O/0119/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. 4027158

IN THE NAME OF THE EVLYNX LTD
TO REGISTER THE FOLLOWING TRADE MARK:

EVLynx

IN CLASS 9, 35 AND 37

AND

IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 448334
BY

SCHNEIDER ELECTRIC INDUSTRIES SAS

Background and pleadings

1. EVLynx Ltd ("the applicant") applied to register the trade mark shown on the cover of this decision in the UK on 17 March 2024. It was accepted and published in the Trade Marks Journal on 29 March 2024 and registration is sought for the following goods/services:

> Class 9 - Charging stations for electric vehicles; Electric charging cables; Battery charging devices for motor vehicles; Electric battery chargers; Car charger; Electrical cable; Electrical connectors; Electrical adapters; Electrical adaptors; Electrical power adaptors; Portable chargers; Chargers for electric batteries; Electric adapter cables; Electrical cable connectors; Electric cables; Extension cables.
>
> Class 35 - Retail services in relation to car accessories; Retail services in relation to domestic electrical equipment; Retail services relating to automobile parts; Wholesale services in relation to domestic electrical equipment.
>
> Class 37 - Charging of electric vehicles; Vehicle battery charging; Battery charging service for motor vehicles; Recharging services for electric vehicles.

2. On 28 June 2024, Schneider Electric Industries SAS ("the opponent") opposed the trade mark on the basis of Section 5(2)(b) of the Trade Marks Act 1994 ("the Act"). The opponent relies on the following trade marks:

> EVLINK
>
> International Registration no: WO1092285
>
> UK designating date: 11 July 2011
>
> Date protection granted in the UK: 19 January 2012
>
> Claiming a priority date of 13 January 2011
>
> Priority country: France
>
> Relying on all of its goods and services in classes 9, 35, 37, 38, 39 and 42 (shown in Annex 1)
>
> ("the first earlier mark")

EVLINK

UK trade mark no: UK912170891

Filing date 25 September 2013; registration date 7 March 2014

Relying on all of its goods and services in classes 9, 35, 37, 38, 39 and 42 (shown in Annex 2)

("the second earlier mark")[1]

3. Under section 5(2)(b) of the Act, the opponent claims that there is a likelihood of confusion on the basis that the marks are similar, and the goods/services are either identical or highly similar leading to a likelihood of confusion, including a likelihood of association, and that the contested mark should be refused registration.

4. The applicant filed a counterstatement denying the claims made and requesting that the opponent provide proof of use of its earlier trade marks relied upon for those goods/services in Classes 9, 35 and 37[2]. The applicant submits as follows:

"Disagree on all statements, as this is fully supported by numerous IPO and Court decisions in the 'Lynx'/'Linx'/'Links' space. In detail:

1) Court case law has long established that Marks are considered as a whole, not part, and differences in shorter Marks are more significant.

2) Specifically on 'Lynx' vs 'Links' previous IPO decisions have taken that as these are conceptually very different (one is a medium-sized short-tail wild cat, the other is a verb meaning to make a connection), there is unlikely to be direct confusion. This therefore extends to 'EVLynx' vs 'EVLink'.

3) Previous decisions have found 'Links' vs 'Linx' to be aurally the same and could result in indirect confusion. If the Opponent's Trade Mark was 'EVlinkS', then this argument would be accepted, but it isn't, and 'EVLynx' and EVlink' are self-evidently not aurally identical, and that therefore the potential for indirect confusion identified would not arise. There are also a multitude of similar trade

[1] As the opponent's earlier marks are identical, I shall refer to them in the singular unless it becomes necessary to distinguish between them.
[2] TM8

marks for similar Use Classes, Goods & Services with similar names that have not been opposed.

4) The Opponent's mark appears to be descriptive and uses generic terms of products that provide an EV link to the power grid. Proof of use for Class 9 in particular will confirm if this is the case.

5) The Applicant's Mark therefore meets the requirements to be registered in full. Full case numbers, tribunal decisions and more detailed submissions will be provided at the appropriate point".

These are the only submissions that the applicant has made in respect of this matter.

Representation

5. The opponent is represented by Albright IP Limited. The applicant is self-represented. Only the opponent filed evidence. No hearing was requested and only the opponent filed written submissions in lieu of the same. This decision is taken following a careful perusal of the papers.

Relevance of EU LAW

6. 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.

Evidence and Submissions

7. The opponent's evidence consists of the witness statement of Mr David Hall, dated 13 January 2025, which is accompanied by eighteen exhibits (DH1 – DH18). Mr Hall is the Vice President - Power Systems, General Management of the opponent and he provides evidence of use of the earlier marks as relied upon. I have read Mr Hall's evidence in its entirety and have summarised the most pertinent points below.

8. The opponent filed written submissions dated 13 January 2025.

9. I have given due consideration to all of the documents filed by both parties but will only refer to the evidence/submissions as appropriate to the extent that it is necessary in my decision.

DECISION

Proof of use

10. The relevant statutory provisions are as follows:

> "6A(1) This section applies where:
>
> (a) an application for registration of a trade mark has been published,
>
> (b) there is an earlier trade mark of a kind falling within section 6(1)(a), (aa) or (ba) in relation to which the conditions set out in section 5(1), (2) or (3) obtain, and
>
> (c) the registration procedure for the earlier trade mark was completed before the start of the relevant period.
>
> (1A) In this section "the relevant period" means the period of 5 years ending with the date of the application for registration mentioned in subsection (1)(a) or (where applicable) the date of the priority claimed for that application.
>
> (2) In opposition proceedings, the registrar shall not refuse to register the trade mark by reason of the earlier trade mark unless the use conditions are met.
>
> (3) The use conditions are met if –
>
> (a) within the relevant period the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or

(b) the earlier trade mark has not been so used, but there are proper reasons for non- use.

(4) For these purposes –

a) use of a trade mark includes use in a form (the "variant form") differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor), and

(b) use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(5)-(5A) [Repealed]

(6) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services."

11. Section 100 of the Act is also relevant, which reads:

"If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it."

