

O-157-18

**TRADE MARKS ACT 1994
IN THE MATTER OF
TRADE MARK APPLICATION NO 3185758
BY AMORA INTERNATIONAL LTD
TO REGISTER**

AMORA

**AS A TRADE MARK
IN CLASSES 25, 26, 38
AND OPPOSITION THERETO (UNDER NO. 408789)
BY
AMARA LIVING LIMITED**

Background & pleadings

1. Amora International Ltd ('the applicant') applied to register the mark **AMORA** on 15 September 2016. The mark was accepted and published on 16 December 2016 in classes 25, 26 and 38. Only classes 25 and 26, outlined below, form part of these proceedings:

Class 25: Clothing; footwear; headgear; swimwear; sportswear; leisurewear

Class 26: Lace; embroidery; ribbons; braid; buttons; hooks and eyes; pins; needles; artificial flowers

2. Amara Living Limited ('the opponent') opposes the application under Section 5(2)(b) of the Trade Marks Act 1994 ('the Act'). The opposition is on the basis of some of the services registered in its earlier UK trade mark set out below:

UK TM No: 2650839	Services relied on:
<p>AMARA</p> <p>Filing date: 31 January 2013</p> <p>Registration date: 10 May 2013</p>	<p>Class 35: Retail services, including such services provided online, connected with the sale of leather laces, articles made of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum or plastic, textiles and textile goods, textiles for making articles of clothing, linen cloth, clothing, footwear, headgear, sportswear, leisurewear, swimwear, decorations for Christmas trees.</p>

3. The applicant filed a counterstatement denying the ground of opposition.

4. The opponent's above mentioned trademark is an earlier mark, in accordance with Section 6 of the Act but is not subject to the proof of use requirements as it has not been registered for five years or more before the publication date of the applicant's mark, as per section 6A of the Act.

5. The applicant is representing itself in these proceedings and the opponent is represented by J A Kemp.

6. No evidence has been filed in this case. Only the opponent filed submissions in lieu of a hearing. I make this decision based on the material before me.

Decision

7. 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.”

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 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

9. The goods and services to be compared are:

Opponent's services	Applicant's goods
Class 35: Retail services, including such services provided online, connected with the sale of leather laces, articles made of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum or plastic, textiles and textile goods, textiles for making articles of clothing, linen cloth, clothing, footwear, headgear, sportswear, leisurewear, swimwear, decorations for Christmas trees.	Class 25: Clothing; footwear; headgear; swimwear; sportswear; leisurewear Class 26: Lace; embroidery; ribbons; braid; buttons; hooks and eyes; pins; needles; artificial flowers

10. With regard to the comparison of goods and services, in the judgment of the CJEU in *Canon*, Case C-39/97, the court stated at paragraph 23 of its judgment that:

“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, [1996] R.P.C. 281, for assessing similarity were:

- a) The respective users of the respective goods or services;
- b) The physical nature of the goods or acts of services
- c) The respective trade channels through which the goods or services reach the market
- d) 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;
- e) 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.

12. In relation to this case, I have to consider the applicant’s goods and the opponent’s retailing of goods. For this particular consideration, the following case law is applicable.

13. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criteria 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 General Court (“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. In *Oakley, Inc v OHIM*, Case T-116/06, at paragraphs 46-57, 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. In *Tony Van Gulck v Wasabi Frog Ltd*, Case BL O/391/14, 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:

“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*¹, and *Assembled Investments (Proprietary) Ltd v. OHIM*², upheld on appeal in

¹ Case C-411/13P

² Case T-105/05, at paragraphs [30] to [35] of the judgment

*Waterford Wedgewood Plc v. Assembled Investments (Proprietary) Ltd*³, 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;
- 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 opponent submits that,

"...the principle that there is a similarity between retail services in respect of certain goods and those goods themselves is well established."

18. Whereas the applicant submits in its counterstatement that,

"The nature of services is intangible whereas goods are tangible, they serve different needs. Retail services consist in bringing together, and offering for sale, a wide variety of different products, thus allowing consumers to conveniently satisfy different shopping needs at one stop. This is not the

³ Case C-398/07P

purpose of the goods. Furthermore goods and services have different methods of use and are neither in competition or complementary”.

