O/0222/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00004012892
IN THE NAME
QUEENSLAND FOREIGN EXCHANGE INC.
TO REGISTER THE FOLLOWING SERIES OF TWO TRADE MARKS:

MARK 1

volet

MARK 2

volet

IN CLASSES 09, 36, 38 and 42

AND

IN THE MATTER OF OPPOSITION THERETO
UNDER NO. OP000447690
BY VOLT TECHNOLOGIES HOLDINGS LIMITED

Background and pleadings

1. On **09 February 2024, QUEENSLAND FOREIGN EXCHANGE INC.** ("the Applicant") applied to register the series of two trade marks shown on the cover page of this decision in the UK. The application was accepted and published in the Trade Marks Journal on **23 February 2024** in respect of the following goods and services:

Class 09: Security tokens [encryption devices]; Computer software and hardware for facilitating payment transactions by electronic means; online payment software; enterprise resource planning software [ERP]; security software; downloadable computer security software; utility, security and cryptography software; software for network and device security; computer software for use as an application programming interface (API); computer software for encrypting, decrypting and authenticating data, information and messages; computer software to verify data integrity; USB hardware; computer hardware; authentication software; computer software for checking the authenticity of a prospective customer both prior to onboarding and after; computer software for checking for the identification and authentication of person and or other legal entity; computer e- commerce software; computer e-commerce software to allow users to perform electronic business transactions via a global computer network; software for processing electronic payments to and from others; downloadable software applications for mobile phones; online non-downloadable software for creation the digital wallet and managing cryptocurrency transactions.

Class 36: Financial services; fund transfer; money transfer; money transfer services; transfer of funds; electronic funds transfer; electronic transfer of money; electronic money

transfer services; electronic funds transfer services; electronic funds transfer by telecommunications; transfer of funds via electronic communication networks; electronic transfer of funds by means of telecommunications networks; transfer of funds for the purchase of goods, via electronic communication networks; financial payment services; processing of electronic payments; electronic commerce payment services; electronic processing of payments via a global computer network; processing payments for the purchase of goods and services via an electronic communications network; e-wallet payment services; electronic wallet services (payment services); safe deposit services; financial exchange services; exchanging money; payment card services; credit fund transfer services; direct debit services; processing of debit card payments; payment transaction card services; provision of cash dispenser facilities for money withdrawal; financial services relating to the withdrawal and depositing of cash; conducting cashless payment transactions; processing of payment transactions via the Internet; financial transfers and transactions and electronic payment services; payment processing; automated payment services; financial risk management; financial risk assessment services; Virtual currency services; Virtual currency exchange; Virtual currency transfer services; Financial exchange of virtual currency; Issue and redemption of tokens of value; provision of virtual currency accounts used to purchase goods and services via the internet and mobile computer networks; Electronic transfer of crypto assets; Electronic transfer of virtual currencies; Financial exchange of crypto assets; transmission of virtual currency and digital currency via electronic communication networks; electronic transmission of currency via computer terminals and electronic devices.

Class 38: Telecommunications; information advisory and consultancy services to all of the aforesaid services.

Class 42: Platform as a service [PaaS]; electronic monitoring of credit card activity to detect fraud via the internet; data encryption and decoding services; encryption, decryption and authentication of information, messages and data; testing, authentication and quality control; authentication services for computer security; IT security services in the nature of protection and recovery of computer data; data security services; computer programming services for electronic data security; computer security threat analysis for protecting data; monitoring of computer systems for security purposes; design and development of electronic data security systems; maintenance of computer software relating to computer security and prevention of computer risks; updating of computer software relating to computer security and prevention of computer risks; design and development of computer software for supply chain management; design and development of computer software for logistics, supply chain management and e-business portals; information technology [IT] consulting services; design of software for embedded devices; updating of software for embedded devices; software as a service (SAAS) services, namely, hosting software for use by others for data security purposes by providing authentication; computer security services in the nature of providing user authentication for data security; rental of apparatus, equipment, machines and installations in connection with the encryption and decryption of information or data; providing temporary use of on-line non-downloadable software for processing electronic payments.

2. On **23 May 2024, VOLT TECHNOLOGIES HOLDINGS LIMITED** ("the Opponent") opposed the application under section 5(2)(b) [1] of the Trade Marks Act 1994 ("the Act"). The opposition is directed against the Applicant's goods and services in classes 09, 36 and 42. The Applicant's services in class 38 are not subject to the opposition.

