**O/0045/26**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF REGISTRATION NO. 3810362**
**IN THE NAME OF**
**FENG, LI**
**FOR THE FOLLOWING TRADE MARK:**

# FLOWFLEX

**IN CLASSES 5, 9 & 10**

**AND**

**AN APPLICATION FOR A DECLARATION OF INVALIDITY**
**UNDER NO. 506730**
**BY LEADWAY (HK) LIMITED**

**Background and pleadings**

1. The trade mark ("contested mark") shown on the front page of this decision stands registered in the name of Feng, Li ("the Proprietor"). The mark was applied for on 18 July 2022 and completed its registration procedure on 14 October 2022. The contested mark stands registered for the goods shown in Annex 1. This invalidation is directed only against the following goods in class 5:

> *Class 5: Swabs for medical use; Medical infusions; Reagents for medical use; Veterinary diagnostic reagents; Medical diagnostic test strips; In vitro diagnostic preparations for medical use; Chemical preparations for use in dna analysis [medical]; Medical preparations; Diagnostic preparations for medical or veterinary purposes; Chemico-pharmaceutical preparations; Pharmaceutical preparations and substances for the treatment of cancer; Reagents for use in medical genetic testing; Reagents for use in veterinary genetic testing.*

2. On 24 November 2023, Leadway (HK) Limited ("the Applicant") applied to have the contested mark declared partially invalid under section 47(2)(a) of the Trade Marks Act 1994 ("the Act") in respect of the above goods. The application was brought under sections 5(1), 5(2)(a) and 5(2)(b) of the Act. The Applicant relies upon the following international registration:

> **FLOWFLEX**
>
> International registration no. 1587464
> International registration date: 12 March 2021
> Designation date: 12 March 2021
> Protection conferred date: 26 August 2021
> Priority date: 3 March 2021
> Priority country: United States of America
> TM from which priority claimed: 90558393
> Relying on all goods for which it is protected, namely:

*Class 5: Medical diagnostic immunoassays for testing of body fluids.*

3. By virtue of its earlier filing date, the Applicant's mark constitutes an earlier mark within the meaning of section 6 of the Act. As the mark had not completed the registration process more than five years before the relevant date (the filing date of the mark in issue), it is not subject to proof of use pursuant to section 6A of the Act. The Applicant can, therefore, rely upon all of the goods it has identified.

4. The Applicant claims that there is a likelihood of confusion because the Proprietor's mark is identical, or at least almost identical, to the Applicant's and the respective goods are identical or highly similar, giving rise to a likelihood of confusion.

5. The Proprietor filed a counterstatement admitting that the respective marks have the same character composition and partially denying the claims made regarding the identity/similarity of the goods. By way of the official letters dated 21 March 2024, 25 March 2024 and 22 April 2024, the Proprietor was requested to file an amended form TM8 addressing the Applicant's claims regarding the similarity of all of the goods for which invalidation is sought.

6. The Proprietor failed to address these claims and was notified by way of the official letter dated 8 May 2024 that the counterstatement had been admitted into the proceedings on the basis that the Proprietor is only defending the claims made regarding the similarity of the following goods to those covered by the earlier right:

> *Class 5: Pharmaceutical preparations and substances for the treatment of cancer; Reagents for use in medical genetic testing; Reagents for use in veterinary genetic testing.*

7. In these proceedings the Applicant is represented by IO Insight Ltd and the Proprietor is represented by Goldstar Compliance Limited. Neither party filed evidence, though I note that the Applicant filed written submissions on 20 May 2024.

8. Neither party requested a hearing nor filed written submissions in lieu. Therefore, this decision is taken following careful consideration of all the papers before me.

