

**O/0100/26**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION NO. UK00004124279**

**IN THE NAME OF**

**UNISON GLOBAL MARKETS (UGM) LTD**

**TO REGISTER THE FOLLOWING TRADE MARK:**

**UNISONPAY**

**IN CLASS 36**

**AND**

**IN THE MATTER OF OPPOSITION THERETO**

**UNDER NO. OP600003667**

**BY CHINA UNIONPAY CO., LTD.**

## **Background and pleadings**

1. On 13 November 2024, Unison Global Markets (UGM) Ltd (“the Applicant”) applied to register the trade mark shown on the cover page of this decision in the UK. It was accepted and published in the Trade Marks Journal on 24 January 2025 in respect of the services in class 36.<sup>1</sup>
2. On 22 April 2025, CHINA UNIONPAY CO., LTD. (“the Opponent”) opposed the application under the fast track opposition procedure, based upon section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The Opponent relies upon the following UK trade mark (“UKTM”) and International trade mark (“IR”):



UKTM no. UK00003600047 (“the first earlier mark”)

Filing date: 24 February 2021

Registration date: 02 July 2021

Relying upon services in class 36<sup>2</sup>

## **UnionPay International**

IR no. WO0000001629741 (“the second earlier mark”)

Designation date: 05 July 2021

Protection conferred date: 25 February 2022

Relying upon services in class 36<sup>3</sup>

3. By virtue of their earlier filing and designation dates, the opponent’s marks constitute earlier marks within the meaning of section 6 of the Act. As the earlier marks had not completed their registration process more than five years before

---

<sup>1</sup> See the services comparison at paragraph 16.

<sup>2</sup> See the services comparison as paragraph 16.

<sup>3</sup> See the Annex to this decision.

the filing date of the application in issue, they are not subject to the use provisions contained in section 6A of the Act. The Opponent can, therefore, rely upon all of the services it has identified without having to demonstrate use.

4. The Opponent submits that the services at issue are identical or similar and that the marks are highly similar. They submit that the distinctive and dominant element in each of their earlier rights is the word UnionPay.<sup>4</sup>
5. The Applicant filed a counterstatement denying the claims made by the Opponent.
6. Rule 6 of the Trade Marks (Fast Track Opposition) (Amendment) Rules 2013, S.I. 2013 2235, disapplies paragraphs 1-3 of Rule 20 of the Trade Mark Rules 2008, but provides that Rule 20(4) shall continue to apply. Rule 20(4) states that:

“(4) The registrar may, at any time, give leave to either party to file evidence upon such terms as the registrar thinks fit.” The net effect of these changes is to require the parties to seek leave in order to file evidence in fast track oppositions.
7. Rule 62(5) (as amended) states that arguments in fast track proceedings shall be heard orally only if (i) the Office requests it or (ii) either party to the proceedings requests it and the registrar considers that oral proceedings are necessary to deal with the case justly and at proportionate cost; otherwise, written arguments will be taken. A hearing was neither requested nor considered necessary; however, the Opponent filed written submissions in lieu of a hearing. This decision is taken following a careful consideration of the papers.
8. The Applicant represents itself; the Opponent is represented by Murgitroyd & Company.
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

---

<sup>4</sup> Form TM7F question 13 in relation to each earlier mark relied upon.

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.

## **Preliminary Issues**

10. In its counterstatement the Applicant states the following:

- The Opponent is an established provider of the China Union Pay card scheme offering payments to consumers primarily based out of China.
- The Applicant does not cater to consumers, nor do they operate a payment scheme.

11. Differences between the target markets of the respective parties and the services they currently provide are irrelevant, except to the extent that those differences are apparent from each party's specification. Furthermore, since the Opponent's earlier mark is not subject to proof of use, it is entitled to protection in relation to all the services for which it is registered. It is the services relied upon by the Opponent and the services applied for by the Applicant that I will be comparing later in this decision. The assessment I must make between the services is a notional and objective assessment, rather than a subjective one.