3. The Opponent relies upon the following two trade marks:

VOLT

UK Trade Mark registration number UK00003734879
Filing date: 20 December 2021
Registration date: 07 April 2023
Relying on the following goods and services:

Class 09: E-commerce and e-payment software; payment software; banking software; computer software and hardware for facilitating payment transactions by electronic means; application software; application software for smartphones, tablets and wireless devices; computer terminals for banking purposes; payment terminals, money dispensing and sorting devices; apparatus for electronic payment processing; electronic payment terminals and devices; electronic and magnetic ID cards for use in connection with payment services; banking cards [encoded or magnetic].

Class 36: Banking services; electronic banking services; online and internet banking; computerised banking services; mobile banking services; payment processing; processing of

[1] The opposition was originally based on sections 5(2)(b) and 5(3), however the Opponent requested to remove the section 5(3) grounds from the opposition in its email and amended form TM7 dated 20 March 2025. This was confirmed by the Registry in letters to the parties dated 25 March 2025.

electronic payments; processing of payments for banks and individuals; payment card services; information, advice and consultancy in relation to the aforementioned services.

Class 42: Design and development of payment processing software; payment and banking software creation, development, installation and maintenance; database design and development; providing temporary use of on-line non-downloadable software for processing electronic payments; hosting platforms on the internet; information, advice and consultancy in relation to the aforementioned services.

volt.io

UK Trade Mark registration number UK00003734873
Filing date: 20 December 2021
Registration date: 07 April 2023
Relying on the following goods and services:

Class 09: E-commerce and e-payment software; payment software; banking software; computer software and hardware for facilitating payment transactions by electronic means; application software; application software for smartphones, tablets and wireless devices; computer terminals for banking purposes; payment terminals, money dispensing and sorting devices; apparatus for electronic payment processing; electronic payment terminals and devices; electronic and magnetic ID cards for use in connection with payment services; banking cards [encoded or magnetic].

Class 36: Banking services; electronic banking services; online and internet banking; computerised banking services; mobile banking services; payment processing; processing of electronic payments; processing of payments for banks and individuals; payment card services; information, advice and consultancy in relation to the aforementioned services.

Class 42: Design and development of payment processing software; payment and banking software creation, development, installation and maintenance; database design and development; providing temporary use of on-line non-downloadable software for processing electronic payments; hosting platforms on the internet; information, advice and consultancy in relation to the aforementioned services.

4. By virtue of their earlier filing dates, the above registrations constitute earlier marks within the meaning of section 6 of the Act. However, as they had not been protected for five years or more at the filing date of the application, they are not subject to the use requirements specified within section 6A of the Act.

5. The notice of opposition filed by the Opponent makes no specific submissions relating to the similarity of the marks or the similarity of the goods and services. By virtue of the Opponent ticking the relevant boxes on the form TM7 it is understood that the Opponent believes that the Applicant's marks are similar to its registrations and have been applied for in respect of identical or similar goods and services.

6. The Applicant filed a counterstatement denying that the respective marks are similar and that there are striking differences between them. The Applicant though, admits that there is some similarity between some of the goods and services, but that this does not lead to or necessitate a finding of likelihood of confusion.

7. The Opponent is represented by Bird & Bird LLP, and the Applicant is represented by Tomkins & Co. Only the Applicant filed evidence, however neither party request a hearing nor did they file any submissions in lieu. I make this decision having taken full account of all the papers, referring to them as necessary.

RELEVANCE OF EU LAW

8. 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

9. The Applicant's evidence consists of the witness statement of Aleksandr Kauzov dated 22 July 2025 and is accompanied by 8 exhibits (Exhibit 1 – Exhibit 8). Mr Kauzov is the Director of the Applicant. The evidence consists of dictionary definitions for the words 'volet' and 'VOLT'. It also includes an extract from the Department of Education's Biology, Chemistry and Physics GCSE subject content, as well as a printout of the BBC Bitesize learning guide in connection with 'Charge and current'. These exhibits attempt to demonstrate that the word 'volt' is commonly understood as a reference to a unit of measurement in relation to electricity. The evidence also includes an extract of Trade Mark Opposition decision O/0271/24 where the Hearing Officer noted that 'Voltage and volts are common words in the English Language to describe units of electricity.' Finally, it includes an extract that shows that '.io' is recognised as a top-level domain name. The purpose of the evidence is to demonstrate that the signs have no conceptual similarity.