**DECISION**

9. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

10. Section 47 of the Act, states as follows:

> "47. – […]
>
> (2) Subject to subsections (2A) and (2G), the registration of a trade mark may be declared invalid on the ground-
>
> > (a) that there is an earlier trade mark in relation to which the conditions set out in section 5(1), (2) or (3) obtain, or
> >
> > (b) […]
>
> unless the proprietor of that earlier trade mark or other earlier right has consented to the registration.
> (2A) The registration of a trade mark may not be declared invalid on the ground that there is an earlier trade mark unless –
>
> > (a) the registration procedure for the earlier trade mark was completed within the period of five years ending with the date of the application for the declaration,

(b) the registration procedure for the earlier trade mark was not completed before that date, or

(c) the use conditions are met.

[…]

(5) Where the grounds of invalidity exist in respect of only some of the goods or services for which the trade mark is registered, the trade mark shall be declared invalid as regards those goods or services only.

(5A) An application for a declaration of invalidity may be filed on the basis of one or more earlier trade marks or other earlier rights provided they all belong to the same proprietor.

(6) Where the registration of a trade mark is declared invalid to any extent, the registration shall to that extent be deemed never to have been made: Provided that this shall not affect transactions past and closed."

**Section 5(1) and 5(2)(a)**

11. The invalidation application is based on Section 5(1) of the Act, which is as follows:

"5(1) A trade mark shall not be registered if it is identical with an earlier trade mark and the goods or services for which the trade mark is applied for are identical with the goods or services for which the earlier trade mark is protected."

12. Section 5(2)(a) of the Act is also being relied upon and is as follows:

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

(a) it is identical with an earlier trade mark and is to be registered for goods or services 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. The following principles considered in this application for invalidity 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:

(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.

**Identity of the marks**

14. It is a prerequisite for both sections 5(1) and 5(2)(a) of the Act that the trade marks at issue are identical. In *S.A. Société LTJ Diffusion v. Sadas Vertbaudet SA,* Case C-291/00, the Court of Justice of the European Union ("CJEU") held that:

"54... a sign is identical with the trade mark where it reproduces, without any modification or addition, all the elements constituting the trade mark or where, viewed as a whole, it contains differences so insignificant that they may go unnoticed by an average consumer.

15. The marks at issue are as follows:

| Applicant's Mark | Proprietor's Mark |
|---|---|
| **FLOWFLEX** | **FLOWFLEX** |

16. The Proprietor has admitted that the marks "have the same character composition". I agree that the marks are comprised of the same 8 letters in the same order and are self-evidently identical.

17. Section 5(2)(b) of the Act applies only in cases where the conflicting marks are similar. As I have found that the marks are identical, the opposition under section 5(2)(b) fails.

**Preferred Approach**

18. I will deal with section 5(2)(a) of the Act first, and the assessment as to the identity/similarity of the goods, given that any findings on identity will also satisfy section 5(1).

**Comparison of goods**

19. In *Canon*, the CJEU stated at paragraph 23 of its judgment:

> "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. Guidance on this issue has also come from Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, where he identified the factors for assessing similarity as:

> 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.

21. In *YouView TV Ltd v Total Ltd*, [2012] EWHC 3158 (Ch), paragraph 12, Floyd J (as he then was) gave the following guidance on construing the words used in specifications:

> "[…] 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 of 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."

22. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU held that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods or services. The GC clarified the meaning of "complementary" goods or services in *Boston Scientific Ltd v OHIM*, Case T-325/06, at paragraph 82:

"[…] 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. General Court ("GC") confirmed in *Gérard Meric v Office for Harmonisation* in the Internal Market, Case T-133/05, that, even if goods are not worded identically, they can still be considered identical if one term falls within the scope of another (or vice versa):

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

24. The competing goods are as follows:

| Applicant's goods | Proprietor's goods |
|---|---|
| **Class 5**: Medical diagnostic immunoassays for testing of body fluids. | **Class 5:** Swabs for medical use; Medical infusions; Reagents for medical use; Veterinary diagnostic reagents; Medical diagnostic test strips; In vitro diagnostic preparations for medical use; Chemical preparations for use in dna analysis [medical]; Medical preparations; Diagnostic preparations for medical or veterinary purposes; Chemico-pharmaceutical preparations; Pharmaceutical preparations and substances for the treatment of cancer; Reagents for use in medical genetic testing; Reagents for use in veterinary genetic testing. |

25. Within the form TM26I the Applicant claims that the Proprietor's goods are in parts identical and in parts highly similar to those covered by their earlier right.