12. Furthermore, marketing strategies, including the targeting of specific consumers, are temporary and may change over time.<sup>5</sup> As such, it is not appropriate to take that factor into account in my assessment. However, I will make an assessment, later in this decision, as to who the average consumer could be for the services at issue.

## **My Approach**

---

<sup>5</sup> *Devinlec Développement Innovation Leclerc SA v OHIM*, Case C-171/06P

13. The specification of the Opponent's first earlier mark is broader than that of the second earlier mark. Consequently, I will conduct my assessment on the basis of the first earlier mark, returning to the second earlier mark only if it is necessary to do so.

## DECISION

### Section 5(2)(b)

14. 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”.

15. 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.

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

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

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

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

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

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

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

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

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

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

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

### Comparison of services

16. The services for comparison are as follows:

Opponent's services	Applicant's services
<p><u>Class 36:</u>  Insurance services; insurance brokerage; travel insurance services; financial services; financial brokerage services; financial management services; banking services; payment processing services; financial exchange services; financial investment services; automatic recording services for financial transactions; electronic funds transfer and currency exchange services; electronic payment services; financial services provided over the telephone and internet or other electronic means; financial services relating to bank cards, credit cards, debit cards, pre-paid cards, cash disbursement, cheque verification and cheque cashing; electronic cash transactions; provision of financial services for the support of retail services provided via computer network, the</p>	<p><u>Class 36:</u>  Collection of payments; Processing of payments for banks; Acceptance of bill payments; Processing of debit card payments; Processing of electronic payments; Electronic processing of payments; Preparation of pension payments; Processing of credit card payments; Financial transfers and transactions, and payment services; Processing of payments in relation to credit cards; E-wallet payment services; Debit card payment services; Contactless payment services; Rent payment services ;Credit services for the payment of insurance premiums; Credit services for payment of insurance premiums; Negotiation for the collection of cheques and bills of payment; Clearing services for payment transactions; Processing of electronic</p>

internet, or other electronic means using electronically digitized information; payment authorization services; collection of payments; financial services, namely, debt settlement; financial clearing and settlement services; payment authorization and payment settlement services; credit card and debit card verification; issuing and redemption of travellers' cheques and currency vouchers; electronic banking services; on-line banking; home banking; financial information; financial consultancy; automated teller machine services; processing of electronic payments conducted through point-of-sale (POS) terminals; financial clearing; bill payment services provided through a website; providing financial information via a web site; e-wallet payment services.

check payments; Financial management of reimbursement payments for others; Payment card services; Payment transaction card services; Credit card payment services; Processing of payments in relation to charge cards; Processing electronic payments made through prepaid cards; Retirement payment services; Bill payment services; Tax payment processing services; Conducting cashless payment transactions; Payment processing; Processing payments made by charge cards; Electronic payment services; Financial payment services; Home collection of financial payments; Collection of payments for goods and services; Payment processing services; Telegraphic remittance [payment] services; Banking services relating to the acceptance of fixed interval installment payments; Guaranteeing payment of medical expenses for travellers; Automated payment of accounts; Credit card payment processing; Tax and duty payment services; Agencies for collecting gas utility payments; On-line bill payment services; Electronic commerce payment services; Payment and receipt of money as agents; Cash disbursement services; Processing of payments for building societies; Payment administration services;

	<p>Processing of payment transactions via the Internet; Financing of purchases; Electronic wallet services (payment services); Automated payment services; Credit card and payment card services; Mortgage loans and financing services; Loans [financing] and discount of bills; Guaranteeing payment of medical expenses for foreign travellers; Automated payment; Remote payment services; Financial consultancy relating to the execution of cashless payment transactions; Electronic debit transactions; Secured loans to fund the provision of instalment credit agreements on motor vehicles; Processing of electronic debit transactions; Electronic cash transactions; Provision of mortgage loans; Mortgage financing services; Money order payment guarantee services; Accounts payable debiting services; Instalment credit financing; Check payment guarantee services; Credit and cash card services; Issuing electronic payment cards in connection with bonus and reward schemes; Instalment loan services; Payroll tax debiting services; Credit and loan services; Loan and credit services; Mortgage loan services; Financing of loans, mortgages and sureties; Financing of cash advances; Electronic</p>
--	---