DECISION

Section 5(2)(b): legislation and case law

10. The opposition is based upon section 5(2)(b) of the Act which reads 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"

11. 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."

12. 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

13. Section 60A of the Act provides:

"(1) For the purpose of this Act goods and services-

(a) are not to be regarded as being similar to each other on the ground that they appear in the same class under the Nice Classification.

(b) are not to be regarded as being dissimilar from each other on the ground that they appear in different classes under the Nice Classification.

(2) In subsection (1), the "Nice Classification" means the system of classification under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, which was last amended on 28 September 1979."

14. The goods and services for comparison are set out in paragraphs 1 and 3 above. I also note that the opposition is directed only at the Applicant's goods and services in classes 9, 36 and 42. In addition, while the Opponent relies on two separate registrations, the specifications in each are identical.

15. I have no submissions from the Opponent on the similarity of the goods and services in question. As stated above, the Applicant admits that some of the respective goods and services are similar, however, it does not say to what

degree. Given the above, I will not undertake a full comparison of the goods and services listed above. I will proceed on the basis that some of the Applicant's goods are self-evidently identical to those covered by the earlier trade marks. Examples of some of these terms is presented below. If the opposition fails even where the goods and services are identical, it follows that the opposition will also fail where the goods and services are only similar.

Identical Goods and services

16. The following terms in classes 09, 36 and 42 are all identically reproduced in both the Opponent's and Applicant's specifications:

Class 09:	computer software and hardware for facilitating payment transactions by electronic means.
Class 36:	payment processing; payment card services.
Class 42:	providing temporary use of on-line non-downloadable software for processing electronic payments.

The average consumer and the nature of the purchasing act

17. 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 (see *Lloyd Schuhfabrik Meyer,* Case C-342/97).

18. 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 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.

19. Neither the Opponent, nor the Applicant provided any submissions on the identity of the average consumer or the nature of the purchasing act.

20. Many of the contested goods and services listed in the Applicant's specification are directed towards professional or commercial users, for example, 'computer

software and hardware for facilitating payment transactions by electronic means' in class 09, as well as 'providing temporary use of on-line non-downloadable software for processing electronic payments' in class 42. However, some terms are broad enough to be offered to the general public, such as 'payment card services' in class 36. Overall, I consider that while certain goods and services are clearly intended for business consumers, many are capable of being used by both commercial and personal users.

21. The level of attention paid by the average consumer will depend on the complexity of the goods and services in question. For instance, services such as 'providing temporary use of on-line non-downloadable software for processing electronic payments' are relatively involved, and customers are likely to assess the cost, suitability, and comparative offerings with considerable care. In such cases, a relatively high degree of attention can be expected. By contrast, services such as payment card services, which are likely to be utilised by the general public, are less complex and will typically involve no more than a medium level of attention.

22. In all instances, the purchasing process is likely to be primarily visual, with consumers selecting the relevant goods and services either following online research or through in-person examination. I also recognise that aural factors may have some influence, particularly where purchases are made by telephone or where consumers rely on word-of-mouth recommendations.

Comparison of trade marks

23. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade 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 trade marks must be assessed by reference to the overall impressions created by the trade marks, bearing in mind their distinctive and dominant components. The Court of Justice of the European Union ("CJEU") stated at paragraph 34 of its judgement 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".

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

25. The trade marks to be compared are as follows:

<table>
<tr><th>The Opponent's marks</th><th>The Applicant's marks</th></tr>
<tr><td>UK00003734879

VOLT</td><td rowspan="2">Mark 1

Mark 2</td></tr>
<tr><td>UK00003734873

volt.io</td></tr>
</table>

26. I have no specific submissions from the Opponent on the similarity of the marks. The Applicant on the other hand submits that there are striking visual, phonetic and conceptual differences between the marks so that the consumer would readily distinguish the marks from one another. The Applicant also argues that consumers will immediately recognise the Opponent's mark 'VOLT' as the ordinary English word meaning a unit of electrical measurement. On this point, and as summarised above, the Applicant's evidence includes exhibits to show that the word VOLT is a unit of electrical measurement. They also say that ".io" in 'volt.io' would be seen merely as a domain extension. Because consumers will form this clear and obvious concept when viewing the Opponent's marks, the Applicant claims this creates a strong conceptual difference from its own mark, eliminating any likelihood of confusion. The Applicant also states that its marks may be viewed as 'vo' and 'et' with the particular elements separated from one another by a forward slash (or solidus) in a standard way or as the word 'volet'. Irrespective of how the Applicant's sign is viewed, it contends that there is a clear conceptual dissimilarity between the marks.

