

**BL O/0275/26**

IN THE MATTER OF THE TRADE MARKS ACT 1994

CONSOLIDATED PROCEEDINGS

IN THE MATTER OF

REGISTRATION NO UK3166146 IN THE NAME OF QINGDAO ECOPURE FILTER CO., LTD AND (I) AN APPLICATION FOR REVOCATION FOR NON-USE THERETO UNDER NO. 506149 AND (II) AN APPLICATION FOR A DECLARATION OF INVALIDITY THERETO UNDER NO. 506796 BY WATERDROP MICRODRINK GMBH

AND

REGISTRATIONS NOS. UK917881798 AND UK3696880 IN THE NAME OF WATERDROP MICRODRINK GMBH AND APPLICATIONS FOR DECLARATIONS OF INVALIDITY THERETO UNDER NO. 505859 AND 505857 BY QINGDAO ECOPURE FILTER CO., LTD

AND

APPLICATIONS NOS. UK3845931 AND UK3867136 IN THE NAME OF QINGDAO ECOPURE FILTER CO., LTD AND OPPOSITIONS THERETO UNDER NOS. 440448 AND 441523 BY WATERDROP MICRODRINK GMBH

AND IN THE MATTER OF AN APPEAL FROM THE DECISION OF T. PINTO (O/0817/25) DATED 5 SEPTEMBER 2025.

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DECISION  
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**Introduction**

1. This is an appeal by Qinqdao Ecopure Filter Co., Ltd ("**Appellant**") from decision O/0817/25 of Teresa Pinto ("**Decision**") concerning six consolidated actions between the Appellant and Waterdrop Microdrink GmbH ("**Respondent**") concerning various UK registered trade marks owned by the two parties for the brand name "WATERDROP".
2. The six actions were, in brief, as follows.
3. The **first action** was application no. 506149 by the Respondent for revocation for non-use of the Appellant's trade mark registration no. UK3166146 ("**Qinqdao's Mark**"), details of which are set out below:


<b>Mark</b>	<b>Filing date</b>	<b>Registration date</b>	<b>Goods</b>
Waterdrop	24/05/2016	26/08/2016	<b>Class 11: Water filters; Air filtering installations.</b>

4. The Respondent contended that Qinqdao's Mark had not been used in the five year period following the date of registration.

5. The **second action** was application no. 506796 by the Respondent for invalidity under ss. 5(2)(a) and (b) of the Trade Marks Act 1994 (“**the Act**”) of Qinqdao’s Mark. The application was based on the Respondent’s earlier mark no. UK914996888 (“**888 Mark**”), details of which are set out below:

Mark	Filing date	Registration date	Goods relied upon
WATERDROP	13/01/2016	28/04/2016	<b>Class 32:</b> <i>Preparations for making beverages; Essences for making beverages; Pastilles for effervescing beverages; Powders for the preparation of beverages.</i>

6. The **third action** was application no. 505859 by the Appellant for partial invalidity under s. 5(2)(b) of the Act of the Respondent’s trade mark registration no. UK917881798 (“**798 Mark**”), details of which are set out below:

Mark	Filing date	Registration date	Goods
	29/03/2018	01/08/2018	<p><b>Class 5:</b> <i>Vitamin supplements; Vitamin tablets; Vitamin preparations; Vitamin drinks; Effervescent vitamin tablets.</i></p> <p><b>Class 21:</b> <i>Decanters; Glasses [drinking vessels]; Tumblers; Drinking vessels.</i></p> <p><b>Class 30:</b> <i>Flavourings, other than essential oils, for beverages; Flavourings for beverages.</i></p> <p><b>Class 32:</b> <i>Beverages containing vitamins; Soft drinks; Preparations for making beverages; Essences for making beverages; Powders for the preparation of beverages; Pastilles for effervescing beverages.</i></p>

7. The application was directed against the Class 21 goods only, and was based on all the registered goods of Qinqdao’s Mark.
8. The **fourth action** was application no. 505857 by the Appellant for partial invalidity under ss. 5(1), 5(2)(a), 5(3) and 5(4)(a) of the Respondent’s mark no. UK3696880 (“**880 Mark**”), details of which are set out below:

Mark	Filing date	Registration date	Goods
WATERDROP	17/09/2021	29/07/2022	<b>Class 5:</b> <i>Vitamin supplements; Vitamin tablets; Vitamin preparations; Effervescent vitamin tablets; Vitamin drinks.</i>

			<p><b>Class 6:</b> <i>Sealing caps of metal; Closures of metal; Bottle closures of metal.</i></p> <p><b>Class 9:</b> <i>Optical and/or electromagnetic and/or electric equipment for determining the fill level of a container integrated in closures for containers (including screw closures); Communications equipment (in particular featuring a data interface featuring short-range radio transmission) for data exchange with a smartphone, tablet, PC or the like integrated in closures for containers (including screw closures); Mobile Apps.</i></p> <p><b>Class 11:</b> <i>Water filters; Water filtering units; Membranes for the filtration of water; Water filtering apparatus for domestic use; Water conditioning units; Water treatment apparatus for water softening; Chilled purified water dispensers; Equipment for generating electromagnetic radiation for disinfecting containers and/or for disinfecting container content; UVC spotlights for the purification of a liquid; Generators for ultraviolet radiation (UVC); Water purification units; Water disinfection apparatus.</i></p> <p><b>Class 21:</b> <i>Decanters; Glasses [drinking vessels]; Tumblers; Drinking vessels; Bottles; Glass flasks [containers]; Heat-insulated containers for beverages; Insulating flasks; Tea cups; Teapots; Tea services [tableware]; Tea caddies.</i></p> <p><b>Class 32:</b> <i>Beverages containing vitamins; Non-alcoholic beverages; Preparations for making beverages; Essences for making beverages; Pastilles for effervescing beverages; Powders for the preparation of beverages.</i></p>
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9. The Appellant relied upon Qinqdao's Mark as follows:

- ss. 5(1) and 5(2) – all goods registered, directed against the goods in classes 11 and 21;
- s. 5(3) – reputation claimed in relation to *water filters*, directed against the goods in classes 6 and 9 save for *Mobile Apps*;

- s. 5(4) – goodwill claimed in relation to *water filters* and *air filtering installations*, directed against the goods in classes 6 and 9 save for *Mobile Apps*.

10. The **fifth action** was a pair of oppositions (no. 440448) by the Respondent to the Appellant’s trade mark application no. UK3845931, details of which are set out below:

Mark	Filing date	Publication date	Goods opposed
Waterdrop	04/11/2022	27/01/2023	<b>Class 21:</b> <i>Insulating sleeves for beverage cans; Reusable plastic water bottles sold empty; reusable stainless steel water bottles sold empty; Drinking cups; ceramics for household purposes; drinking vessels).</i>

11. The Respondent brought the oppositions under ss. 5(1) and 5(2)(a)<sup>1</sup> and relied upon the ‘880 Mark and all of the goods in classes 5, 6, 9,11, 21 and 32 for which that mark is registered.

12. The **sixth action** was an opposition (no. 441523) by the Respondent to the Appellant’s trade mark application no. UK3867136, details of which are set out below:

Mark	Filing date	Publication date	Goods opposed
WATERDROP	12/01/2023	31/03/2023	<b>Class 7:</b> <i>Apparatus for aerating water; Machines for the production of soda water and sparkling beverages; beverage preparation machines, electromechanical; apparatus for aerating beverages.</i>

13. The Respondent brought the opposition under s. 5(2)(a)<sup>2</sup> and relied upon the ‘880 Mark and some of the goods in class 32 covered by it, namely *Preparations for making beverages; Essences for making beverages; Pastilles for effervescing beverages; Powders for the preparation of beverages.*

14. Each of the parties filed counterstatements denying the claims made. Both parties filed evidence. A hearing took place on 29 January 2025.

15. Ms T. Pinto for the Registrar held that each party achieved a degree of success (as summarised below). On 3 October 2025 the Appellant filed a series of Notices to Appeal to the Appointed Person against the Decision under Section 76 of the Trade Marks Act 1994.