	<p>credit card transactions; Processing debit card transactions for others; Accounts receivables financing; Provision of instalment loans; Processing of electronic credit card transactions; Bank card, credit card, debit card and electronic payment card services; Cheque account services for the cashing of cheques; Instalment loan financing; Insurance services for the repayment of medical expense; Instalment loans; Provision of mortgage loan insurance; Credit and debit card services; Arranging the provision of finance to pay medical expenses; Agencies for collecting electric power utility payments; Financing of consumer purchases; Cheque account services for the receiving of cheques; Financial services relating to cash disbursement; Provision of mortgage funds; Mortgage loans; Financing and loan services; Debit account services; Information services relating to the automated payment of accounts; Personal insurance relating to liability for repayment of loans; Credit card transaction processing services; Debt settlement services; Processing payments for the purchase of goods and services via an electronic communications network; Financial services related to the issuance of bank</p>
--	--

	<p>cards and debit cards; Issuing of payment gift cards; Factoring services for invoices; Services for debiting and crediting financial accounts; Cash card services; Arranging instalment loans; Issuing of payment gift vouchers; Loans [financing];Loans (Financing of - );Financing of loans; Lease-purchase loans; Credit fund transfer services; Savings and loan services; Arranging the payment of customs duties; Processing credit card transactions for others; Sales credit financing; Issuance of credit and debit cards; Insurance services relating to credit agreements; Financial services relating to the withdrawal and depositing of cash; Insurance services relating to credit cards; Automated banking services relating to credit card transactions; Agencies for collecting gas or electric power utility payments; Provision of loans for school fees; Debit card services; Mortgage services; Provision of credit for fuel expenses; Collection of money owed from settlements ;Financing of mortgages and sureties; Insurance claims adjustment and settlement services; Credit sales (Provision of finance for -).</p>
--	---

17. In *Gérard Meric v OHIM*, Case T-133/05, the General Court (“GC”) stated that:

“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 für Lernsysteme v OHIM - Educational Services (ELS)* [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark”.<sup>6</sup>

18. When making the comparison, all relevant factors relating to the goods and services in the specifications should be taken into account. In the judgment of the Court of Justice of the European Union (“CJEU”) in *Canon*, Case C-39/97, the court stated at paragraph 23 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.

19. Guidance on this issue has 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 uses of the respective goods or services;
- (b) The respective users of the respective goods or services;
- (c) The physical nature of the goods or acts of service;
- (d) The respective trade channels through which the goods or services reach the market;
- (e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be found in supermarkets and, in particular, whether they are or are likely to be found on the same or different shelves;

---

<sup>6</sup> Paragraph 29

(f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance, whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.”

20. For the purposes of considering the issue of similarity of the services, it is permissible to consider groups of terms collectively where appropriate: *Separode Trade Mark*, BL O-399-10.

21. While making my comparison, I bear in mind the comments of Floyd J. (as he then was) in *YouView TV Ltd v Total Ltd* [2012] EWHC 3158 (Ch):

"12. ... Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise. ... Nevertheless the principle should not be taken too far. ... 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."

22. In the case of services, the terms used should not be interpreted widely, but confined to the core of the possible meanings attributable to the terms: *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1)* [2024] UKSC 36, at [365].

***Collection of payments; E-wallet payment services; Electronic payment services; Payment processing services; Electronic cash transactions.***

23. The above services are explicitly named in both the Applicant's and the Opponent's specifications. They are self-evidently identical.

***Debt settlement services.***

24. Although expressed slightly differently, the Applicant's above service is self-evidently identical to the Opponent's "financial services, namely, debt settlement".