26. Without putting forward a blanket denial for the competing specifications, the Proprietor failed to address the Applicant's claims within the Form TM8 and counterstatement regarding the identity and high similarity of the following goods:

*Swabs for medical use; Medical infusions; Reagents for medical use; Veterinary diagnostic reagents; Medical diagnostic test strips; In vitro diagnostic preparations for medical use; Chemical preparations for use in dna analysis [medical]; Medical preparations; Diagnostic preparations for medical or veterinary purposes; Chemico-pharmaceutical preparations.*

27. By way of the official letter dated 8 May 2024, the Proprietor was notified that the counterstatement had been admitted into the proceedings on the basis that the

Proprietor is only defending the claims against those goods in Class 5, namely "*Pharmaceutical preparations and substances for the treatment of cancer; Reagents for use in medical genetic testing; Reagents for use in veterinary genetic testing",* addressed in the form TM8.

28. Professor Phillip Johnson, sitting as the Appointed Person, in *SKYCLUB*, BL O/044/21, at paragraph 24 states:

> "The position in the Civil Procedure Rules (CPR) is clear; namely, a defendant must state which allegations are denied, which allegations a defendant is unable to admit or deny, and which allegations the defendant admits (CPR, 16.5(1)). Where a defendant fails to deal with an allegation it is taken to be admitted (CPR 16.5(5)). This is subject to the rule that where an allegation is not dealt with, but the defence sets out the nature of his case in relation to the issue to which that allegation is relevant, then the allegation must be proved by the Claimant (CPR 16.5(3)). Thus, the filing of a "blank" defence would lead to the whole of the Claimant's case being admitted."

29. As such, and in the absence of a blanket denial from the Proprietor, I will proceed on the basis that the Applicant's claims, namely that part of the above contested goods in paragraph 26 are identical and part highly similar to those covered by the earlier right, are admitted.

30. As the Applicant did not specify which of the Proprietor's goods they claim are identical and which highly similar, I will conduct my assessment below.

<u>Medical preparations; Diagnostic preparations for medical or veterinary purposes.</u>

31. I find that the Applicant's m*edical diagnostic immunoassays for testing of body fluids*, would be encompassed by the Proprietor's broader terms above. I therefore find the goods to be identical in line with the principles outline in *Meric*.

Swabs for medical use; Medical infusions; Reagents for medical use; Veterinary diagnostic reagents; Medical diagnostic test strips; In vitro diagnostic preparations for medical use; Chemical preparations for use in dna analysis [medical]; Chemico-pharmaceutical preparations.

32. I do not consider the above goods to be identical to those of the Applicant. As such, and in the absence of a denial from the Proprietor, I find the goods to be highly similar.

33. I will now conduct my assessment as to the remaining terms for which the Proprietor has denied similarity.

Reagents for use in medical genetic testing.

34. I understand the above goods to be a substance or mixture for use in genetic testing. When compared with the Applicant's *Medical diagnostic immunoassays for testing of body fluids* there is an overlap in the nature and purpose of the competing goods in that both are used for medical testing and they could also share the same method of use, with both being a substance that is combined with a sample in order to carry out a test. The goods of both parties are likely to be sought by the same users such as medical professionals or patients and offered through the same trade channels, those being medical suppliers or pharmacies and their online counterparts. Although the respective goods may be used together in certain contexts, they are not indispensable or important for one another to the extent that users would believe that they are derived from the same undertaking. As such I do not find that the goods are complementary, nor are they in competition. Overall, I consider the goods to be similar to a high degree.

Pharmaceutical preparations and substances for the treatment of cancer.