12. The relevant period for assessing genuine use is the five-year period ending with the filing date of the application in issue, i.e. 18 March 2019 to 17 March 2024. As the second earlier mark is a comparable mark, the opponent can rely upon use of that mark in the EU for any and all parts of the relevant periods which fall prior to IP Completion Day, namely, 31 December 2020, and thereafter use must be shown in the UK.[3]

[3] paragraphs 7 and 8 of Part 1 Schedule 2A of the Act.

13. In *easyGroup Ltd v Nuclei Ltd & Ors* [2023] EWCA Civ 1247, Arnold LJ summarised the law relating to genuine use as follows:

> "105. The principles applicable to determining whether there has been genuine use of a trade mark have been considered by the CJEU in a considerable number of cases, the principal decisions being Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, Case C-259/02 *La Mer Technology Inc v Laboratories Goemar SA* [2004] ECR I-1159, Case C-416/04 P *Sunrider Corp* v *Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237, Case C-442/07 *Verein Radetsky-Order v Bundervsvereinigung Kamaradschaft 'Feldmarschall Radetsky'*[2008] ECR I-9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Merken BV v Hagelkruis Beheer BV* [EU:C:2012:816], Case C-609/11 *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], Case C-141/13 *P Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089], Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434] and Joined Cases C–720/18 and C–721/18 *Ferrari SpA v DU* [EU:C:2020:854].
>
> 106. Ignoring issues which do not arise in the present case, such as use in relation to spare parts or second-hand goods and use in relation to a sub-category of goods or services, the principles may be summarised as follows:
>
> (1) Genuine use means actual use of the trade mark by the proprietor or by a third party with authority to use the mark: *Ansul* at [35] and [37].
>
> (2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at[36]; *Sunrider* at [70]; *Verein* at [13]; *Centrotherm* at [71]; *Leno* at [29]; *Ferrari* at [32].
>
> (3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13];

Silberquelle at [17]; *Centrotherm* at [71]; *Leno* at [29]; *Gözze* at [37], [40]; *Ferrari* at [32].

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: *Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37]; *Verein* at [14]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle* at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23].

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial *raison d'être* of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: *Ansul* at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34]; *Leno* at [29]-[30], [56]; *Ferrari* at [33].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use

of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no *de minimis* rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72]; *Leno* at [55].

(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: *Reber* at [32]."

14. In *Dosenbach-Ochsner Ag Schuhe Und Sport v Continental Shelf 128 Ltd*, Case BL O/404/13, Mr Geoffrey Hobbs QC (as he then was), sitting as the Appointed Person stated that:

"22. When it comes to proof of use for the purpose of determining the extent (if any) to which the protection conferred by registration of a trade mark can legitimately be maintained, the decision taker must form a view as to what the evidence does and just as importantly what it does not 'show' (per Section 100 of the Act) with regard to the actuality of use in relation to goods or services covered by the registration. The evidence in question can properly be assessed for sufficiency (or the lack of it) by reference to the specificity (or lack of it) with which it addresses the actuality of use."

15. What I take from this case law is that there is no requirement to produce any specific form of evidence, but that I must consider what the evidence as a whole shows me, and whether on this basis I can reasonably be satisfied on the balance of probabilities that there has been genuine use of the earlier marks.

The Opponent's Evidence

16. In his witness statement, Mr Hall states that the opponent:

"is a global leader in the digital transformation of energy management and automation in homes, buildings, data centres, infrastructure, and industries. With a global presence in over 100 countries with more than 100,000 employees, Schneider Electric is a multinational Fortune 500 company and the

market leader in power management - medium voltage, low voltage, and secure power and automation systems providing integrated energy and automation digital solutions that combine energy, automation, and software for efficiency and sustainability”[4].

17. Mr Hall has provided an extract from the EVLink Pro OCPP Protocol Connectivity Guide[5]. This is dated June 2023, and Mr Hall explains that this:

> “shows use of the Trade Mark in relation to: Stations and terminals for electrical power and for electrical recharging; Stations and terminals for electrical power and for electrical recharging, for electric vehicles and electric batteries. This guide is downloadable from our UK facing website: https://www.se.com/uk/en/download/document/GEX1969200/”.

18. Mr Hall has provided a website printout from professional-electrician.com of promotional material relating to the opponent’s launch of the EVlink Pro AC for residential buildings. This is an article dated 9 May 2022 regarding the launch of the EVlink Pro AC to allow building owners and housebuilders to continue to navigate the changing regulations around EV charging stations. A photograph accompanies the article which shows the mark in use:

[4] Witness statement of Mr Hall, para 4
[5] Exhibit DH1

19. Mr Hall has provided evidence from YouTube, which shows the marks in use on charging stations and terminals. I note that these videos appear on Schneider Electric's YouTube channel which has 214,000 subscribers. The videos are undated; however, I note that the exhibit was created on 30 October 2024 and the videos range from "1 year ago" to "9 years ago".

20. Mr Hall has provided what he refers to as a sample of invoices dated between 19 September 2019 and 19 October 2023[6]. I note the following:

a. The invoice amounts are redacted; however, Mr Hall states that sales of EVlink products to UK consumers during the above period totalled over £10,000,000[7].

b. The invoices show the products being sold, along with the unit price and invoice total (albeit that the latter are redacted). The invoices contain a product description and Mr Hall has provided a table[8] that shows the product codes alongside the corresponding product description/name and the catalogue page where the product can be found.

c. 30 invoices are provided, and these are all addressed to UK customers, for delivery within the UK.

