

O/0258/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00004017643

IN THE NAME OF

CALDERA HEAT BATTERIES LIMITED

TO REGISTER THE FOLLOWING TRADE MARKS:



IN CLASSES 7, 9, 11, 37 AND 42

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. OP000447952

BY HEATSTAR LIMITED

Background and pleadings

1. On 23 February 2024, Caldera Heat Batteries Limited (“the applicant”) applied to register the series of four 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 15 March 2024 in respect of the goods and services set out at paragraph 20.
2. On 11 June 2024, Heatstar Limited (“the opponent”) opposed the application under Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opposition is directed against all of the goods in the application. The opponent relies upon the following mark:

HEATSTAR

UK Registration no. UK00003169268

Filing date: 13 June 2016

Date of registration: 16 September 2016

Relying upon the goods and services set out at paragraph 20.

3. The opponent submits that the marks are highly similar, and that the goods and services at issue are identical or highly similar.
4. The applicant filed a counterstatement within which it denied the claims made and put the opponent to proof of use in respect of the earlier mark.
5. Both parties filed evidence and the applicant filed submissions during proceedings. Neither party requested a hearing, but both parties filed submissions in lieu. This decision is taken following a careful consideration of the papers.
6. The applicant is represented by Maguire Boss and the opponent is represented by Potter Clarkson LLP.
7. 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

8. The opponent filed evidence in the form of the witness statement of Paul Scott, director of Heatstar Limited, signed and dated 24 March 2025. The witness statement is accompanied by exhibits PS1–PS8.
9. The applicant filed evidence in the form of the witness statement of Sylvie Tate, of Maguire Boss, the applicant's representatives, signed and dated 27 May 2025. The witness statement is accompanied by exhibits ST1–ST10.
10. The applicant also filed written submissions, dated 27 May 2025.
11. The opponent filed evidence in reply, in the form of the witness statement of Sarah Talland, of Potter Clarkson LLP, signed and dated 28 July 2025. The witness statement is accompanied by Exhibits ST1–ST4.
12. The opponent's evidence seeks to show evidence of use.
13. The applicant's submissions and evidence, amongst other things, endeavour to support the proposition that the provision of heating systems and installation services for swimming pools is a distinctly separate activity from the provision of heating systems and installations for industrial plant, industrial applications or industrial purposes and that there is no crossover between the goods and services at issue.
14. The opponent's evidence in reply seeks to show examples of the respective goods and services being sold or offered in conjunction or by the same retailer. It further seeks to show that the Heating, Ventilation and Air Conditioning (HVAC) market encompasses residential, commercial and institutional premises in general as well as specialist applications such as swimming pools.

DECISION

Section 5(2)

15. The opposition is based upon Sections 5(2)(b) of the Act, which read as follows:

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

(a) ...

(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”.

Proof of use

16. The Opponent’s earlier marks had been registered for more than five years at the filing date of the application and therefore the proof of use provisions apply.

17. The proof of use provisions are set out in section 6A of the Act, the relevant parts of which state:

“(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), (b) 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) 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.

...”

18. Pursuant to section 6A of the Act, the relevant period for assessing whether there has been genuine use of the opponent’s word mark is the five-year period ending with applicant’s filing date i.e. 23 February 2024, and therefore the relevant period is 24 February 2019 to 23 February 2024. However, for reasons that will become apparent later in this decision, I will proceed as if proof of use had been established for the full range of Class 11 goods and Class 37 services for which the opponent holds a registration.

19. 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 be dominated by one or more of its components;
- (f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;
- (g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;
- (h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;
- (i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;
- (j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;
- (k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically linked undertakings, there is a likelihood of confusion.