35. When compared to the Applicant's *Medical diagnostic immunoassays for testing of body fluids,* which I understand to be a type of diagnostic test to detect the presence of a substance in a bodily fluid, I am of the view that while the goods share

the same broad purpose of medical use, they differ in their nature and specific purpose, with the Applicant's being for medical testing and the Proprietor's for treatment of cancer. The goods will share similar trade channels, with both being available through medical suppliers, and there will be an overlap in user where both goods are sought by medical professionals and patients. The goods are not competitive, nor are they complementary in the sense that they are indispensable or important for one another to the extent that users would believe that they are derived from the same undertaking. Overall, I consider the goods to be similar to a low to medium degree.

Reagents for use in veterinary genetic testing.

36. The above goods share a board overlap in nature and purpose with those of the Applicant with both being components of tests used in a medical/health setting. The goods may share a similar method of use, however, the end users for both goods will differ, with the end users of the Proprietor's goods being vets and the Applicant's being medical professionals or patients, although there may be some overlap where the goods are sought by laboratories carrying out testing on both humans and animals. I do not consider that the goods will be offered through the same trade channels. The goods are not in competition nor are they complementary. Consequently, I consider the goods to be similar to a low degree.

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

37. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties' goods. I must then determine the manner in which the goods are likely to be selected by the average consumer. 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.”

38. In Olimp Laboratories sp. z o.o. v EUIPO, Case T-817/19, EU:T:2021:41, the GC considered the average consumer for and level of attention which would be paid in the selection of pharmaceutical and medical products in Class 5. It said:

> “39 Where the goods in question are medicinal or pharmaceutical products, the relevant public is composed of medical professionals, on the one hand, and patients, as end users of those goods, on the other (see judgment of 15 December 2010, Novartis v OHIM – Sanochemia Pharmazeutika (TOLPOSAN), T-331/09, EU:T:2010:520, paragraph 21 and the case-law cited; judgment of 5 October 2017, Forest Pharma v EUIPO – Ipsen Pharma (COLINEB), T-36/17, not published, EU:T:2017:690, paragraph 49).
>
> 40 Moreover, it is apparent from case-law that, first, medical professionals display a high degree of attentiveness when prescribing medicinal products and, second, with regard to end consumers, in cases where pharmaceutical products are sold without prescription, it must be assumed that those goods will be of concern to consumers, who are deemed to be reasonably well informed and reasonably observant and circumspect where those goods affect their state of health, and that these consumers are less likely to confuse different versions of such goods. Furthermore, even assuming that a medical prescription is mandatory, consumers are likely to demonstrate a high level of attentiveness upon prescription of the goods at issue in the light of the fact that those goods are pharmaceutical products. Thus, medicinal products, whether or not issued on prescription, can be regarded as receiving a heightened level of attentiveness on the part of consumers who are normally well informed and

reasonably observant and circumspect (see judgment of 15 December 2010, TOLPOSAN, T-331/09, EU:T:2010:520, paragraph 26 and the case-law cited).

41 […]

42 In the present case, having regard to the nature of the goods concerned, namely medical or pharmaceutical products in Class 5, the Board of Appeal acted correctly in finding in paragraphs 18 to 21 of the contested decision – which, moreover, is not disputed by the Applicant – that, in essence, the relevant public was made up of medical professionals and pharmacists and consumers belonging to the general public with a higher than average degree of attentiveness."

39. The goods in question are all forms of medical products. The average consumer will likely be a medical or veterinary professional, or a member of the public seeking medical diagnosis or treatment. I consider that the goods may be obtained through a medical supplier, a pharmacy, or a specialist supplier, and that the purchasing act will be predominantly visual in nature for both medical and veterinary professionals, who may encounter the goods in specialist brochures or their online equivalent, and the public, who may encounter the goods on the shelves of a pharmacy or their online equivalent. I do not, however, discount the aural consideration where orders are placed with medical suppliers over the phone or where advice is sought from a pharmacist/specialist. The goods may vary in price, but none are likely to be prohibitively expensive and will likely be purchased reasonably frequently. As stated above the goods at issue are all medical products. As such, the average consumer is likely to be concerned with their health, or the health of their patients and will be alive to considerations such as the quality, suitability and effectiveness of the goods. Consequently, I find that members of the general public would pay a higher than medium degree of attention during the purchasing process, while medical professionals are likely to pay a high degree of attention.