***Cheque account services for the cashing of cheques.***

25. Although expressed slightly differently, the Applicant's above services are self-evidently identical to the Opponent's "financial services relating to [...] cheque cashing".

***Electronic wallet services (payment services).***

26. Although expressed slightly differently, the Applicant's above services are self-evidently identical to the Opponent's "E-wallet payment services".

***Cash disbursement services; Financial services relating to cash disbursement.***

27. Although expressed slightly differently, the Applicant's above services are self-evidently identical to the Opponent's "financial services relating to [...] cash disbursement [...]".

***Financial management of reimbursement payments for others.***

28. The Applicant's above services are a type of financial management. In view of this, I consider the Applicant's above services to be encompassed by the Opponent's wider category "financial management services". They are therefore identical on the principle outlined in *Meric*.

***Processing of payments for banks; Processing of debit card payments; Processing of electronic payments; Electronic processing of payments; Processing of credit card payments; Processing of payments in relation to credit cards; Processing of electronic check payments; Processing of payments in relation to charge cards; Processing electronic payments made through prepaid cards; Tax payment processing services; Payment processing; Processing payments made by charge cards; Credit card payment processing;***

***Processing of payments for building societies; Processing of payment transactions via the Internet; Processing of electronic debit transactions; Processing debit card transactions for others; Processing of electronic credit card transactions; Credit card transaction processing services; Processing payments for the purchase of goods and services via an electronic communications network; Processing credit card transactions for others.***

29. The Applicant's above services are all types of payment processing, focused on managing or enabling the process of making and receiving payments. In view of this, I consider the Applicant's above services to be encompassed by the Opponent's wider category "payment processing services". They are therefore identical on the principle outlined in *Meric*.

***Guaranteeing payment of medical expenses for travellers; Guaranteeing payment of medical expenses for foreign travellers; Money order payment guarantee services; Check payment guarantee services.***

30. The Applicant's above services are all financial guarantee services, which I consider are usually provided by banks. In view of this, I consider the Applicant's above services to be encompassed by the Opponent's wider category "banking services". They are therefore identical on the principle outlined in *Meric*.

***Insurance services for the repayment of medical expense; Provision of mortgage loan insurance; Personal insurance relating to liability for repayment of loans; Insurance services relating to credit agreements; Insurance services relating to credit cards; Insurance claims adjustment and settlement services.***

31. The Applicant's above services are all insurance services, which provide protection against financial loss. In view of this, I consider the Applicant's above services to be encompassed by the Opponent's wider category "insurance services". They are therefore identical on the principle outlined in *Meric*.

***Credit services for payment of insurance premiums; Financing of purchases; Mortgage loans and financing services; Loans [financing] and discount of bills;***

***Secured loans to fund the provision of instalment credit agreements on motor vehicles; Provision of mortgage loans; Mortgage financing services; Instalment credit financing; Instalment loan services; Credit and loan services; Loan and credit services; Mortgage loan services; Financing of loans, mortgages and sureties; Financing of cash advances; Accounts receivables financing; Provision of instalment loans; Instalment loan financing; Instalment loans; Arranging the provision of finance to pay medical expenses; Financing of consumer purchases; Provision of mortgage funds; Mortgage loans; Financing and loan services; Arranging instalment loans; Loans [financing]; Loans (Financing of -);Financing of loans; Lease-purchase loans; Credit fund transfer services; [...] and loan services; Sales credit financing; Provision of loans for school fees; Mortgage services; Provision of credit for fuel expenses; Financing of mortgages and sureties; Credit sales (Provision of finance for -).***

32. The Applicant's above services all relate to the arrangement, provision, or management of financing, mortgages, credit or loans. In view of this I consider the Applicant's above services to be encompassed by the Opponent's wider category "financial services". They are therefore identical on the principle outlined in *Meric*.