21. Mr Hall has provided a table which shows a summary of annual turnover related to the sale of EVLink products to UK customers for delivery within the UK, as follows[9]:

	2019	2020	2021	2022	2023	2024
Turnover	£962,856	£1,220,948	£1,578,305	£3,100,846	£49,268	£3,652,871

22. Whilst I have not been provided with the prices for individual products within the range, Mr Hall has provided several examples of the revenue accrued from individual products on sale. Examples are as follows:

[6] Exhibit DH6
[7] Witness statement of Mr Hall, para 10
[8] Exhibit DH7
[9] Witness statement of Mr Hall, para 10

a. Product EVF2S22P44R is a type of EVLink floor standing car park electric vehicle charging station, and Mr Hall confirms that this can be found at pages 37 and 74 of the catalogue[10]. Mr Hall states that in 2019 the company made £53,329 worth of sales to UK customers for this product, and by 2022, UK sales for this product had risen to £323,114. Mr Hall also notes that this product is one of "at least 16 different EVLink floor standing car park charging stations for sale…The others can be seen at page 37 and 74 of the catalog shown at Exhibit DH8"[11].

b. Product EVB1A22P4RI is a type of EVLink smart wall mounted electric vehicle charging station, and Mr Hall confirms that this can be found on page 31 and 73 of the catalogue[12]. Mr Hall states that sales figures for this product made to UK consumers are as follows:

    i. 2019 - £222,918

    ii. 2020 - £294,082

    iii. 2021 - £268,782

    iv. 2022 - £37,158

    v. 2023 - £6,730.

    Mr Hall states that "in the 2020 catalog [sic] alone, shown at Exhibit DH8, we have at least 12 different EVLink smart wall mounted charging stations for sale. EVB1A22P4RI is just one of them. The others can be seen at page 31 and 73 of the catalog [sic]".[13]

c. Product EVP1CNL32322 is a type of EVLink charging cable, and Mr Hall explains that this can be found on page 46 of the catalogue[14] shown at

[10] Exhibit DH8
[11] Witness statement of Mr Hall, para 11
[12] Exhibit DH8
[13] Witness statement of Mr Hall, para 12
[14] Exhibit DH8

Exhibit DH8. Mr Hall states that sales figures for this product made to UK consumers are as follows:

i. 2022 - £7951

ii. 2023 - £4539

iii. 2024 - £12,006

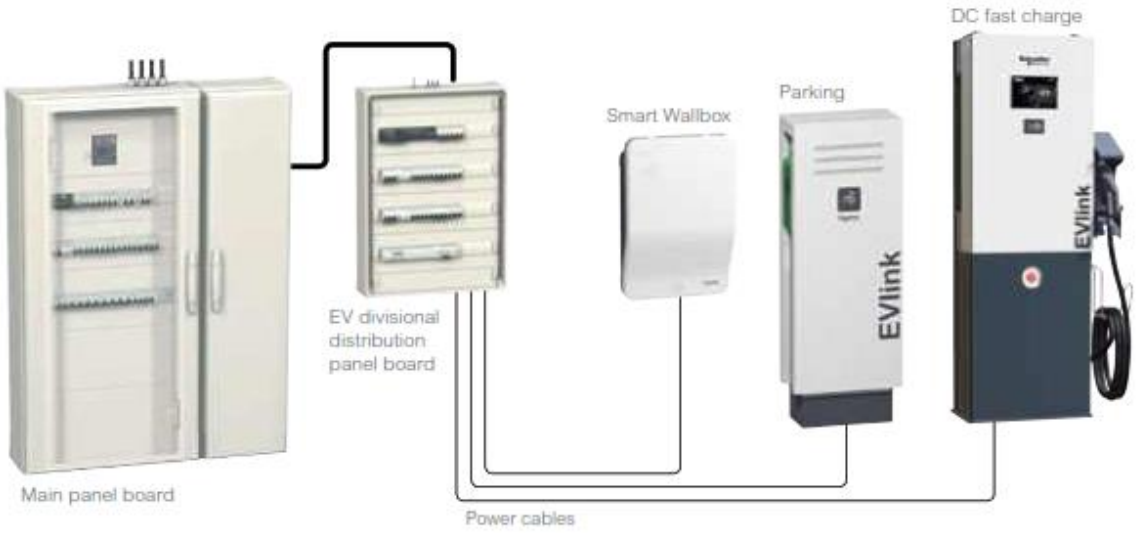
Mr Hall states that there are a number of different charging cables sold under the Trade Mark, and "in the 2020 catalog [sic] alone we have 9 different EVLink cables for sale. EVP1CNL32322 is just one of them. The others can be seen at page 46 of the catalog shown at Exhibit DH8".[15]

23. A breakdown of sales to UK customers with respect to the sales of the EVLink products between 2019 to 2024 has also been provided[16], however, there are no figures provided to indicate the total cost of each sale.

24. Mr Hall has provided the complete product catalogue from 2020[17], which is in English. This details the EVlink product range and how it works. There are no prices for individual products contained within the catalogue, however, the mark is produced throughout and displayed on various products shown within the catalogue, examples of which are as follows:

[15] Witness statement of Mr Hall, para 13
[16] Exhibit DH15
[17] Exhibit DH8

Electrical installation without energy management



25. Further product brochures and instruction manuals have also been provided, dated between 2019 and 2020[18]. Mr Hall states that "these were distributed to customers

[18] Exhibit DH14

throughout the United Kingdom and European Union. Use of the Trade Mark is visible on electric vehicle charging stations and an associated charging station testing tool."[19]

26. Mr Hall has provided UK webpage analytics data[20]. This is a spreadsheet, which I understand shows the month and year and the number of users who have accessed a selection of their UK web pages. Mr Hall states:

> "I have also provided a screenshot of the relevant webpage to which the analytics data relates. These are organised per spreadsheet, and each website screenshot is positioned after its relevant analytics data within the Exhibit. Also included within Exhibit DH9 are files downloaded. Again, screenshots of the webpages from which the downloads took place are included. Schneider is the owner of the "se.com" domain".

This evidence ranges from 2023-2024. In total, there are 1141 sessions and 963 users across the various pages. Example webpages have also been provided, which show a selection of products on offer.

27. Mr Hall has also provided evidence illustrating marketing and promotion of the brand. I have before me a summary of UK marketing spend for 2022[21] (both print and digital) with regards to the EVLink products. Details of the marketing spend specifically for the SE EV Charger Launch dated May to October 2022 have been provided and I note the total UK budget spend planned was "over £25,000". I note that £8,500 was spent on print advertising for the EVlink Pro AC in both April and October 2022. Full page print advertisements were taken out in a number of titles including Electrical Wholesaler, E&T Magazine and the Facilities Management Journal, as examples. I have not been provided with the digital marketing spend for this period, however, I have details of 9 different publishers who were running advertisements during this time, with total impressions ranging from 0 to 22,080.