27. I have considered the two marks relied upon by the Opponent and will base the comparison on its '879 mark only. The Opponent's two registrations both contain the exact same specification, and it is my view that the '873 mark, with the additional '.io' is less similar overall to the Applicant's marks. Additionally, the Applicant has shown in its evidence (which has not been challenged by the Opponent) that '.io' is described as '*one of the highest level domains in the hierarchical domain name system after the root domain*' and '*[a]lthough .io is technically a country-specific TLD representing the British Indian Ocean Territory, it is widely recognized as a versatile and valuable domain for global brands*". Accordingly, it is considered that '.io' is a non-distinctive element, that being a domain name, and therefore, the Opponent's case is no better under this mark.

Overall Impression

28. The Opponent's '879' mark consists of the single word 'VOLT'. There are no other elements in the mark to contribute to its overall impression, which lies in the word itself.

29. The Applicant's marks comprise the word 'volet', with the letter 'l' rendered at a slight angle. In Mark 1, the word appears in black text on a white background, while in Mark 2, it is shown in white text on a black background. Despite this limited stylisation, the dominant impression of both marks remains the word itself. Although I note the Applicant's argument that consumers would interpret the marks as the letters 'vo' and 'et' separated by a forward slash, I do not accept this view. In my assessment, the majority of average consumers will perceive the marks as the single word 'volet', with only minor stylisation of the letter 'l'.

Visual comparison

30. The Opponent's '879' mark contains four letters, whereas the Applicant's marks contain five letters. However, the Applicant's marks contain all of the letters present in the Opponent's mark, though there is an additional letter 'e' in between the letters 'l' and 't'. This is clearly a point of visual difference, as is the 'angled' letter 'l' in the Applicant's mark. On this point, I recognise that a word only mark may be used in various typefaces, including italics. However, this does not necessarily extend to stylised or engineered divisions in presentation. For example, it is unlikely that the Opponent's word only mark would cover a presentation such as 'vo*l*t' in which the letter 'l' appears in italics while the remainder of the word is shown in a standard typeface. Bearing in mind the overall impression of the marks I consider the marks to be visually similar to a medium degree.

Aural Comparison

31. The Opponent's '879' mark consists of the single-syllable word 'VOLT', which will be pronounced in the usual way. The Applicant's mark contains two syllables and is likely to be pronounced either as 'vol-et' or 'vol-ay'. In support

of the latter, the Applicant has provided evidence from the Oxford English Dictionary indicating that 'volet' is pronounced *'VOL-ay'* in British English and *'voh-LAY'* in U.S. English. Further, I remind myself that while there is no special test which applies to the comparison of 'short' marks [2], I am of the view that in the present case, the shortness of the marks at issue means that the average consumer is more likely to notice the differences. In my assessment, regardless of whether the Applicant's marks are pronounced as *'vol-let'* or *'vol-lay'*, they share a low to medium level of aural similarity with the Opponent's mark.

Conceptual Comparison

32. Conceptually, I agree with the Applicant that the Opponent's mark would be understood in line with its standard dictionary meaning. It is not an unfamiliar term, and the average consumer is likely to interpret it as referring to a unit of measurement related to the force of an electrical current. By contrast, although I note the Applicant's evidence indicating that 'volet' is an archaic word historically defined as *"a veil worn at the back of the head"* or *"a wing of a triptych"*, I do not consider the average consumer to be aware of these meanings. Instead, they are more likely to regard 'volet' as an invented term or a word of foreign origin and therefore will attribute no meaning to it. Taking all of this into account I find the marks to be conceptually dissimilar.

Distinctive character of the earlier trade mark

33. I have no submissions from either party regarding the distinctiveness of the Opponent's earlier mark.

34. The distinctive character of a trade mark can be appraised only, first, by reference to the goods and 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:

[2] See paragraph 44 of *BOSCO*, BL O/301/20

> “22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee* v *Huber and Attenberger* [1999] ECR I-0000, paragraph 49).
>
> 23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

35. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods and services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use that has been made of it. However, as the Opponent has not filed any evidence of use of its mark, I only have the inherent position to consider.