19. I note the applicant’s point but taking account of the guidance outlined above, I agree with the opponent that retail services for particular goods may be considered complementary to those goods.

20. Taking first the goods in the applicant’s class 25 specification namely, *Clothing; footwear; headgear; swimwear; sportswear; leisurewear*, I note these are identical goods to those included in the opponent’s specification i.e. *Retail services, including such services provided online, connected with the sale of clothing, footwear, headgear, sportswear, leisurewear, swimwear*. I find that there is a relevant complementary relationship between the applicant’s goods and the opponent’s services I have identified, such that a consumer would see a close connection between the goods and the retail of identical goods and assume they came from the same undertaking. Overall I find this results in a medium degree of similarity between the goods in class 25 and the retail services in class 35.

21. With regard to the applicant’s class 26 goods, the opponent has separated the terms into the following four groups and has made separate submissions on each of the groups.

lace, embroidery, ribbons, braid

22. Firstly in relation to *lace, embroidery, ribbons, braid*, the opponent submits these are all textile goods, often used when making clothes and therefore identical to the goods included in the term *Retail services, including such services provided online, connected with the sale of textiles and textile goods, textiles for making articles of clothing*. I agree that these goods are textile in nature and can be used in making clothes amongst other things. Such goods are likely to be retailed as standalone items from, for example, a haberdashers or haberdashery department. I find that a consumer would see a close connection between these goods and the retail service and assume they come from the same undertaking. Taking this into account, this results in a medium degree of similarity.

hooks and eyes

23. With regard to *hooks and eyes*, the opponent's submits these goods are similar to the retail of *leather laces* on the grounds that they all share the same purpose of being fasteners for clothing and footwear. Whilst there may be a similarity of purpose at the most general level, the goods are not physically similar in nature. The users may be the same at a general level in that they may be consumers looking for clothing and footwear fasteners but in my experience a consumer will not make a close connection between the contested items. Overall I find there is a low similarity.

Buttons; hooks and eyes; pins; needles

24. The opponent further submits that *Buttons; hooks and eyes; pins; needles* should be considered similar to *Retail services, including such services provided online, connected with the sale of articles made of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum or plastic, textiles and textile goods, textiles for making articles of clothing* on the grounds that buttons, hooks and eyes, pins and needles can be made of various materials. I have some concern with this submission as the term 'articles' in the retail specification does not define what the 'articles' are only what material they are made of. In *YouView TV Ltd v Total Ltd*, [2012] EWHC 3158 (Ch), Floyd J. (as he then was) stated that:

"... Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless the principle should not be taken too far. Treat was decided the way it was because the ordinary and natural, or core, meaning of 'dessert sauce' did not include jam, or because the ordinary and natural description of jam was not 'a dessert sauce'. Each involved a straining of the relevant language, which is incorrect. Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is

equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question."

25. Furthermore in *Beautimatic International Ltd v Mitchell International Pharmaceuticals Ltd and Another*, [2000] F.S.R. 267 (HC), Neuberger J. (as he then was) stated that:

"I should add that I see no reason to give the word "cosmetics" and "toilet preparations"... anything other than their natural meaning, subject, of course, to the normal and necessary principle that the words must be construed by reference to their context."

And in *Avnet Incorporated v Isoact Limited*, [1998] F.S.R. 16, Jacob J. (as he then was) stated that:

"In my view, specifications for services should be scrutinised carefully and they should not be given a wide construction covering a vast range of activities. They should be confined to the substance, as it were, the core of the possible meanings attributable to the rather general phrase."

26. In *Chartered Institute of Patent Attorneys v Registrar of Trade Marks*, C-307/10 ('IP Translator') the CJEU determined that the terms *articles made of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum or plastic* would not be acceptable as a description in class 20 as it lacks the clarity and precision that enables others to determine the scope of the protection it gives. I find the same reasoning will apply in class 35 for retail of the above so I cannot find that these goods are similar to *Buttons; hooks and eyes; pins; needles* in the applicant's specification.