Comparison of goods and services

20. The goods and services for comparison are as follows:

Opponent's goods and services	Applicant's goods and services
<p>Class 11: Swimming pool heaters; installations for heating swimming pools; heating and ventilating equipment for use with swimming pools; heat recovery apparatus for use with swimming pools; dehumidifiers for use with swimming pools; control units for heating installations, heat recovery apparatus and dehumidifiers, all for use with swimming pools.</p> <p>Class 37: Installing heating and ventilating equipment for use with swimming pools; repair of heating and ventilating equipment for use with swimming pools; servicing of heating and ventilating equipment for use with swimming pools; installing heat recovery apparatus, dehumidifiers and control units for use with swimming pools; repair of heat recovery apparatus, dehumidifiers and control units for use with swimming pools; servicing of heat recovery apparatus, dehumidifiers and control units for use with swimming pools.</p>	<p>Class 7: Heat pumps [parts of machines]; heat exchangers [parts of machines]; pumps for heating installations; water heaters [parts of machines]; heat exchangers being parts of machines; steam boilers [parts of machines]; uninterruptible power supplies [machines] for the generation of heat energy; generators; steam boilers for steam generating [parts of machines]; parts and fittings for all of the aforesaid goods; all of the aforesaid goods being for industrial plants or for industrial applications or purposes only.</p> <p>Class 9: Heat regulators; heat regulating apparatus; electric control devices for heating management; interface software; electronic display interfaces; apparatus for monitoring heat consumption; heating meters; electric control devices for heating management; photovoltaic apparatus for generating electricity; none of the aforesaid being for use in relation to domestic radiators or storage heaters; parts and fittings for the aforesaid; all of the aforesaid goods being for industrial plants or for industrial applications or purposes only.</p> <p>Class 11:</p>

Heating apparatus; heating installations; electric heating installations; heat exchangers; automatic temperature regulators; heat generating apparatus; steam boilers for steam generating [other than parts of machines]; apparatus for heating; boilers for use in heating systems; electric heating apparatus; heat pumps; heat regenerators; heat regulating devices [valves] being parts of heating installations; heating boilers; heating installations for industrial use; instantaneous water heaters; solar heating installations; parts and fittings for the aforesaid; none of the aforesaid being or relating to domestic radiators or storage heaters; all of the aforesaid goods being for industrial plants or for industrial applications or purposes only.

Class 37:

Installation, maintenance, repair and support services relating to heating apparatus and equipment; construction of heating installations; retrofitting of heating installations in buildings; installation, maintenance and repair of energy saving apparatus; installation, maintenance and repair of electrical and generating machinery; installation, maintenance and repair of power generating apparatus; installation,

	<p>maintenance and repair of energy generating installations; installation, maintenance and repair of power generating apparatus and installations; installation, maintenance and repair of steam generating apparatus; installation, maintenance and repair of power generators; servicing of power generating apparatus and installations; heating equipment installation; maintenance and repair of heating apparatus; assembly, construction, installation, maintenance and repair of installations for generating electrical and thermal energy from renewable energy sources; cleaning of heating apparatus and equipment; installation, maintenance, repair and support services relating to solar powered systems and apparatus for heat generation; information, advisory and consultancy services relating to the aforesaid; none of the aforesaid relating to domestic radiators or storage heaters; all of the aforesaid services being for industrial plants or for industrial applications or purposes only.</p> <p>Class 42: Technical design and planning of heating installations; engineering design services; engineering design services in the field of heating installations and heat</p>
--	---

	<p>pump installations; information, advisory and consultancy services relating to all of the aforesaid; none of the aforesaid relating to domestic radiators or storage heaters; all of the aforesaid services being for industrial plants or for industrial applications or purposes only.</p>
--	---

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

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

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

“In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary.

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

- a. The respective uses of the respective goods or services;

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

24. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v OHIM*, Case T-325/06, the General Court (“GC”) stated that “complementary” means:

“82. ...there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking”.

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

26. In *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1)* [2024] UKSC 36, Lord Kitchin set out the proper approach to considering terms in specifications:

“365. [...] The correct approach, as a matter of principle, in considering a specification of services which is defined by terms which are not clear or precise, is to confine the terms used to the substance or core of their possible meanings: see, for example, *Reed Executive plc v Reed Business Information Ltd* [2004] EWCA Civ 159; [2004] RPC 40, at para 43. So too, if a specification of goods is defined by terms which are ambiguous, then it should be confined to those goods which are clearly covered. These principles are consistent with first, the requirement that the specifications of goods and services must be clear and precise so that others know what they can and cannot do; and secondly, general fairness because any ambiguity is the responsibility of the owner of the mark. If despite this, the words used are still unclear so that they cannot be interpreted, then it is permissible to disregard them. But, in my opinion, that will rarely be the case.”

