered for more than five years at the date on which Mr Weymont’s mark was published meaning that the proof of use provisions contained in Section 6A do not apply. The opponent can, as a consequence, rely upon all of the goods it has identified.

Section 5(2)(b) case law

8. The following principles 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 OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P.

The principles

- (a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;
- (b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;
- (c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;
- (d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;
- (e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;
- (f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;
- (g) a lesser degree of similarity between the goods or services may be offset by a 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.

The opponent's strongest case

9. Before considering the substantive issue under Section 5(2)(b), I should say that, although in the notice of opposition both of the above marks are relied upon, in its written submissions the opponent focuses on its mark in plain block capitals. I believe this to be a sensible approach: if the opponent cannot succeed in respect of the mark in this form, it will be in no better position as regards the stylised version. Accordingly, I will base my comparison on CTM no 10444222, which I will refer to as 'the opponent's mark', since this provides the opponent with the strongest possible case.

Comparison of goods

10. The goods to be compared are as follow:

Opponent's goods	Mr Weymont's goods
<p>Class 25 Clothing, footwear, headgear; shirts; T-Shirts; sweatshirts; skirts; jogging suits; trousers; jeans; pants; shorts; rainwear; cloth bibs; blouses; sweaters; jackets; coats; jumpers; gloves; socks; vests; leggings; neckties; scarves; night clothes; bathing clothes; sports clothes; bath robes; costumes; dress-up costumes; jodhpurs; boys underwear; girls underwear; men's underwear; women's underwear; casual sportswear; sweatshirts; hosiery; socks; tights; hats; caps; sun visors; boots; slippers; bibs; sneakers; sandals; shoes; parts and fittings for all the aforesaid goods</p>	<p>Class 25 Articles of clothing; footwear; boots, shoes, slippers, sandals, trainers, socks and hosiery; headgear; hats; caps; berets; scarves; gloves; mittens; belts (being articles of clothing); shirts, blouses, casual shirts, T-shirts, vests, camisoles, bodysuits, polo shirts, sports shirts, football and rugby shirts; trousers, jeans, shorts, sports shorts, swimwear; underwear; lingerie; tracksuits; articles of outerwear, coats, jackets, ski jackets, casual jackets, waterproof and weatherproof jackets and coats, parkas, body warmers, ski wear; suits; dresses; skirts; culottes; jumpsuits, playsuits; sweatshirts; jumpers, shrugs and cardigans; knitwear; leggings; neckties; pyjamas; waistcoats; headbands and wristbands; legwarmers; menswear; womenswear; childrenswear</p>

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

“29. ...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”.

12. Both the opponent's and Mr Weymont's goods are in Class 25 and both specifications include the broad terms Clothing, Footwear and Headgear. Although

the respective specifications contain a number of named items, some of which are identical, e.g. coats, skirts, blouses, hats, etc., the fact that all of the applied for terms are either forms of clothing, footwear or headgear means that they are encompassed by the opponent's broad terms mentioned above. The goods covered by the application in suit are either literally identical to the goods covered by the opponent's registration or identical on the principle outlined in *Meric*.

13. In his counterstatement, Mr Weymont indicates that the products of particular interest to him are swimwear and lingerie, however, since the opponent's registration specifically includes items of women's underwear and swimwear, such goods are still identical and, furthermore, as found in the preceding paragraph, these goods would also be included in the general term 'clothing'.

14. Having reached these conclusions, I have not overlooked that, in his counterstatement, Mr Weymont contends that:

"I cannot find any clothing named 'Bunty' on sale within the UK or further afield therefore I cannot see how this mark can possibly be of relevance or affect that of the opponent & given this lack of product the idea of us passing off is totally implausible & not relevant. Our product will target young women who will have no knowledge of the opponent's mark or brand."

15. I believe that Mr Weymont's submissions are based upon a misunderstanding of how use of the marks must be assessed in the instant case. As I indicated above, the earlier mark is not subject to proof of use and the opponent is entitled to rely on it for all of the goods it has identified, whether or not it has, in fact, used the mark on those goods. The comparison I have to make is a notional one, based on the specifications as registered and for which registration is applied, neither of which are limited to certain target markets.