**Distinctive character of the earlier mark**

40. The distinctive character of a trade mark can be appraised only, first, by reference to the goods in respect of which it is registered and, secondly, by reference to the way it is perceived by the relevant public. In *Lloyd Schuhfabrik*, 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)."

41. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods and services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use that has been made of it. The Applicant has not pleaded that its mark has obtained an enhanced level of distinctiveness through the use made of it, nor has it filed any evidence of use. Therefore, I have only the inherent distinctiveness of the mark to consider.

42. The Applicant's mark "FLOWFLEX" will, in my view, be understood as a combination of the words as the consumers would still break the mark down into "FLOW-" and "-FLEX" that resemble words which are known to them.[1] The Earlier mark is therefore a combination of ordinary dictionary words that are neither descriptive nor allusive to the goods at hand. I find the earlier mark to be distinctive to a medium degree.

**Conclusions on sections 5(1) and 5(2)(a)**

43. In respect of section 5(1), the marks are identical. I found that some of the goods in Class 5 of the respective marks as set out at paragraph 31 are also identical. The invalidation succeeds under section 5(1) in relation to those goods where I found identity.

**Likelihood of confusion**

44. Turning to section 5(2)(a), confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one trade mark for the other, while indirect confusion is where the average consumer realises the trade marks are not the same but puts the similarity that exists between the trade marks and the goods and services down to the responsible undertakings being the same or related. There is no simple formula for determining whether there is a likelihood of confusion. I must make a global assessment of the competing factors (*Sabel* at [22]), keeping in mind the interdependency between them i.e. that a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa (*Canon* at [17]) and considering the various factors from the perspective of the average consumer. In making my assessment, I must bear in mind that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them they have retained in their mind (*Lloyd Schuhfabrik* at [26]).

[1] *See Usinor SA v OHIM,* Case T-189/05, para 62

45. In the present case, as is a requirement for all claims under section 5(2)(a), the respective marks are identical. I have found the goods to range in similarity from a low degree to high and that the earlier mark is inherently distinctive to a medium degree. The average consumer will comprise medical professionals and members of the general public who will demonstrate a high, and a higher than medium level of attention during the selection process, which will be primarily visual. Weighing these factors, I find that the identity of the marks together with the medium degree of inherent distinctiveness will offset a lesser degree of similarity between the goods leading the average consumer to mistake one mark for the other by virtue of the interdependence principle. I therefore consider there to be a likelihood of direct confusion. As a result of the above, the invalidation succeeds under section 5(2)(a) of the Act for similar goods at any degree.

**Conclusion**

46. The partial invalidation under sections 5(1) and 5(2)(a) is successful. Subject to any successful appeal against my decision, the registration, under section 47(6) of the Act, is invalidated with effect from 18 July 2022 in respect of the following goods:

> Class 5: Swabs for medical use; Medical infusions; Reagents for medical use; Veterinary diagnostic reagents; Medical diagnostic test strips; In vitro diagnostic preparations for medical use; Chemical preparations for use in dna analysis [medical]; Medical preparations; Diagnostic preparations for medical or veterinary purposes; Chemico-pharmaceutical preparations; Pharmaceutical preparations and substances for the treatment of cancer; Reagents for use in medical genetic testing; Reagents for use in veterinary genetic testing.

47. For completeness, the mark will remain registered in respect of the uncontested goods:

> Class 5: Sanitizers for household use; Disinfectants and antiseptics; Isopropyl alcohol for medical use; Antibacterial wipes; Sanitizing wipes; Dietary supplements and dietetic preparations; Herbs for medicinal purposes.