36. The Opponent’s mark consists of the common dictionary word ‘VOLT’, which, while not directly descriptive of the goods or services, may be regarded as allusive in relation to certain goods, as it can suggest the strength or force of an electrical current. This allusive quality does not extend to the services,

however. Accordingly, I consider the mark to possess a low to medium level of inherent distinctiveness, varying depending on the specific goods or services in question.

Likelihood of Confusion

37. 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 and services down to the responsible undertakings being the same or related.

38. 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 factors are interdependent, and, for instance, a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa. It is necessary for me to keep in mind the distinctive character of the earlier mark, the average consumer for the goods and 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.

39. Throughout the course of this decision, I have determined that:

- I have proceeded on the basis that some of the goods and services are identical. If the opposition fails for these goods and services, then it follows that it will also fail for goods and services which are only similar.

- The average consumer of the respective goods and services can be the general public or business consumers and sometimes both. The purchasing process is mainly visual but aural considerations may play a

part. The level of attention paid during the purchasing process varies between medium and reasonably high.

- The purchasing process for the goods will be primarily visual in nature, though aural considerations have not been excluded.

- The level of inherent distinctive character of the Opponent's '879' mark is considered to be between low and medium depending on the goods and services concerned.

- The marks at issue are visually similar to a medium degree, aurally similar to between a low and medium degree, and conceptually dissimilar.

40. Although I accept that the marks share a number of letters, including some in the same positions, the overall visual and aural similarities are not significant. When this is considered alongside the conceptual differences between the marks, I am satisfied that consumers would be able to distinguish between them. Moreover, as noted above, the visual element is likely to play the predominant role in the selection process for the goods and services in question.[3]

41. In my judgement, taking all the above factors into account, the differences between the competing trade marks are likely to enable consumers paying, at least, a medium level of attention, to avoid mistaking the marks for one another, notwithstanding the principles of imperfect recollection and interdependency. As a result, I find that there is no likelihood of direct confusion, even in relation to goods and services that are identical.

42. That leaves indirect confusion to be considered. In *L.A. Sugar Limited v By Back Beat Inc,* Case BL O/375/10, Mr Iain Purvis QC, (as he then was) sitting as the Appointed Person, explained that:

[3] *New Look Limited v OHIM,* joined cases T-117/03 to T-119/03 and T-171/03

“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).”

43. 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 in *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors.* [4] 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.

44. Furthermore, in *Liverpool Gin* Arnold LJ referred to the comments of James Mellor Q.C. (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at [16] that "a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion". Arnold LJ agreed, pointing out that there must be a "proper basis" for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

45. Consumers, having recognised the differences between the marks, would not then assume that they are economically linked undertakings. I do not consider it logical that an undertaking would add an additional seemingly arbitrary letter within its mark so as to change the word completely; the addition of a letter 'e' in this case. Whilst I appreciate that the *L.A. Sugar* categories (referred to above) are not exhaustive, I do not see any other plausible basis on which to conclude that consumers would see the competing marks as deriving from economically linked undertakings. Consequently, and bearing in mind the comments of Arnold LJ and Mr Mellor Q.C (as he then was) in the preceding paragraph, I do not consider there to be a likelihood of indirect confusion.

Final remarks

46. While I have considered that there exists no likelihood of confusion in respect of the '879' mark, I can confirm, for the avoidance of doubt (and as alluded to above), it follows that there is no likelihood of either direct or indirect confusion

[4] *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207

between the application and the '873' mark for reasons similar to those set out above.

Conclusion

47. The opposition has failed in its entirety. Therefore, subject to any successful appeal, the application may proceed to registration for all of the goods and services contained within the specification.

Costs

48. As the Applicant has been successful, it is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice ("TPN") 1/2023.[5] In the circumstances, I award the applicant the sum of £850. The sum is calculated as follows:

Considering the notice of opposition and preparing the counterstatement	£250
Preparing evidence	£600
Total	**£850**

49. I therefore order **VOLT TECHNOLOGIES HOLDINGS LIMITED** to pay **QUEENSLAND FOREIGN EXCHANGE INC.** the sum of £850. This sum is to be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

[5] As the proceedings were commenced after 01 February 2023.

Dated this 16th day of March 2026

Oliver Rose'Meyer
For the Registrar