[19] Witness Statement of Mr Hall, para 20
[20] Exhibit DH9
[21] Exhibit DH16

28. I note that In April 2023, the opponent attended trade event, 'Fully Charged Live South'. I understand that this was held at Farnborough International Exhibition and Conference Centre in the UK over 3 days and is a home energy and electric vehicle show. An invoice has been provided[22] which is addressed to Schneider Electric and is for two stands at the event at a cost of £18,900. The invoice is dated 1 November 2022. Photographs of the marketing stands taken at the event are also provided[23] and the mark is visible within those photographs, an example of which is as follows (red highlighting added by Mr Hall to show the mark in use):

29. Mr Hall has also provided examples of social media posts[24] on LinkedIn to evidence attendance at various trade events. Screenshots have been provided and range from 43 likes to 132 likes. I have been provided with details of the impressions of some of the posts which range from 1403 to 2194.

Form of the Mark

30. For the sake of completeness, before I move on to assess if the opponent has shown genuine use, I must first consider if I find the use of the mark as shown in the evidence to be use of the mark as registered. As outlined *in Lactalis McLelland Limited*

[22] Exhibit DH12
[23] Exhibit DH13
[24] Exhibit DH17

v Arla Foods AMBA, Case BL O/265/22,[25] the use of the mark in a different form may also constitute use of the mark as registered.

31. The earlier marks are word only marks presented in upper case. Given that normal and fair use of the registration will cover use in any standard typeface or font, where the marks are used in capitals or title case this is use of the mark as registered and is use upon which the opponent may rely. The marks are also shown as follows throughout the evidence:

32. The above variations are figurative marks in which the word EVlink is presented in both green and black font. In both of these variations there is the outline of a car and an electric plug which appears above the word. I consider that the image is descriptive of the goods/services provided and that in these variations, the use of EVlink remains as registered and is the dominant element of the mark. Therefore, in accordance with *Colloseum Holdings AG v Levi Strauss & Co.*[26], I find the above to be use of the mark as registered and use upon which the opponent can rely.

Sufficient Evidence

33. An assessment of genuine use is a global assessment, which includes looking at the evidential picture as a whole, not whether each individual piece of evidence shows use by itself[27].

34. I am satisfied that the evidence shows that the trade marks have been used either as registered or in the acceptable variations as outlined above. The revenue figures are in the millions and the opponent has clearly taken steps to promote the products sold under its mark and to maintain a share in the market (albeit that I have no evidence of what this is). Taking the evidence as a whole into account, I am satisfied

[25] At [13 – 15]. See also Hyphen GmbH v EUIPO, Case T-146/15, at [28-32].
[26] Case C-12/12
[27] *New Yorker SHK Jeans GmbH & Co KG v OHIM*, T-415/09

that the earlier marks have been put to genuine use during the relevant period in the UK.

Fair Specification

35. Having reached the above conclusion, I must now consider whether, or the extent to which, the evidence shows use of the earlier mark in relation to the services relied upon. In *Euro Gida Sanayi Ve Ticaret Limited v Gima (UK) Limited*, BL O/345/10, Mr Geoffrey Hobbs Q.C. (as he then was) as the Appointed Person summed up the law as being:

> "In the present state of the law, fair protection is to be achieved by identifying and defining not the particular examples of goods or services for which there has been genuine use but the particular categories of goods or services they should realistically be taken to exemplify. For that purpose the terminology of the resulting specification should accord with the perceptions of the average consumer of the goods or services concerned."

36. In *Merck KGaA v Merck Sharp & Dohme Corp & Ors* [2017] EWCA Civ 1834 the Court of Appeal set out the proper approach to partial revocation, as follows:

> "245. First, it is necessary to identify the goods or services in relation to which the mark has been used during the relevant period.
>
> 246. Secondly, the goods or services for which the mark is registered must be considered. If the mark is registered for a category of goods or services which is sufficiently broad that it is possible to identify within it a number of subcategories capable of being viewed independently, use of the mark in relation to one or more of the subcategories will not constitute use of the mark in relation to all of the other subcategories.
>
> 247. Thirdly, it is not possible for a proprietor to use the mark in relation to all possible variations of a product or service. So care must be taken to ensure this exercise does not result in the proprietor being stripped of protection for goods or services which, though not the same as those for which use has been proved,

are not in essence different from them and cannot be distinguished from them other than in an arbitrary way.

248. Fourthly, these issues are to be considered having regard to the perception of the average consumer and the purpose and intended use of the products or services in issue. Ultimately it is the task of the tribunal to arrive at a fair specification of goods or services having regard to the use which has been made of the mark.

249. This approach does strike an appropriate balance. It gives effect to the clear intention of the EU legislature that marks must actually be used or, if not used, be subject to revocation. […] It is also fair to proprietors for it does not require a proprietor to prove that he has used his mark in relation to all possible variations of the goods or services covered by its registration but only those which are sufficiently distinct to constitute coherent categories or subcategories. I am also satisfied that it gives appropriate protection to the legitimate interest of a proprietor in being able in the future to extend his range of goods or services within the scope of the terms describing the goods or services for which its mark is registered."

37. The goods/services for which proof of use has been sought are set out in Annex 1 and 2 of this decision. Some of the terms relied upon by the opponent are broad and would cover a wide range of services. Whilst I am satisfied that the trade mark has been used, I consider that the opponent has shown enough evidence for some of their broader terms, such as *stations and terminals for electrical power and for electrical recharging*, but not enough for some of the specific services that they have within their specification. For example, whilst I have evidence of their use of *cables,* there is no evidence of the use of the component parts. I have no evidence of *computer software for managing and maintaining parking lots and fleets of electric vehicles*. Similarly, I do not consider that the evidence before me shows that the opponent has used the mark in relation to *computer software for geopositioning*. Further, there is no sufficient evidence which states that the services are provided by the opponent. Whilst I accept that they may install their own devices, I have no evidence before me that they offer this as a stand-alone service.