### The Hearing Officer’s decision

16. The Hearing Officer held as follows (in summary, and insofar as is relevant to this appeal):

<sup>1</sup> Initially the oppositions were brought under ss. 5(1), 5(2)(a), 5(3), 5(4)(a) and 3(6), however only the oppositions under 5(1) and 5(2)(a) were pursued, and those grounds concerned only the goods listed in the table.

<sup>2</sup> Initially the opposition was brought under ss. 5(2)(a), 5(3) and 5(4)(a), however only the opposition under 5(2)(a) was pursued, and that ground concerned only the goods listed in the table.

- a. **First action:** The Appellant failed to establish genuine use of Qinqdao's Mark in respect of *Air filtering installations*, genuine use in respect of *Water filters* having been conceded by the Respondent by the time of the hearing. Qinqdao's Mark was accordingly revoked for *Air filtering installations* from 27 August 2021.
- b. **Second action:** The Respondent restricted the invalidity attack to *water filters* only, conditional upon the revocation for non-use succeeding in relation to *air filtering installations*. The '888 Mark was put to proof of use, however the Appellant conceded genuine use in relation to *Preparations for making beverages; Pastilles for flavouring beverages* (the registered term is *Pastilles for effervescing beverages*) and *Powders for the preparation of beverages* (in class 32) but only insofar as they cover goods used for flavouring.

The Hearing Officer held that a fair specification for the '888 Mark was *Preparations for making flavoured water; Essences for making flavoured water; Powders for making flavoured water* in Class 32. Those goods are dissimilar to those for which Qinqdao's Mark is registered following the first action (*Water filters*). The invalidity action therefore failed, and accordingly Qinqdao's Mark remained registered for *Water filters*.

- c. **Third action:** the goods for which Qinqdao's Mark was registered – *Water filters, Air filtering installations* – are dissimilar to the contested goods in the '798 Mark (*Decanters; Glasses [drinking vessels]; Tumblers; Drinking vessels*). The invalidity action therefore failed, and accordingly the '798 Mark remained registered for *Decanters; Glasses [drinking vessels]; Tumblers; Drinking vessels* in Class 21.
- d. **Fourth action:** the invalidity action succeeded under s. 5(1) in relation to the contested goods in Class 11. The contested goods in class 21 (*Decanters; Glasses [drinking vessels]; Tumblers; Drinking vessels; Bottles; Glass flasks [containers]; Heat-insulated containers for beverages; Insulating flasks; Tea cups; Teapots; Tea services [tableware]; Tea caddies*) are dissimilar to *water filters*. The invalidity action under s. 5(2)(b) therefore failed.

The Appellant failed to establish that it had a reputation in the UK at the relevant date, and the invalidity action under s. 5(3) therefore failed. The invalidity action under s. 5(4) also failed. Accordingly, the '880 Mark was invalidated in respect of the class 11 goods only.

- e. **Fifth action:** *Reusable plastic water bottles sold empty; reusable stainless steel water bottles sold empty; Drinking cups; ceramics for household purposes; drinking vessels* are (or include) types of drinking vessels and as such are encompassed by *Drinking vessels* in the '880 Mark. The opposition under s. 5(1) accordingly succeeded against those goods. *Insulating sleeves for beverage cans* are dissimilar to any of the goods in the '880 mark. Accordingly, the opposition failed in relation to *Insulating sleeves for beverage cans* in Class 21.
- f. **Sixth action:** *Apparatus for aerating water; apparatus for aerating beverages* are dissimilar to any of the goods in the '880 Mark. The s. 5(2)(b) opposition therefore failed in relation to those goods. The remaining goods - *Machines for the production of soda water and sparkling beverages; beverage preparation machines, electromechanical* – are similar to a low to medium degree to *Preparations for making beverages*. The Hearing Officer held that there is a likelihood of direct confusion. Accordingly, the opposition was

successful against *Machines for the production of soda water and sparkling beverages; beverage preparation machines, electromechanical* in Class 7.