***Home collection of financial payments; Collection of payments for goods and services; Agencies for collecting gas utility payments; Agencies for collecting electric power utility payments; Agencies for collecting gas or electric power utility payments; Collection of money owed from settlements.***

33. The Applicant's above services all concern the collection of payments. In view of this I consider the Applicant's above services to be encompassed by the Opponent's wider category "collection of payments". They are therefore identical on the principle outlined in *Meric*.

***Financial consultancy relating to the execution of cashless payment transactions.***

34. The Applicant's above service is a specific type of financial consultancy. It is encompassed within the Opponent's wider category "financial consultancy". It is therefore identical on the principle outlined in *Meric*.

***Cheque account services for the receiving of cheques.***

35. I understand the Applicant's above service to be a banking service concerned with the processing of cheques, including receipt, verification, clearing and crediting of an account. I consider that it is encompassed within the Opponent's wider category "banking services". It is therefore identical on the principle outlined in *Meric*.

***Debit card payment services; Payment card services; Credit card payment services; Credit card and payment card services; Credit and cash card services; Bank card, credit card, debit card and electronic payment card services; Credit and debit card services; Debit account services; Financial services related to the issuance of bank cards and debit cards; Cash card services; Issuance of credit and debit cards; Debit card services.***

36. The Applicant's above services all relate to financial services provided in relation to debit, credit and cash cards. I consider these are encompassed within the Opponent's wider category "financial services relating to bank cards, credit cards, debit cards, pre-paid cards, [...]". They are therefore identical on the principle outlined in *Meric*.

***Negotiation for the collection of cheques and bills of payment.***

37. The Applicant's above services are financial services, focused on the execution, issuing, remittance and administration of payments. In view of this, I consider the Applicant's above services to be encompassed by the Opponent's wider category "financial services". They are therefore identical on the principle outlined in *Meric*.

***Bill payment services; On-line bill payment services.***

38. The Opponent's "bill payment services provided through a website" are encompassed within the Applicant's above wider categories. They are therefore identical on the principle outlined in *Meric*.

***Clearing services for payment transactions.***

39. I understand the Applicant's above services to relate to the validation and preparation of payments. I consider the Applicant's above service to be encompassed by the Opponent's wider category "financial clearing". They are therefore identical on the principle outlined in *Meric*.

***Savings [...] services.***

40. I understand the Applicant's above service to be focused on allowing individuals or companies to set aside money for future use. I consider it to be encompassed by the Opponent's wider categories "banking services" and "financial services". They are therefore identical on the principle outlined in *Meric*.

***Banking services relating to the acceptance of fixed interval instalment payments; Automated banking services relating to credit card transactions.***

41. The above service is a banking services. In view of this, I consider the services to be encompassed by the Opponent's wider category "*banking services*". They are therefore identical on the principle outlined in *Meric*.

***Contactless payment services; Electronic commerce payment services; Electronic debit transactions; Electronic credit card transactions; Conducting cashless payment transactions.***

42. The Applicant's above services are all types of payment service which are provided electronically. In view of this, I consider the services to be encompassed by the Opponent's wider category "*electronic payment services*". They are therefore identical on the principle outlined in *Meric*.

***Accounts payable debiting services; Payroll tax debiting services; Information services relating to the automated payment of accounts; Services for debiting and crediting financial accounts; Acceptance of bill payments; Financial transfers and transactions, and payment services; Rent payment services; Payment transaction card services; Telegraphic remittance [payment] services; Automated payment of accounts; Payment and receipt of money as agents; Payment administration services; Automated payment services; Automated payment; Remote payment services.***

43. The Applicant's above services involve initiating, authorising, transmitting, settling, or managing payments. In view of this, I consider the services to be encompassed by the Opponent's wider category "payment processing services". They are therefore identical on the principle outlined in *Meric*.

***Financial payment services.***

44. The Opponent's "payment processing services" are encompassed within the Applicant's above wider category. The services are therefore identical on the principle outlined in *Meric*.