Artificial flowers

27. The opponent submits that *artificial flowers* should be considered as similar to *Retail services, including such services provided online, connected with the sale of decorations for Christmas trees* on the grounds that "Christmas tree decorations may

take the form of artificial flowers, including in garlands”. I do not agree with this submission. Artificial flowers and Christmas tree decorations are different in nature and they are unlikely to share the same trade channels. There is only a vague overlap in purpose in that both can be said to be used as a form of decoration. Taking all of these factors into account, I do not find any similarity in these goods and services.

Average consumer and the purchasing process

28. I need to consider who the average consumer is and how they purchase the contested goods and services. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer, Case C-342/97*.

29. 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.”

30. Specifically with regard to clothing, in *New Look Ltd v Office for the Harmonization in the Internal Market (Trade Marks and Designs) Joined Cases T-117/03 to T-119/03 and T-171/03* the GC 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.

53. 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.”

31. The average consumer for the contested goods and services are the general public. As stated by the GC, items of clothing vary in price and quality. Ordinarily I would expect a normal level of attention to be paid by the consumer when selecting such goods. The purchasing act will be mainly visual and will likely be based on the aesthetic appeal of a garment and suitability for wear. With regard to items such as *lace, embroidery, ribbons, braid, hooks and eyes* I consider these to be inexpensive products but as they may be quite specific to the making or tailoring of a garment, a consumer will be paying a normal degree of attention during the purchasing process. It is likely that the contested goods will be selected after perusal of racks/shelves in retail establishments, or from images on Internet websites or in catalogues. However, I do not discount aural considerations which may also play a part.

Comparison of the marks

32. The marks to be compared are:

Opponent's mark	Applicant's mark
AMARA	AMORA

33. 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.”

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

35. The opponent's mark consists of a single word, AMARA, presented in plain block capitals. The overall impression of the mark rests solely in this word.

36. The applicant's mark consists of a single word, AMORA, presented in plain block capitals. The overall impression of the mark rests solely in this word.

37. In a visual comparison, both marks are single words, both are five letters long and share four of the same letters, namely A,M,R and A. In its counterstatement, the applicant submits that,

“The length of signs may influence the effect of the differences between them. In principle, the shorter a sign, the more easily the public is able to perceive all its single elements”.

Whereas the opponent contends in its submissions that,

“The fact that the only difference between the marks lies in the middle of the words means that it could easily go unnoticed, or at least that it is less noticeable than if, for example, the first letter of the marks were different”.

38. Both marks consist of short words but in my view a single letter difference in a middle of a word can be overlooked. Overall I find there is a medium degree of visual similarity.

39. In an aural comparison, both marks are three syllables long. The first syllable AM and the last syllable RA will be pronounced in the same way for both marks. This leaves me to consider the aural impact of the middle syllable. The applicant submits in its counterstatement that,

“The ‘MOR’ and ‘MAR’ syllables is not a small difference but a major one. It is a syllable that has a very ‘definite sound, not a sound that is likely to be slurred or disappear”.

40. The opponent submits that the second syllable is “aurally similar” but does not provide any further explanation as to how or why they should be considered as such. It is the case that ‘ar’ and ‘or’ sounds in English have differences in pronunciation. Even taking this in to account I find there is a medium degree of aural similarity.

41. With regard to the conceptual comparison, the applicant submits in some detail in its counterstatement that,

“The earlier mark ‘AMARA’ is a well-known Latin female name meaning ‘grace’ or ‘bitter’. It also holds meaning in Sanskrit which is ‘immortal’.

The subject mark, 'AMORA' has two meanings. The first is 'one of a group of Jewish scholars, active in Palestine and Babylonia from the 3rd to the 6th centuries'. The second is a Spanish female name meaning 'love'. Some members of the public may perceive the subject mark to derive the word 'amore', which is well –known in European countries meaning 'love'.

Some members of the public may view both marks as names and treat the earlier mark and subject mark as similar in so far as they are names, despite having different meanings altogether.

However it is more likely that the subject mark 'AMORA' will be associated with the meaning love. If so then the marks cannot be viewed as conceptually similar”.