The average consumer and the nature of the purchasing act

16. As the case law above indicates, it is necessary for me to determine who the average consumer is for the goods at issue; I must then determine the manner in which these goods will be selected in the course of trade.

17. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

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

18. In the present case, the goods at issue are articles of clothing, footwear and headgear in class 25. The average consumer for all these goods is the public at

large. In *New Look Limited v OHIM*, joined cases T-117/03 to T-119/03 and T-171/03, the GC considered the level of attention paid when and the manner in which clothing is selected. It stated:

“43 It should be noted in this regard that the average consumer’s level of attention may vary according to the category of goods or services in question (see, by analogy, Case C-342/97 *Lloyd Schuhfabrik Meyer* [1999] ECR I-3819, paragraph 26). As OHIM rightly pointed out, an applicant cannot simply assert that in a particular sector the consumer is particularly attentive to trade marks without supporting that claim with facts or evidence. As regards the clothing sector, the Court finds that it comprises goods which vary widely in quality and price. Whilst it is possible that the consumer is more attentive to the choice of mark where he or she buys a particularly expensive item of clothing, such an approach on the part of the consumer cannot be presumed without evidence with regard to all goods in that sector. It follows that that argument must be rejected.

“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.”

19. The purchase is likely to be primarily visual as it is likely to be made from a physical store on the high street, a catalogue or from a website. That said, as the selection of the goods may, on occasion, involve the intervention of a sales assistant, aural consideration cannot be ignored. As to the degree of care that will be taken when selecting the goods at issue, both parties’ specifications cover a range of products which are bought on a fairly regular basis and are generally fairly low cost purchases. Consequently, the level of attention paid is likely to be no more than average.

Comparison of marks

20. 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 them, bearing in mind their distinctive and dominant components. The Court of Justice of the European Union (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.”

21. It would be wrong, therefore, artificially to dissect the 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.

The respective marks are shown below:

Opponent's mark	Mr Weymont's mark
BUNTY	BUNTY LONDON

22. The opponent's mark consists of the single word BUNTY. This is the overall impression it will convey. In relation to Mr Weymont's mark, the opponent submits that the distinctive and dominant part is the word BUNTY and that the word LONDON is a non-distinctive element. I consider that there is merit in this argument. London is the capital and largest city of the United Kingdom. In my experience, it is fairly common for fashion and clothing brands to include references to fashion capitals in their marks, e.g. Paris, New York, Milan, London. I consider that the overall impression of Mr Weymont's mark will be dominated by the word BUNTY with LONDON being seen as a reference to a well-known geographical location. That is all the more so since Mr Weymont is applying for a UK mark for goods that are to be traded in the UK. Accordingly, LONDON is likely to have very little relative weight upon the perception or recall of the average consumer.

23. Mr Weymont states, inter alia:

"I disagree entirely that our mark is 'identical' to theirs as Bunty London is in fact an individual's name where Bunty is a universally accepted female forename & London a surname. In no way does this infringe on or pretend to relate to Bunty as used by the opponent."

24. I do not think this point assists Mr Weymont. Although I accept (as does the opponent) that BUNTY is a forename, and I do not discount the possibility that LONDON may be used as a surname, I am not convinced that the average consumer will naturally see BUNTY LONDON as a full name. It was certainly not my first impression, which was of LONDON being an obvious reference to a geographical location. The real test is how marks will be perceived by the average consumer in the normal course of trade. In my experience, LONDON is not a common surname in the United Kingdom. The fact that the word LONDON may have usage as a surname does not overcome its primarily geographical significance.

25. In my view, the overall impression conveyed to the relevant public by both marks will be dominated by the word BUNTY with LONDON being seen as a geographical location and having little relative weight in the overall impression Mr Weymont's mark conveys.