### Grounds of Appeal

17. Neither party sought to appeal the outcomes of the First or Second actions, and accordingly I need say no more about them.
18. In relation to the remaining actions, the Appellant's Grounds of Appeal are as follows:
  - a. **Third action:** The Hearing Officer erred by not finding that *water filters* are similar to the *Decanters; Glasses [drinking vessels]; Tumblers; Drinking vessels* in the '798 Mark;
  - b. **Fourth action:** The Hearing Officer erred by not finding that *water filters* are similar to the *Decanters; Glasses [drinking vessels]; Tumblers; Drinking vessels; Bottles; Glass flasks [containers]; Heat-insulated containers for beverages; Insulating flasks; Tea cups; Teapots; Tea services [tableware]; Tea caddies* in the '880 Mark;
  - c. **Fifth action:** This is a conditional appeal – the Appellant contends that in the event that the '880 Mark is invalidated in relation to the Class 21 goods, the opposition against UK3845931 should fail;
  - d. **Sixth action:** The Hearing Officer erred in finding similarity between the Respondent's goods in class 32 *Preparations for making beverages; Essences for making beverages; Pastilles for effervescing beverages; Powders for the preparation of beverages* and the Appellant's goods in class 7 *Machines for the production of soda water and sparkling beverages; beverage preparation machines, electromechanical*.
19. The Appellant's representative, Tom Brand, expanded upon the above in his skeleton argument and at the hearing, and I set out below further details as are necessary to understand my overall conclusions. The Respondent filed a skeleton argument in response and its representative, Darren Meale, made oral submissions at the hearing. I thank both advocates for their clear written and oral submissions, which I found very helpful.

### Standard of review

20. The approach to be adopted in an appeal hearing has been laid down a number of times in case law, most recently in *Iconix Luxembourg Holdings SARL v. Dream Paris Europe Inc* [2025] UKSC 25 at §§94-95:

"94. It is perhaps obvious, and certainly an inevitable conclusion drawn from experience, that reasonable minds, and in particular reasonable judicially trained minds, each faithfully applying the relevant law and principles, will come to different conclusions about the answer to these multifactorial questions. While of course the decision of an appellate court trumps that of the court below, the law has imposed structured constraints designed to prevent a free for all in a higher court whenever a party (with the necessary resources) wishes to challenge the first instance decision of the trial judge. The reasons for these constraints are set out in a string of well-known authorities including, in the intellectual property context, *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5; [2014] FSR 29, per Lewison LJ at para 114. The reasons there set out relevantly include the following:

- (i) The trial is not a dress rehearsal. It is the first and last night of the show.

(ii) Duplication of the trial judge's role on appeal is a disproportionate use of the limited resources of an appellate court.

(iii) In making his decisions the trial judge will have regard to the whole of the sea of evidence presented to him, whereas an appellate court will only be island hopping.

95. In *Lifestyle Equities CV v Amazon UK Services Ltd* [2024] UKSC 8; [2024] Bus LR 532 this court reviewed those constraints in a trade mark context. After citing from the *Fage* case this court in a joint judgment said, at paras 49- 50:

"49. That does not, however, mean the appeal court is powerless to intervene where the judge has fallen into error in arriving at an evaluative decision such as whether an activity was or was not targeted at a particular territory. It may be possible to establish that the judge was plainly wrong or that there has been a significant error of principle; but the circumstances in which an effective challenge may be mounted to an evaluative decision are not limited to such cases. Many of the important authorities in this area were reviewed by the Court of Appeal in *In re Sprintroom Ltd* [2019] 2 BCLC 617, paras 72–76. There, in a judgment to which all members of the court (McCombe, Leggatt and Rose LJ) contributed, the court concluded, at para 76, in terms with which we agree, that on a challenge to an evaluative decision of a first instance judge, the appeal court does not carry out the balancing exercise afresh but must ask whether the decision of the judge was wrong by reason of an identifiable flaw in the judge's treatment of the question to be decided, such as a gap in logic, a lack of consistency, or a failure to take into account some material factor, which undermines the cogency of the conclusion.

50. On the other hand, it is equally clear that, for the decision to be 'wrong' under CPR r 52.21(3), it is not enough to show, without more, that the appellate court might have arrived at a different evaluation."