42. In response the opponent submits that,

“For the majority of UK consumers, neither mark will have any obvious conceptual meaning, such that a conceptual comparison is not possible. A small number of UK consumers might perceive either or both marks as girls' names of foreign origin. To this extent, they are conceptually identically”.

43. I agree with the opponent on this matter. The average consumer may see two invented words or alternatively may at least recognise that both marks consist of non-English words. If the latter is the case then it may be that some average consumers will know the meaning of these words whereas others will not. But intrinsically neither mark has any immediately graspable concept⁴. In which case I consider the marks to be conceptually neutral.

⁴ It has been highlighted in numerous judgments such as *The Picasso Estate v OHIM*, Case C-361/04 that it is only concepts capable of immediate grasp by the consumer that are relevant.

Distinctive character of the earlier mark

44. The distinctive character of the earlier mark must be considered. The more distinctive it is, either inherently or through use, the greater the likelihood of confusion (*Sabel BV v Puma AG*). 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).”

45. The opponent did not file any relevant evidence showing use of the earlier mark for the services relied on so I can only consider inherent distinctiveness. I previously found that the earlier mark will either be seen as an invented word or at least a non-English word. In either scenario, the mark does not describe the services for which it is registered in any way and as such has a high level of inherent distinctiveness.

Likelihood of confusion

46. I now draw together my earlier findings into the global assessment of the likelihood of confusion, keeping in mind the following factors and those outlined in paragraph 8:

- a) The interdependency principle, whereby a lesser degree of similarity between the goods may be offset by a greater similarity between the marks, and vice versa (*Canon*).
- b) The principle that the more distinctive the earlier mark is, the greater the likelihood of confusion (*Sabel BV v Puma AG*).
- c) Imperfect recollection i.e. that consumers rarely have the opportunity to compare marks side by side but must rather rely on the imperfect picture that they have kept in their mind (*Lloyd Schuhfabrik Meyer*).

47. Confusion can be direct (when the average consumer mistakes one mark for the other) or indirect (where the average consumer realises the marks are not the same but puts the similarity that exists between the marks, goods and services down to the responsible undertakings being the same or related).

48. I have found that the goods and services are complementary for all the goods in class 25 and *lace, embroidery, ribbons, braid* in class 26 but only of a low similarity for *hooks and eyes* and that the goods are primarily purchased visually by the general public who will be paying a normal level of attention during the purchasing process. In addition I have found that the earlier mark has a high level of inherent distinctiveness and that the contested marks are visually and aurally similar to a medium degree, and are conceptually neutral.

49. Based on the marks and the goods and services before me and taking into account the assessments I have made, I find that there is a likelihood of direct confusion. There is a single letter difference between the marks and it is contained in the middle of the respective words. This single letter difference could be easily overlooked and lead to one mark being mistaken for the other. I refer back to bullet point (b) in paragraph 8 regarding the consumer rarely having the chance to make

direct comparisons between marks but instead relying on an imperfect recollection. I consider that to be the case here.

Conclusion

50. The opposition succeeds under section 5(2)(b) and, subject to any successful appeal against my decision, the application is refused for class 25 in its entirety and *lace, embroidery, ribbons, braid* in class 26.

51. The application can proceed to registration for the remainder of the goods in class 26 namely *buttons; hooks and eyes; pins; needles; artificial flowers* and class 38 which did not form part of these proceedings.

Costs

52. As the opponent has been substantially more successful than the applicant, it is entitled to a contribution towards the costs incurred in these proceedings. Awards of costs are governed by Annex A of Tribunal Practice Notice (TPN) 2/2016. Bearing in mind the guidance given in TPN 2/2016, I award costs as follows:

£100 Official fee for filing opposition

£100 Filing the Notice of Opposition

£200 Preparing submissions and considering the applicant's counterstatement

£400 Total

53. I order Amora International Ltd to pay Amara Living Limited the sum of £400. This sum is to be paid within 14 days of the expiry of the appeal period or within 14 days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 12th day of March 2018

**June Ralph
For the Registrar,
The Comptroller General**