Class 9: Respirators for filtering air; Filters for respiratory masks; Safety gloves for protection against accident or injury; Protective and safety equipment; Safety, security, protection and signalling devices; Thermometers, not for medical purposes; Diagnostic apparatus, not for medical purposes; Photovoltaic apparatus and installations for generating solar electricity; Batteries for vehicles; Batteries; Battery chargers; Power banks; Power adapters; Power controllers; Power cables; Glasses, sunglasses and contact lenses; Virtual reality hardware; Head mounted augmented reality displays; Charging stations for electric vehicles; Dust masks.

Class 10: Face masks for medical use; Respirators for medical purposes; Face shields for medical use; Medical gloves; Medical isolation gowns; Cardiopulmonary resuscitation masks; Resuscitation apparatus; Surgical devices and instruments; Thermometers for medical purposes; Pulse oximeters; Blood pressure measuring apparatus; Apparatus for blood analysis; Dental apparatus and instruments; Sexual activity articles; Medical diagnostic apparatus for testing for viruses; Diagnostic apparatus for medical purposes; Medical apparatus and devices; Massage apparatus, electric or non-electric; Medical testing instruments; Apparatus for the treatment of cancer.

**COSTS**

48. As the Applicant has been successful it is entitled to a contribution towards its costs. Awards of costs in proceedings commenced on or after 1 February 2023 are governed by Annex A of Tribunal Practice Notice 1 of 2023. Taking account of that scale, I award the Applicant the sum of £800, calculated as follows:

| | |
|---|---|
| Preparing a statement and considering the other side's statement: | £250 |
| Filing submissions: | £350 |

| | |
|---|---|
| Official fee: | £200 |
| **Total:** | **£800** |

49. I therefore order Feng, Li to pay the sum of £800 to Leadway (HK) Limited. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

**Dated this 23rd day of January 2026**

**Jacob Robinson**
**For the Registrar**

**Annex 1- Proprietor's goods**

Class 5: Sanitizers for household use; Disinfectants and antiseptics; Isopropyl alcohol for medical use; Antibacterial wipes; Sanitizing wipes; Swabs for medical use; Medical infusions; Reagents for medical use; Veterinary diagnostic reagents; Medical diagnostic test strips; In vitro diagnostic preparations for medical use; Chemical preparations for use in dna analysis [medical]; Medical preparations; Diagnostic preparations for medical or veterinary purposes; Dietary supplements and dietetic preparations; Chemico-pharmaceutical preparations; Herbs for medicinal purposes; Pharmaceutical preparations and substances for the treatment of cancer; Reagents for use in medical genetic testing; Reagents for use in veterinary genetic testing.

Class 9: Respirators for filtering air; Filters for respiratory masks; Safety gloves for protection against accident or injury; Protective and safety equipment; Safety, security, protection and signalling devices; Thermometers, not for medical purposes; Diagnostic apparatus, not for medical purposes; Photovoltaic apparatus and installations for generating solar electricity; Batteries for vehicles; Batteries; Battery chargers; Power banks; Power adapters; Power controllers; Power cables; Glasses, sunglasses and contact lenses; Virtual reality hardware; Head mounted augmented reality displays; Charging stations for electric vehicles; Dust masks.

Class 10: Face masks for medical use; Respirators for medical purposes; Face shields for medical use; Medical gloves; Medical isolation gowns; Cardiopulmonary resuscitation masks; Resuscitation apparatus; Surgical devices and instruments; Thermometers for medical purposes; Pulse oximeters; Blood pressure measuring apparatus; Apparatus for blood analysis; Dental apparatus and instruments; Sexual activity articles; Medical diagnostic apparatus for testing for viruses; Diagnostic apparatus for medical purposes; Medical apparatus and devices; Massage apparatus, electric or non-electric; Medical testing instruments; Apparatus for the treatment of cancer.