***Factoring services for invoices; Arranging the payment of customs duties; Preparation of pension payments; Retirement payment services; Tax and duty payment services; Financial services relating to the withdrawal and depositing of cash; Negotiation for the collection of cheques and bills of payment.***

45. The Applicant's above services are specific financial services. In view of this, I consider the services to be encompassed by the Opponent's broad category "financial services". They are therefore identical on the principle outlined in *Meric*.

***Issuing electronic payment cards in connection with bonus and reward schemes; Issuing of payment gift cards; Issuing of payment gift vouchers.***

46. The Applicant's above services are concerned with the issuing of gift cards, vouchers and electronic payment cards. I consider that these services are

encompassed within the Opponent's wider category "financial services relating to bank cards, credit cards, debit cards, pre-paid cards, cash disbursement, cheque verification and cheque cashing". I say this because the Opponent's term covers the issuance, administration, and use of payment cards and related financial instruments. They are therefore identical on the principle outlined in *Meric*.

### **Average consumer and the purchasing act**

47. It is necessary for me to determine who the average consumer is for the services in question; I must then determine the manner in which the services are likely to be selected by the average consumer in the course of trade.

48. 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 services in question: *Lloyd Schuhfabrik Meyer, Case C-342/97*.

49. 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:

"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."


50. I find that the average consumer for the services will include members of the general public, business users as well as professional users in the financial sector. The average consumer is likely to be concerned with factors such as quality of the service provider, customer service standards and security of financial information,

etc. Consequently, I consider that the average consumer (whether business/professional users or members of the general public) will be paying a high degree of attention during the purchasing process.

51. The services are likely to be selected following perusal of advertisements, websites or signage on physical premises. Consequently, visual considerations will dominate the purchasing process. However, I do not discount an aural component given that word-of-mouth recommendations may also play a part.

### Comparison of the marks

52. The respective trade marks pleaded under 5(2)(b) are shown below:

Opponent's trade mark	Applicant's trade mark
 The UnionPay logo consists of the words "UnionPay" in white italicized font, centered on a parallelogram background divided into three vertical stripes of red, blue, and green.	<b>UNISONPAY</b>

53. The Opponent's mark is a composite mark comprising words and a figurative device element. The conjoined words "UnionPay" are presented in white italic, standard sentence case, with a capital first letter, and lowercase letters following, and are placed centrally upon a figurative tri-coloured parallelogram shaped background. I find that the eye is naturally drawn to the element of the mark that can be read,<sup>7</sup> resulting in the words 'UnionPay' playing a greater role in the overall impression, with the figurative background device element playing a slightly lesser role.

54. The Applicant's mark consists of the conjoined words "UNISON" and "PAY". The overall impression lies in the combination of these words.

<sup>7</sup> *MigrosGenossenschafts-Bund v EUIPO*, T-68/17

55. Visually, the marks identically coincide in the letters 'UNIONPAY' / 'UNI-ONPAY'. The marks differ in the presence of the letter 'S', in the Applicant's mark, namely 'UNISON' and the coloured background element present in the opponent's mark. I bear in mind that consumers tend to focus on the beginning of the marks,<sup>8</sup> therefore, I consider the positioning of the additional letter 'S' within the Applicant's mark does not create a striking impression. Further, notional and fair use of the marks would include use in both upper and lower case,<sup>9</sup> so letter case is irrelevant to the comparison. Overall, I consider there to be a medium degree of visual similarity between the marks.
56. Aurally, the Opponent's mark will likely be pronounced in the same way as the ordinary dictionary words 'UNION-PAY'. Likewise, the Applicant's mark will likely be pronounced in the same way as the ordinary dictionary words 'UNISON-PAY'. The figurative background element in the Opponent's mark will not be articulated. Overall, I consider the marks to be aurally similar to between a medium to high degree.
57. Conceptually, I find that use of capital letters 'U' and 'P' in the Opponent's mark separates the word element into two distinct ordinary words, 'Union' and 'Pay'. With regards to the Applicant's mark, I remind myself that even though consumers normally perceive marks as a whole,<sup>10</sup> they nevertheless will break down elements if they suggest a meaning or resemble words known to them. I consider this to be the case here. I am of the view that a significant proportion of average consumers will recognise that the mark is made up of two ordinary English dictionary words, namely 'unison' and 'pay'. Accordingly, conceptually the marks identically coincide in their use of the word 'pay', meaning, inter alia, the transfer of money between individuals or businesses in exchange for products or services.
58. The marks differ in the use of the word 'UNION', in the Opponent's mark, and the word 'UNISON' in the Applicant's mark. In this regard, the Opponent submits:<sup>11</sup>