38. I note that each of the earlier marks relied upon has a slightly different specification, although there is an overlap in a number of the terms contained within both marks. Having considered both specifications, I consider that the below is a fair specification of the goods and services upon which the opponent may rely:

> Class 9
>
> Charging terminals for car parks and for use in the home; Cables

Decision

Section 5(2)(b)

39. 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".

18. Section 5A of the Act states as follows:

> "Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only."

Relevant law

40. The following standard summary of the principles applicable to the assessment of the likelihood of confusion was approved by the Supreme Court in *Iconix Luxembourg Holdings SARL v Dream Paris Europe Inc & Anor*, [2025] UKSC 25:

(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, in certain circumstances, be dominated by one or more of its components;

(f) and beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite 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 greater 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; and

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

Comparison of goods and services

41. The competing goods/services are shown in paragraph 1 and paragraph 38, above.

42. When making the comparison, all relevant factors relating to the goods/services in the specifications should be taken into account, as per *Canon*, where the CJEU stated at paragraph 23 of its judgement:

> "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."

43. 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 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;

(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.

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

"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."

45. I bear in mind that it is permissible to group goods/services together for the purposes of the assessment[28].

Class 9

46. The opponent submits as follows:

"20. The Earlier Mark contains the following goods in Class 9:

Stations and terminals for electrical power and for electrical recharging; Stations and terminals for electrical power and for electrical recharging, for electric vehicles and electric batteries; Connectors, sockets, plugs, socket

[28] *Separode Trade Mark* O/399/10

bases and cords for electrical power and for electrical recharging; Connectors, sockets, plugs, socket bases and cords for recharging the batteries of electric vehicles.

21. Applying the reasoning laid down in Meric, all of the Class 9 goods applied for are contained within the general categories of goods designated by the Earlier Mark, and hence are identical."

Charging stations for electric vehicles; Battery charging devices for motor vehicles; Car charger;

47. The applicant's above terms relate to charging stations and charging devices for motor vehicles. The opponent's specification includes the term *charging terminals for car parks and for use in the home* in Class 9. I consider that the opponent's term is wide and would encompass the applicant's above terms and therefore they are identical on the principles outlined in *Meric*.

Electric battery chargers; Portable chargers; Chargers for electric batteries; Electric charging cables;

48. The above goods are very broad terms that can include chargers for handheld electronic devices such as mobile phones or chargers for larger electrical machinery, such as electric vehicles. When comparing the above goods to the opponent's goods, such as *cables* in Class 9, I consider that the goods are identical on the principles outlined in *Meric*. If I am wrong about that, I consider that the goods are similar in nature, method of use, user and trade channels, and they are therefore similar to a high degree.

Electrical connectors; Electrical cable connectors; Electric adapter cables; Electric cables; Extension cables; Electrical cable;

49. The opponent's goods specification includes the term *cables* in Class 9. This term is wide and would encompass the applicant's above terms. Therefore, they are identical on the principles outlined in *Meric*

Electrical adapters; Electrical power adaptors;

50. I understand electrical adaptors to be devices that convert electrical power from one form to another, allowing electronics to receive the appropriate voltage and current to function. They are designed to take alternating current from a wall outlet and convert it to allow electronics to operate safely. Adaptors come in a variety of shapes and sizes and are tailored for different devices. The opponent's specification includes the term *cables* in Class 9, which I consider to be a wide term which may encompass the applicant's terms above. Therefore, I find the same to be identical on the principles outlined in *Meric*. If I am wrong about that, I consider that there may be an overlap in the nature and purpose of the goods and that the uses may also overlap. I find there will be an overlap in users and trade channels. There may be competition between the goods. I do not find complementarity. I find these goods to be similar to a high degree.

Class 35

Retail services in relation to car accessories; Retail services in relation to domestic electrical equipment; Retail services relating to automobile parts; Wholesale services in relation to domestic electrical equipment.

51. The opponent submits:

> "30. The goods being retailed are similar and complementary to the Class 9 goods covered by the Earlier Mark. They are targeted at the same end user and will follow the same trade channels. The Registrar is directed to Oakley, Inc v OHIM, Case T-116/06, at paragraphs 46-57, where it was held retail services for particular goods may be complementary to those goods, and distributed through the same trade channels, and therefore similar to a degree. The goods being retailed could quite easily be sold by the same undertaking that manufactures the Class 9 goods contained in the Earlier Mark. The principles laid down in Meric apply here, in that the broad categories of goods being retailed, i.e. car accessories, domestic electrical equipment, and automobile parts, all encompass the Class 9 goods designated by the Earlier Mark. It is submitted that the Class 35 services applied for are similar to at least a medium degree to the Class 9 goods contained in the Earlier Mark"

52. 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. I consider it likely that these retail services will be sold through the same trade channels, to the same users as the opponent's goods, such as cables. The nature, method of use and purpose of the goods/services clearly differ. They are not in competition; however, they may be complementary as the retailing of goods/services can be considered important or indispensable to the goods/services themselves, and the average consumer may assume that the producer of these types of goods/services will also be responsible for the retailing of the same. I consider them to be similar to a medium degree.

Class 37

Charging of electric vehicles; Vehicle battery charging; Battery charging service for motor vehicles; Recharging services for electric vehicles.

53. The opponent submits as follows:

> "31. The services applied for are complementary to the Class 37 services and Class 9 goods covered by the Earlier Mark. Such services would be provided by the same undertakings, and are again, indispensable to one another. For example, for an undertaking to be able to provide electrical vehicle charging or battery charging services, there must exist electric charging stations. In turn, these charging stations and associated charging equipment would need to be installed and maintained and often repaired."

54. The applicant's above terms relate to various types of charging services for vehicles. The opponent's specification includes the terms *charging terminals for car parks and for use in the home* in Class 9. I consider that the nature and uses of the services will differ, however, users may overlap as the opponent's goods will be used in close conjunction with the applicant's services (in order to charge a vehicle) and will therefore overlap in purpose. I find that the goods/services are complementary as the opponent's services are important and/or indispensable to the provision of the various

vehicle charging services of the applicant and I consider that the average consumer will believe the services are provided by the same undertaking[29]. I do not find that the services are in competition. I find the services to be similar to a medium degree.

Average consumer and the purchasing act

55. 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.