Visual similarity

26. The competing marks are word marks both written in upper case. Visually both marks begin with the word BUNTY. It is the totality of the opponent's mark and the

first word of Mr Weymont's mark. The word LONDON in Mr Weymont's mark must be taken into account; however, it has little relative weight in the overall impression for the reasons already given.

27. The opponent draws my attention to the case law according to which consumers are likely to remember the first part of the mark. There is a general rule, clear from decisions such as joined cases¹ T-183/02 and T-184/0272, that the first parts of words (and consequently, first words of marks) catch the attention of consumers, however, this is only a general rule and each case must be decided on its merits and considering the marks as wholes. In the case before me the overall impression of Mr Weymont's mark is dominated by the word BUNTY. Bearing in mind the foregoing, I consider that there is a high degree of visual similarity.

Aural similarity

28. Aurally, again both marks are phonetically identical as far as the word BUNTY is concerned. It will be articulated as BUN-TEE. Although LONDON must also be taken into account, in my experience, it is not unusual for the descriptive element of a mark to be dropped in speech. As LONDON is the second and descriptive element in Mr Weymont's mark, it is likely that the average consumer will refer to his mark by the word BUNTY alone, in which case the competing marks would be aurally identical. Were the word LONDON to be articulated, however, I conclude there would be at least a medium degree of aural similarity between the competing marks.

Conceptual similarity

29. From a conceptual perspective, the parties agree that the word BUNTY is a forename. I have already rejected the submission that BUNTY LONDON will be perceived as a full name. Given that, for the reasons mentioned above, LONDON has little relative weight in the overall impression, the conceptual impression of the respective marks is essentially the same. Accordingly, if not conceptually identical, I find that the competing marks are conceptually similar to the highest degree.

30. Although the parties agree that BUNTY is a forename, in assessing the conceptual similarity, the forename BUNTY does not strike me as very common; I should, as a consequence, allow for it being unknown to some average consumers who will treat it as an invented word. In those circumstances, the conceptual position would be neutral.

31. In summary, I found a high level of visual similarity, at least a medium level of aural similarity and the highest level of conceptual similarity. Alternatively, if the word BUNTY conveys no meaning, the conceptual position is neutral.

¹ *El Corte Inglés v OHIM – González Cabello and Iberia Líneas Aéreas de España (MUNDICOR)* [2004] ECR II – 965, paragraph 81

Distinctive character of the earlier mark

32. The distinctive character of a mark must be assessed. This is because the more distinctive the earlier mark, based either on inherent qualities or because of use made, the greater the likelihood of confusion (see *Sabel BV v Puma AG*, paragraph 24). The distinctive character of a mark can be appraised only, first, by reference to the goods in respect of which registration is sought and, secondly, by reference to the way it is perceived by the relevant public – *Rewe Zentral AG v OHIM (LITE)* [2002] ETMR 91. In *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).”

33. As the opponent has filed no evidence, I have only the earlier mark’s inherent characteristics to consider. Both parties agree that BUNTY is a forename. Forenames are, in principle, acceptable as marks in Class 25, however, account has to be taken of how common the forename is, as this is likely to impact on the mark’s distinctive character and, consequently, on the level of protection accorded to the mark.

34. In reaching a conclusion on this point, I am mindful of the comment of the GC in *Giordano Enterprises Ltd v Office for Harmonisation in the Internal Market*, Case T-483/08, when assessing the distinctive character of a first name in relation to a registration of a trade mark for goods in Class 25:

“30. It is appropriate to examine first the applicant’s argument that the earlier mark has only a low degree of distinctiveness because it is a word mark consisting of a common first name.

31. It is certainly true that in sectors such as clothing and fashion, in which it is common to use marks consisting of patronymics, it may be assumed, as a general rule, that a very common name will appear more frequently than a

rare name. Thus, consumers will not believe that there is necessarily an economic link between all the proprietors of marks containing the same name or surname (see, to that effect, SISSI ROSSI, paragraph 25 above, paragraph 83).