---

<sup>8</sup> *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

<sup>9</sup> *Bentley Motors Limited v Bentley 1962 Limited*, BL O/158/17

<sup>10</sup> *Usinor SA v OHIM*, Case T-189/05

<sup>11</sup> Opponent's written submissions in lieu, paragraph 37.

*“the word UNION, refers to the act of being joined together. The word UNISON refers to an act being performed at the same time. Both words evoke the concept of togetherness.”*

59. In its counterstatement the Applicant submits that unison’ and ‘union’ have different meanings.<sup>12</sup>
60. The ordinary dictionary word ‘UNION’ will likely be perceived as meaning, inter alia, something done jointly/together; ‘UNISON’ will likely be perceived as meaning, inter alia, doing something jointly/in agreement. Accordingly, whilst not the same, I find that the words will evoke a similar concept, for example, something that is done jointly. As such, when viewed as a whole, I consider that ‘union pay’ and ‘unison pay’ evoke similar conceptual meanings, i.e. joint pay, e.g. a financial arrangement where a payment, etc, is shared between two or more parties. As for the figurative device element in the Opponent’s mark, this will not, in my view, convey any message to the consumer. Overall, I consider the marks to be conceptually similar to between a medium to high degree.

### **Distinctive character of the earlier trade mark**

61. The distinctive character of a trade mark can be appraised only, first, by reference to the services 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*, 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

---

<sup>12</sup> Applicant’s counterstatement, paragraph 3.

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).”

62. Registered trade marks possess varying degrees of inherent distinctive character, being lower where they are suggestive or allusive of a characteristic of the 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.
63. The Opponent has not filed any evidence to support that the earlier mark’s distinctive character has been enhanced through use. Consequently, I have only the inherent position to consider.
64. The Opponent’s mark comprises the conjoined words ‘UnionPay’ along with a figurative device element. Both ‘union’ and ‘pay’ are ordinary dictionary words, which taken as a whole, whilst not directly descriptive, I find that in the context of the financial services at issue, they may allude to characteristics of the services, i.e. a joint pay/payment system. With regards to the figurative element present in the mark, I appreciate that it will not be overlooked or ignored. However, it is not particularly striking and will not add to the distinctiveness of the mark to any material degree beyond that created by the words. Moreover, it has no obvious meaning in respect of the services at issue. I am reminded that invented words usually have the highest degree of distinctive character, whereas words which

are descriptive or allusive of the services relied upon normally have the lowest. Accordingly, I find the Opponent's mark to be inherently distinctive to between a low to medium degree.

### **Likelihood of confusion**

65. I must now feed all of my earlier findings into the global assessment of the likelihood of confusion, keeping in mind the following factors: i) 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 Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*); ii) the principle that the more distinctive the earlier mark is, the greater the likelihood of confusion (*Sabel BV v Puma AG*), and; iii) the factor of 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 & Co. GmbH v. Klijsen Handel B.V.*).

66. There are two types of confusion that may occur. Direct confusion is where the average consumer mistakes one mark for the other, while indirect confusion is where the average consumer recognises that the marks are different, but for some reason assumes that the later mark also identifies the goods or services of the owner of the earlier mark, or that the two undertakings are related: see *L.A. Sugar Limited v Back Beat Inc*, BL O/375/10, paragraph 16.