56. In *Iconix Luxembourg Holdings SARL v Dream Paris Europe Inc & Anor*, [2025] UKSC 25, the Supreme Court approved the comments of Arnold LJ in *Lidl Great Britain Ltd & Anor v Tesco Stores Ltd & Anor (Rev1)* [2024] EWCA Civ 262, where he pointed out that:

> (a) Consumers who are ill-informed or careless, or consumers with specialised knowledge or who are excessively careful are excluded from consideration;
>
> (b) The average consumer provides a standard which enables the courts to strike a balance between the competing interests involved, such as trade mark owners, their competitors and consumers;
>
> (c) The average consumer is neither a single hypothetical person nor a mathematical average; assessment from the perspective of the average consumer does not involve a statistical test. There is no single meaning rule and if, having regard to the perceptions and expectations of the average consumer, the court considers that a significant proportion of the relevant public is likely to be confused, a finding of infringement may properly be made;
>
> (d) Assessment from the perspective of the average consumer is intended to facilitate adjudication of trade mark disputes by providing an objective criterion, by promoting consistency of assessment and by and enabling courts and

[29] *Everest Dairies Limited v Everest Food Products Private Limited,* [23] O/0107/23

tribunals to determine such issues so far as possible without the need for evidence;

(e) The average consumer's level of attention varies according to the category of goods or services in question; and

(f) the average consumer rarely has the opportunity to make direct comparisons between trade marks (or between trade marks and signs) and must instead rely upon the imperfect picture of the trade mark they have kept in their mind.

57. The average consumer for the goods/services will be either a member of the general public (such as those looking to charge their vehicle) or a business user (such as companies looking to install and operate charging stations). Whilst the goods/services will range in price, they are likely to be reasonably considered purchases, taking account of factors such as functionality, suitability for requirements and customers service standards. For members of the general public, I consider that the goods/services will most likely be available online, for example via app stores (for downloadable software to charge a vehicle), or they will be selected via websites/from general retailers, or via signage (such as on motorways if someone is looking to charge their car on a drive). I consider that the purchasing process for the general public will be predominantly visual, although I do not discount an aural component for orders placed by telephone or seeking word of mouth recommendations in-store.

58. For business users, the goods/services will be available through wholesalers, specialist retailers or through the producers of the goods/providers directly. Again, I consider that the selection of the goods/services by business users is likely to be primarily visual on the basis that the goods/services are likely to be selected after seeing images of them in catalogues or a list of services in pamphlets, for example. The aural component is more likely to play a role in this instance as selection of the goods/services may take place after discussions with salespersons; however, the consumer will still review the products visually.

59. The level of attention paid may vary depending upon the consumer and the goods/services being selected. A member of the general public who is accessing electric vehicle charging services, for example, is likely to consider factors such as

reliability, cost/availability of charge and whether there is a minimum spend. In my view, this will attract a medium degree of attention. A business user who is seeking installation of charging stations, for example, will consider various factors such as expertise offered by the provider, timescale of the project and reputation of the provider, for example. Therefore, I consider that business users will pay a relatively high degree of attention (but not the highest).

Comparison of marks

60. 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 Court of Justice of the European Union 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."

61. It would be wrong, therefore, to dissect the trade marks artificially, 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.

62. The respective trade marks are shown below:

Earlier trade mark	Contested trade mark
EVLINK	EVLynx

Overall impression

63. The applicant's mark, EVLynx, is a word only mark which is presented in plain typeface. There are no other elements to contribute to the overall impression of the mark which resides in the word itself. The applicant's mark is presented as one word; however, it will be viewed as the conjoining of two elements, being 'EV' and 'Lynx'. The EV element of the mark (for reasons that I will set out below) will be understood as being an abbreviation of 'electric vehicle' and due to the goods/services on offer, will be considered allusive.

64. The opponent's mark, EVLINK, is a word only mark which is presented in plain typeface. It will, in my view, be viewed as the conjoining of 'EV' and 'LINK'. There are no other elements to contribute to the overall impression of the mark which resides in the word itself.

Visual impression

65. Both marks comprise of a word made up of six letters. The applicant's mark shares four out of six of those letters with the opponent's mark, and the letters that it does share appear in the same order as in the opponent's mark. The fourth and sixth letters in the marks differ. The opponent's mark is presented in capital letters, whereas the applicant's mark is made up of a mixture of upper and lower casing. As word only marks, they are both capable of use in any case, be that upper, lower or any customary combination of the two. As such, the use of different case has no visual impact. I consider that the respective marks are visually similar to between a medium and high degree.

Aural impression

66. Aurally, the opponent's mark will either be pronounced E-V-LINK or EV-LINK. The applicant's mark will either be pronounced E-V-LINKS or EV-LINKS. The differing letters I and Y will have no impact on the pronunciation and the aural difference in the marks comes from the 'S' sound at the end of the applicant's mark. The GC have previously noted that the beginnings of a word tend to have more impact than the ends[30]. I find the marks aurally similar to a high degree.

Conceptual impression

67. The applicant submits:

> "2) Specifically on 'Lynx' vs 'Links' previous IPO decisions have taken that as these are conceptually very different (one is a medium-sized short-tail wild cat, the other a verb meaning to make a connection), there is unlikely to be direct confusion. This therefor extends to 'EVLynx' vs 'EVlink.
>
> …
>
> 4) The Opponent's Mark appears to be descriptive and uses generic terms for products that provide an EV link to the power grid. Proof of use for Class 9 in particular will confirm if this is the case.'"