32. In the present case, however, the two word marks at issue are absolutely identical, which increases the likelihood that consumers might perceive the goods marketed under those marks as coming from the same source. Moreover, as OHIM points out, the applicant has not shown that the Italian first name 'Giordano' which makes up both trade marks is common in Portugal. That being so and since, as noted at paragraph 19 above, the relevant public is made up of average Portuguese-speaking consumers, it must be held that the earlier trade mark has at least an average degree of distinctive character per se."

35. Earlier in this decision, I considered the possibility of the word BUNTY being seen as an invented word. If the mark were perceived in such a way then this would inevitably increase its inherent distinctive character, which would result in it having a relatively high degree of inherent distinctive character.

36. I have no evidence before me to help me assess to what extent the forename BUNTY is usual in the UK. Mr Weymont has neither contended nor shown that the name BUNTY is common in the UK and, from my own experience, it is not. Therefore, according to the above case law, I conclude that the earlier mark has at least an average degree of distinctive character.

Likelihood of confusion

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

38. Earlier in this decision, I found that:

- the parties' goods are identical;
- the average consumer is a member of the general public. The purchase is primarily visual and the level of attention is not more than average;
- the competing marks are visually similar to a high degree, aurally similar to at least a medium degree and conceptually similar to a high degree, or alternatively, conceptually neutral;

- the opponent's earlier trade mark is possessed of at least an average degree of distinctive character.

39. There are two types of relevant confusion to consider: direct confusion (where one mark is mistaken for the other) and indirect confusion (where the respective similarities lead the consumer to believe that the respective goods come from the same or a related trade source). This distinction was summed up by Mr Iain Purvis Q.C. sitting as the Appointed Person in *L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10:

“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).”

40. In the present case, given the above considerations and taking into account that the overall impression and distinctive character of the competing marks lays in the word BUNTY and that the LONDON element in Mr Weymont's mark is merely descriptive and has a very low relative weight, I have little hesitation in concluding that there is a likelihood of direct confusion.

41. In the event that I am found to be wrong on this point, I go on and consider whether there may be indirect confusion.

42. It seems to me that even allowing for the average consumer to recall the word LONDON within Mr Weymont's mark, there will be indirect confusion, as the consumer will still assume that the goods are the responsibility of the same undertaking or undertakings with economic connections. This is all the more so since, as I have outlined above, it is fairly common practice for clothing companies to include fashion capitals in their marks. It would be reasonable for the average consumer to believe that, as the opponent states, BUNTY LONDON is a new range of the brand BUNTY or that the undertaking trading under the name BUNTY has licensed the mark. Either way, there is a likelihood of confusion.

43. For the avoidance of doubt, I would have reached the same conclusion had I considered that the word BUNTY would be seen as invented word by the average consumer. As I explained above this would have resulted in the opponent's mark having a relatively high degree of inherent distinctive character and, although the competing marks would be conceptually neutral, there would still be a likelihood of confusion.

Conclusion

44. The opposition has succeeded.

Costs

45. As the opponent has been successful, it is entitled to a contribution towards its costs. Awards of costs are governed by Annex A of Tribunal Practice Notice (TPN) 4 of 2007, a copy of which can be found at:

<http://webarchive.nationalarchives.gov.uk/tna/20140603093547/http://www.ipo.gov.uk/pro-types/pro-tm/t-law/t-tpn/t-tpn-2007/t-tpn-42007.htm>

Using that TPN as a guide, I award costs to the opponent on the following basis:

Official fees: £100 (see below)

Preparing a statement and considering the other side's statement: £200

Written submissions: £200

Total: £500

46. I note from the form TM7 that although the opposition was based solely on Section 5(2)(b) (attracting a fee of £100), the opponent incorrectly paid £200. The Tribunal will arrange a refund of £100 in due course.

47. I order Mr Drew Weymont to pay D.C Thompson & Co. Limited the sum of £500 as a contribution towards its costs. This sum is to be paid within fourteen days of the expiry of the appeal period or within fourteen days of the final determination of this case, if any appeal against this decision is unsuccessful.

Dated this 17th day of September 2015

**Teresa Perks
For the Registrar
The Comptroller - General**