67. Earlier in the decision I found that:

- The services are identical.
- The average consumer for the services will include members of the general public, business users and professional users in the financial sector, who will likely pay a high degree of attention during the purchasing process.

- The purchasing process will be predominantly visual, although I do not discount an aural component.
- The marks are visually similar to a medium degree, and aurally and conceptually similar to between a medium to high degree.
- The mark is inherently distinctive to between a low to medium degree. On this point, it is acknowledged that a weaker degree of distinctive character in an earlier mark does not preclude a finding of confusion.<sup>13</sup>

68. Bearing in mind the principle of imperfect recollection and recognising that the letters 'UnionPay' / 'UNI\_ONPAY' are identically present in the competing marks, I consider that the marks are likely to be mistakenly recalled or misremembered as each other when used on the identical services at issue, keeping in mind the predominantly visual purchasing process. The Applicant's mark is a word mark and can therefore be produced in any colour or font, etc. The verbal element 'UnionPay' in the Opponent's mark is fully encompassed within the Applicant's mark, with only the additional letter 'S' in the Applicant's mark differentiating these verbal elements. Further, due to the positioning of the letter 'S' (being the fourth letter in the applicant's mark), I am of the view that this will be easily overlook or imperfectly recalled by the average consumer, keeping in mind that consumers tend to focus on the beginnings of marks. Additionally, as the figurative element in the Opponent's mark will not be articulated, I am of the view that the average consumer will easily overlook or misremember this element.

69. Whilst it is acknowledged that the relatively low degree of inherent distinctiveness in the earlier mark is a factor in favour of the Applicant, in my view this is counteracted by the degree of similarity between the marks and the identity of the services. Even taking into account that a high degree of attention is being paid, I do not consider that this will assist in avoiding one mark being confused for the other, keeping in mind that the average consumer rarely has the opportunity to compare marks side-by-side and will instead encounter them in different settings

---

<sup>13</sup> See *L'Oréal SA v OHIM*, Case C-235/05 P

and at different times, particularly when factoring in the principle of imperfect recollection. Therefore, given the level of similarity across the marks and the identical services, I am of the view that the average consumer is unlikely to recall the differences between the marks, resulting in a likelihood of direct confusion.

## **Conclusion**

70. As the opposition based on the first earlier mark has been wholly successful, I do not need to consider the position in respect of the second earlier mark.

71. The opposition under section 5(2)(b) of the Act has succeeded. Subject to any successful appeal against my decision, the application will be refused in its entirety.

## **COSTS**

72. The Opponent has been successful and is entitled to a contribution towards its costs. Therefore, considering the guidance in Tribunal Practice Notice 1/2023, I award the Opponent costs on the following basis:

Official fee:	£100
Preparing a notice of opposition and considering the counterstatement:	£250
Preparing written submissions in lieu of a hearing:	£350
<b>Total:</b>	<b>£700</b>

73. I therefore order Unison Global Markets (UGM) Ltd to pay CHINA UNIONPAY CO., LTD. the sum of £700. 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 6<sup>th</sup> day of February 2026**

**Emma Rees  
For the Registrar**

## ANNEX

### The second earlier mark

Class 36: Issuance of travellers' cheques; providing financial information via a website; e-wallet payment services; financial evaluation [insurance, banking, real estate]; financial customs brokerage services; business liquidation services, financial; insurance underwriting; financial analysis; financial information; financial consultancy; issuance of credit cards; financing services; processing of credit card payments; financial services relating to credit cards; processing of debit card payments; electronic funds transfer; banking; jewellery appraisal; real estate agency services; surety services; charitable fund raising; trusteeship; pawnbrokerage; providing rebates at participating establishments of others through use of a membership card; exchanging money; currency trading; automated teller machine [ATM] banking services; online banking; clearing, financial; processing of electronic credit card transactions; instalment loans; debt collection agency services; savings bank services.