68. The opponent submits:

> "15. Each Trade Mark comprises a single invented word, and whilst being careful not to artificially dissect the Marks, it is submitted that the Trade Marks still share a concept. Each Trade Mark refers to electric vehicles (EV), and this will be obvious to the average consumer upon seeing the Trade Marks in relation to the goods and services concerned, with "EV" being a widely understood abbreviation of "electric vehicle". The high degree of visual and aural similarity between "LINK" and "LYNX" will reinforce the likelihood of consumers inferring a shared concept. When seen or spoken as a whole, it is submitted that the Trade Marks both convey the meaning of connecting

[30] *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

something to an electric vehicle. Notwithstanding, if it is held that "EV" is widely understood to mean "electric vehicle", the fact that two Trade Marks share an arguably weak component, such a component can still contribute to an overall sense of conceptual similarity. The fact that the letters "EV" feature at the start of each Trade Mark, and are emphasised in the Application due to their capitalisation, renders such an element incapable of being disregarded. It is submitted that there is at least a medium level of conceptual similarity between the Trade Marks"

69. For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer, as highlighted in numerous judgments of the GC and the CJEU[31]. In respect of the letters 'EV', which appear in both marks, I am of the view that a greater proportion of the average UK consumer would understand this element of the marks to refer to electric vehicles, particularly in the context of the goods and services on offer. Therefore, this element of both marks is allusive.

70. The applicant's mark contains the word 'Lynx'. I agree with the applicant's submissions that the average consumer will understand this word as referring to a type of cat. Whilst I accept that some consumers may see 'Lynx' as a misspelling of 'links' when viewed in conjunction with EV, I do not believe that those consumers form a significant proportion of the average consumer base. Therefore, when viewing the mark as a whole, EVLynx, will not be understood to have any obvious meaning, despite the EV element of the mark being allusive of the goods and services on offer.

71. I consider that the opponent's mark, EVLINK, will be understood by the average consumer as meaning 'electric vehicle link', which a significant proportion of consumers would understand to be a means of charging an electric vehicle. Therefore, the mark as a whole is allusive of the goods and services on offer. As a result, and given the common presence of 'EV', I find the marks to be conceptually similar to a low degree.

[31] *Ruiz Picasso v OHIM* [2006] e.c.r.-I-643; [2006] E.T.M.R 29

Distinctive character of the earlier trade mark

72. 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 *WindsurfingChiemsee* 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)."

73. 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/services, to those with high inherent distinctive character, such as invented words which have no allusive qualities.

74. In this instance, I consider that EVLINK will be understood as set out above, and the mark is therefore allusive of the goods/services on offer. Consequently, I find that the earlier mark has a low degree of inherent distinctive character.

75. The distinctiveness of a mark can be enhanced by virtue of the use that has been made of it, and such enhanced distinctiveness may affect the likelihood of confusion between that mark and a later mark including the same, or a similar, element.

76. As discussed in detail above, the opponent filed a witness statement by Mr Hall to evidence its use of the earlier marks in the UK during the relevant period. Whilst I have determined that the opponent has provided sufficient evidence that it has used the marks in the UK during this time, I note that there are limitations to the evidence, particularly that there are no details in relation to the size of the relevant market, or the share of that market held by goods/services bearing the opponent's marks which makes it difficult for me to assess whether the scale of the use shown is sufficient for establishing enhanced distinctiveness. Whilst the level of turnover has been provided, and whilst this is in the millions, I do not consider that this is high enough to establish enhanced distinctiveness given the goods/services at issue. I also note that, save for a few catalogues published within the relevant dates, I have some limited details of marketing and expenditure, and no evidence as to the distribution of the catalogue or the opponent's marketing strategy. As noted, whilst I have found this evidence to be sufficient in respect of genuine use, I do not consider that it goes far enough to establish enhanced distinctiveness.

Conclusions on Likelihood of Confusion

77. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods/services down to the responsible undertakings being the same or related.

78. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle, i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods/services and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the opponent's trade marks, the average consumer for the goods/services and the nature of the

purchasing process. In doing so, I must be alive to the fact 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 that he has retained in his mind.

79. I have found as follows:

- The goods/services at issue range from being identical (either self-evidently or on the principles in *Meric)* to having a medium degree of similarity.
- I have identified that the average consumer will be members of the general public and business users. They will select the goods/services primarily by visual means, although I do not discount an aural component;
- I have concluded that members of the general public will pay a medium degree of attention, whereas business users will pay a relatively high degree of attention (but not the highest);
- The contested mark is visually similar to the earlier marks to between a medium and high degree;
- The contested mark is aurally similar to the earlier marks to a high degree;
- I have found the contested mark and the earlier marks to be conceptually similar to a low degree;
- I have found the earlier marks overall to be inherently distinctive to a low degree;[32]

80. Taking all of the above into account and bearing in mind the principle of imperfect recollection, I do not consider that consumers would misremember or inaccurately recall which mark was which. Even though both marks share the identical element 'EV' (which is allusive of the goods/services at issue), the additional elements in each mark play a role with the common element, and both have their own meaning. I have found the opponent's mark to be allusive as a whole, whereas the applicant's mark is likely to be broken down into separate elements and conceptually brings to mind both

[32] As per *L'Oréal SA v OHIM*, Case C-235/05 P, a weaker distinctive character of an earlier mark does not preclude a likelihood of confusion.

electric vehicles and a type of cat. When considering the applicant's mark as a whole, the meaning is unclear. As a result, I find that consumers will also focus upon these differences when attempting to recall the marks and therefore, will not be confused by the common presence of 'EV'. As such, I do not find that the consumer is likely to mistake one mark for another. Consequently, I do not consider that there exists a likelihood of direct confusion between the marks, even in instances where the goods/services are identical.

81. This leads me to consider indirect confusion. In *L.A. Sugar Limited v By Back Beat Inc*, BL O/375/10, Mr Iain Purvis Q.C., as the Appointed Person, explained that:

> "16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: 'The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark'.
>
> 17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:
>
> (a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right ('26 RED TESCO' would no doubt be such a case).
> (b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand

extension (terms such as ‘LITE’, ‘EXPRESS’, ‘WORLDWIDE’, ‘MINI’ etc.).

(c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension (‘FAT FACE’ to ‘BRAT FACE’ for example).”

82. These three categories are not exhaustive; rather, they were intended to be illustrative of the general approach, as has been confirmed by the Court of Appeal[33]. I recognise that a finding of indirect confusion should not be made merely because the competing marks share a common element. In this connection, it is not sufficient that a mark merely calls to mind another mark; this is mere association not indirect confusion[34]. The Court of Appeal has also emphasised that, where there is no direct confusion, there must be a “proper basis” for finding indirect confusion.