27. In *YouView TV Ltd v Total Ltd* [2012] EWHC 3158 (Ch), Floyd J. (as he then was) stated that:

"... Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless the principle should not be taken too far. Treat was decided the way it was because the ordinary and natural, or core, meaning of 'dessert sauce' did not include jam, or because the ordinary and natural description of jam was not 'a dessert sauce'. Each involved a straining of the relevant language, which is incorrect. Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question."





28. Having carefully analysed the respective goods and services, I have come to the conclusion that they are dissimilar.

29. The opponent's goods and services all relate to the heating, ventilation and dehumidification of swimming pools. All of the applicant's goods and services relate to heating and all of them are subject to the following limitation: "all of the aforesaid goods/services being for industrial plants or for industrial applications or purposes only."
30. Swimming pools are found in private homes, in hotels, and can also be provided as publicly funded facilities in places such as schools and leisure centres. None of these settings can be said to be industrial nor can swimming pools themselves be said to be industrial. Therefore, the specific limitations that the goods and services are subject to mean that the goods and services are clearly separate.
31. I consider the fact that both parties' goods and services relate to heating to be too high a level of generality for there to be a finding of similarity. While I note that the opponent has filed evidence seeking to show that there are some suppliers that cater to both the specific swimming pool and the general commercial and institutional markets in terms of their heating requirements, I consider that the respective goods and services will typically be sold through divergent trade channels that reflect the specialist nature of swimming pools and the particular type and scale of industrial requirements.
32. I conclude that the respective goods and services are dissimilar. To find otherwise would be to strain the ordinary and natural meaning of the terms at issue and to fail to give proper effect to the limitations that are in play.
33. As some degree of similarity between the goods and services is required for there to be a likelihood of confusion under section 5(2)(b),¹ the opposition fails in its entirety at this point. However, if I am wrong, and there is some degree of similarity between the goods and services, I will analyse the marks and consider the question of likelihood of confusion.

¹ *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA

Comparison of the marks

34. The respective trade marks are shown below:

Opponent's mark	Applicant's marks
<p>HEATSTAR</p>	<div style="text-align: center;">  <p>(1 of 4)</p> </div> <div style="text-align: center;">  <p>(2 of 4)</p> </div> <div style="text-align: center;">  <p>(3 of 4)</p> </div> <div style="text-align: center;">  <p>(4 of 4)</p> </div>

35. The opponent's mark is a plain word consisting of the conflated words "HEAT" and "STAR", the overall impression being made by the mark residing in that word alone.

36. The applicant's marks are all figurative marks featuring solid rectangles with the word "HEATSTOR" inside (the word "HEATSTOR" consisting of the conflated words "HEAT" and "STAR"). To the left of the word is a coil that is taller than the letters of the word, and which joins on to the end of the letter "R" via a "wire". The "O" of the word "HEATSTOR" is a solid circle with wavy lines inside. The colours used in the marks are respectively white on black, black on orange, orange on black, and orange on navy blue. The word "HEATSTOR" is marginally the more dominant element within the mark, but the figurative elements – the coil and the wire and the solid circle with the wavy lines inside – play a significant part in forming the overall impression made of it.

37. Visually, both marks contain conflated words, the first word of which is the descriptive word “HEAT” and then they differ to the extent that the second word of the conflated word is “STAR”/“STOR”, the “O” of “STOR” being a solid circle with wavy lines inside. The applicant’s marks also contain a coil which joins on to the end of the letter “R” via a “wire”. Overall, I find the respective marks to be visually similar to a medium degree.
38. Aurally, the marks are “HEAT-STAR” versus “HEAT-STORE” which are aurally similar to a high degree.
39. Conceptually, the marks share the descriptive word “HEAT” and so they give rise to that concept. The figurative elements of the applicant’s marks - the coil and the wire and the wavy lines – all reinforce the concept of heat. The second word of the conflated words in the opponent’s mark, “STAR”, evokes the concept a “star”, as in someone or something that excels, and is laudatory of the opponent’s goods and services. The second word of the conflated words in the applicant’s marks, “STOR”, is a contraction of the word “store”, as in the storage of heat, and so to that extent the applicant’s marks give rise to a different concept to that of the opponent’s mark.

Average consumer and the purchasing act

40. It is necessary for me to determine who the average consumer is for the goods and services in question; I must then determine the manner in which the goods and services are likely to be selected by the average consumer in the course of trade.
41. 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.
42. 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.