83. For indirect confusion to arise the average consumer must consider that as a result of the common element, there is an economic connection between the respective marks, such that the goods/services provided under one are regarded as a brand extension or sub brand of the other, for example.

84. Whilst the marks share a common element, ‘EV’, I consider that conceptually the marks bring different things to mind, as set out above. I have found that the applicant’s mark, ‘EVLynx’ is likely to be broken down by the average consumer, and whilst the ‘EV’ element of the mark is allusive of the good/services on offer, the overall meaning of the mark is unclear. This differs with the opponent’s mark which has a clear meaning which is immediately graspable by the average consumer and may counteract the visual and phonetic similarities between the marks[35]. As such, I do not see a situation in which consumers would view the differences between the marks as alternations or additions that constitute a logical brand extension or sub-brand, as the applicant’s mark is conceptually different from that of the opponent’s mark. Whilst both marks share the use of ‘EV’, I consider this to have a low level of distinctiveness, and therefore I do not consider that the average consumer would be confused by this. In short, based upon each mark incorporating the letters ‘EV’, I can see no basis on which

[33] *Liverpool Gin Distillery and others v Sazerac Brands, LLC and others* [2021] EWCA Civ 1207
[34] *Duebros Limited v Heirler Cenovis GmbH,* BL O/547/17
[35] *The Picasso Estate v OHIM*, Case C-361/04 P

the average consumer would conclude that the marks must originate from the same, or a related, undertaking. If a consumer did notice that both marks contain the same letters, I consider that this would be viewed as purely coincidental. Consequently, I consider that there exists no likelihood of indirect confusion, even when the marks are viewed on identical goods/services.

Conclusion

85. The opposition fails in its entirety. Therefore, subject to appeal, the application may proceed to registration for all goods/services.

COSTS

86. The applicant has been successful and is entitled to a contribution towards its costs. However, as the applicant is not legally represented, in its letter of the 23 March 2025, the Registry informed the applicant that if it intended to make a request for an award of costs, it must do so by completing the attached costs pro forma by 21 April 2025. No cost pro forma has been received to date. Since the applicant did not file a costs pro forma by the deadline given in the Registry's letter, and has paid no statutory fees in these proceedings, I will make no costs order against the opponent in this matter.

Dated this 13th day of February 2026

LA Bailey

For the Registrar

Annex 1

Class 9

Stations and terminals for electrical power and for electrical recharging; Stations and terminals for electrical power and for electrical recharging, for electric vehicles and electric batteries; Connectors, sockets, plugs, socket bases and cords for electrical power and for electrical recharging; Connectors, sockets, plugs, socket bases and cords for recharging the batteries of electric vehicles; Fittings for managing electrical power cables, namely brackets for cords, retracting reels and dispensing reels; Payment terminals and software for battery recharging installations for electric vehicles; Equipment for the processing and transmission of information relating to electrical charge, to the state of the electric vehicle or to electrical energy; Computer software for monitoring and managing battery recharging installations for electric vehicles; Computer software for the management and maintenance of parking areas and fleets of electric vehicles; Computer software for the geopositioning and reservation of battery recharging installations for electric vehicles; Computer software for the geopositioning and reservation of electric vehicles; Apparatus and computer software for the transmission of information relating to the availability of battery recharging installations for electric vehicles, and to the state of the vehicle; Checking and control apparatus for electric vehicles, for electrical panels and for battery recharging installations for electric vehicles.

Class 35

Administrative management of battery recharging installations for electric vehicles; Invoicing for the use of battery recharging installations for electric vehicles; Invoicing for electrical energy consumption; Supply and management of memberships for battery recharging installations for electric vehicles.

Class 37

Installation, repair and maintenance of recharging installations for electric vehicles and electric batteries; Supervision (monitoring and checking) of battery recharging installations for electric vehicles.

Class 38

Communications, namely transmission of information, transmission of data, formatting of data, and uploading of information in real time, in connection with recharging installations for electric vehicles and electric batteries.

Class 39

Geopositioning of battery recharging installations for electric vehicles; Geopositioning of electric vehicles; Providing of information relating to the availability of battery recharging installations for electric vehicles, to the status of the electric vehicle; Reservation of battery recharging installations (terminals) for electric vehicles.

Class 42

Management of electrical energy for battery recharging installations for electric vehicles, namely consultancy and auditing relating to energy efficiency for battery recharging installations for electric vehicles.

Annex 2

Class 9

Terminals and power feeding and recharging stations for electric vehicles and electric batteries; connectors (electricity), sockets, plugs, socket-outlets and leads for recharging electric vehicle batteries; attachments for managing electric power cables, namely jibs for use with leads, winding spools and unwinders; payment terminals and computer software for electric vehicle battery recharge installations; equipment for processing and transmitting information on the electric charge, the state of an electric vehicle or the electrical energy; computer software for monitoring and managing electric vehicle battery recharge installations; computer software for managing and maintaining parking lots and fleets of electric vehicles; computer software for geopositioning and reserving electric vehicle battery recharge installations; computer software for geopositioning and reserving electric vehicles; apparatus and computer software for transmitting information on the availability of electric vehicle battery recharge installations, and on the state of vehicles; control apparatus for electric vehicles, for electric boards and for electric vehicle battery recharge installations.

Class 35

Administrative management services for electric vehicle battery recharge installations; invoicing services for the use of electric vehicle battery recharge installations; invoicing services for the consumption of electricity; services for providing and managing subscriptions for electric vehicle battery recharge installations.

Class 37

Services for installing, repairing and maintaining electric vehicle and electric battery recharge installations.

Class 38

Communication services, namely transmission of information, transmission of data, posting information in real time concerning electric vehicle battery recharge installations.

Class 39

Geopositioning services for electric vehicle battery recharge installations; geopositioning services for electric vehicles; information services on the availability of electric vehicle battery recharge installations, and on the status of electric vehicles; booking services for installations (charging stations) for batteries for electric vehicles.

Class 42

Services for managing electricity for electric vehicle battery recharge installations, namely consulting and audit services on energy efficiency for electric vehicle battery recharge installations; supervisory services (checking and monitoring) for electric vehicle battery recharge installations; formating data.