43. Were there to be a degree of similarity between the goods and services, the average consumer for the installation and maintenance of heating, ventilation and dehumidification systems for swimming pools would be a member of the public or a company. They would pay sufficient attention to the specification and cost of such systems so as to exhibit at least an average level of attention.

44. The average consumer for the installation and maintenance of industrial heating systems is a company. They would pay sufficient attention to the specification and cost of such systems so as to pay an above average level of attention.

Distinctive character of the earlier trade mark

45. 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:

“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).”

46. Registered trade marks possess varying degrees of inherent distinctive character, being lower where they are suggestive or allusive of a characteristic of the goods or 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.

47. The earlier mark consists of the conflated words “HEAT” and “STAR”, the former being descriptive of the opponent’s goods and services and the latter being laudatory of the opponent’s goods and services. The mark is inherently distinctive to a very low degree.

48. I now turn to consider whether the distinctiveness of the opponent’s mark has been enhanced through use.

49. I note from the opponent’s evidence, as per paragraph 12 of Paul Scott’s witness statement, that sales under its mark between 2019 and 2024 range from £3.5 million to £5.6 million a year. The cost of its products and services as documented in a sample of invoices for the UK (Exhibit PS3) is of the order of 10 or 20 thousand pounds a time.

50. The opponent markets its products through advertising and the sponsorship of awards. Its marketing expenditure in the years 2019 to 2013, as per paragraph 16 of Paul Scott’s witness statement amounts to a total £144,500.

51. While the opponent describes itself as a “market leader”, it has not stated what its precise market share is nor has it said what the size of the relevant market is. While its sales figures are not inconsiderable, its marketing expenditure is relatively modest and, overall, the evidence is not sufficient to establish that the distinctiveness of the earlier mark has been enhanced through use.

Likelihood of confusion

52. I must now feed all of my earlier findings into the global assessment of the likelihood of confusion, keeping in mind the following factors: i) the interdependency principle, whereby a lesser degree of similarity between the goods or services may be offset by a greater similarity between the marks, and vice versa (*Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*); ii) the principle

that the more distinctive the earlier mark is, the greater the likelihood of confusion (*Sabel BV v Puma AG*), and; iii) the factor of imperfect recollection i.e. that consumers rarely have the opportunity to compare marks side by side but must rather rely on the imperfect picture that they have kept in their mind (*Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V.*).

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

54. If I am wrong in my finding that the goods and services are dissimilar and there is a degree of similarity between them, I am mindful of the fact that both the opponent's mark and the applicant's marks feature conflated words where the first word is the entirely descriptive "HEAT". As such, the average consumer, paying at least an average level of attention, will discount the presence of that descriptive word and focus their attention on the second of the conflated words, and they will notice that they differ. The opponent's mark has the laudatory "STAR", which evokes the concept of someone or something that excels, whereas the applicant's marks have "STOR", a contraction of the word "store", as in storage, a different concept. Another point of difference is that the "O" of the word "STOR" is a solid circle with wavy lines inside and the other figurative elements in the applicant's marks – the coil and the wire – may not go unnoticed. Overall, I find that there is no likelihood of direct confusion in this case.

55. Given that the average consumer will notice the differences between the marks, I will now consider the question of indirect confusion.

56. I remind myself that the opponent's mark is inherently distinctive to a very low degree. It consists of the conflated words "HEAT" and "STAR", the former being descriptive and the latter being laudatory. Given the prevalence of the use of the word "heat" on the market for goods and services to do with heating, the average

consumer, on encountering the respective marks, would see the presence of the word “HEAT” as coincidental. They would not consider it to be indicative of the marks emanating from the same or related undertakings and so there is no possibility of indirect confusion.

CONCLUSION

57. Subject to appeal, the opposition fails in its entirety.

COSTS

58. The applicant has been entirely successful and is entitled to a contribution towards its costs. The relevant scale is contained in Tribunal Practice Notice 1/2023 and I award costs as follows:

Preparing a statement and considering the other side’s statement:	£250
Preparing evidence and considering and commenting on the other side’s evidence:	£750
Preparation of submissions:	£500
Total:	£1500

59. I therefore order Heatstar Limited to pay Caldera Heat Batteries Limited the sum of £1500. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 25th day of March 2026

John Williams
For the Registrar