21. Further guidance was provided in *Axogen v Aviv* [2022] EWHC 95 (Ch) at §24-25:

"24. Although I was referred to numerous cases on the subject (including *English v Emery Demibold & Struck Ltd* [2002] 1 WLR 2409, *REEF Trade Mark* [2003] RPC 5, *Fine & Country Ltd v Okotoks Ltd* [2014] FSR 11, *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5, *Shanks v Unilever Plc* [2014] RPC 29, *TT Education Ltd v Pie Corbett Consultancy* [2017] RPC 17, *Apple Inc v Arcadia Trading Limited* [2017] EWHC 440 (Ch), *Actavis Group PTC v ICOS Corporation* [2019] UKSC 1671 and *NINEPLUS O/039/21*), the approach of the appeal court to a statutory appeal under section 76(1) of the TMA is uncontroversial. I bear the following principles, relevant to the issues before me, firmly in mind:

- i) The appeal is by way of a review, not a rehearing (see *TT Education Ltd v Pie Corbett Consultancy Ltd* (O/017/17) at [52(i)]);
- ii) The appeal court will allow an appeal where the decision of the lower court was "wrong" (see CPR 52.11). Neither surprise at a Hearing Officer's conclusion, nor a belief that he or she has reached the wrong decision suffices to justify interference (*NINEPLUS O/039/21* at [14]);
- iii) The decision of the lower court will be "wrong" if the judge makes an error of law, which might involve asking the wrong question, failing to take account of relevant

matters or taking into account irrelevant matters. Absent an error of law, the appellate court would be justified in concluding that the decision of the lower court was wrong if the judge's conclusion was "outside the bounds within which reasonable disagreement is possible" (*Actavis Group* at [81]);

- iv) The approach required by the appeal court depends on a number of variables including the nature of the evaluation in question (*REEF Trade Mark* [2003] RPC per at [26]). There is a "spectrum of appropriate respect for the Registrar's determination depending on the nature of the decision" (*TT Education* at [52(ii)]), with decisions of primary fact at one end of the spectrum and multi-factorial decisions (of the type which the parties agree were made in this case by the Hearing Officer) being further along the spectrum.
- v) In the case of a multifactorial assessment or evaluation, involving the weighing of different factors against each other, the appeal court should show a real reluctance, but not the very highest degree of reluctance, to interfere in the absence of a distinct and material error of principle. Special caution is required before overturning such decisions (*TT Education* at [52(iv)], *REEF* at [28] and *Fine & Country* at [50]-[51]).
- vi) An error of principle is not confined to an error as to the law but extends to certain types of error in the application of a legal standard to the facts in an evaluation of those facts. The evaluative process is often a matter of degree upon which different judges can legitimately differ and an appellate court ought not to interfere unless it is satisfied that the judge's conclusion is outside the bounds within which reasonable disagreement is possible (*Actavis Group* at [80]).
- vii) Another variable to be taken into account will be "the standing and experience of the fact-finding judge or tribunal" (*REEF* at [26], *Actavis Group* at [78]). Expert tribunals are charged with applying the law in the specialised fields and their decisions should be respected unless it is quite clear that they have misdirected themselves in law. Appellate courts should not rush to find such misdirections simply because they might have reached a different conclusion on the facts (*Shanks* at [28] citing the warning given by Baroness Hale in *AH (Sudan) v Secretary of State for the Home Department* [2007] UKHL 49).
- viii) The appellate court should not treat a judgment as containing an error of principle simply because of its belief that the judgment or decision could have been better expressed; "The duty to give reasons must not be turned into an intolerable burden" (see *REEF* at [29]). The reasons need not be elaborate. There is no duty on a judge, in giving her reasons, to deal with every argument presented by counsel in support of his case. It is sufficient if what she says shows the basis on which she has acted (*English* at [17], *Fage* at [115]). The issues the resolution of which were vital to the judge's conclusions should be identified and the manner in which she resolved them explained (*English* at [19]).
- ix) In evaluating the evidence, the appellate court is entitled to assume, absent good reason to the contrary, that the first instance judge has taken all of the evidence into account (*TT Education* at [52(vi)])."

22. To the above should be added the judgment of the Court of Appeal in *Lidl Great Britain Ltd v. Tesco Stores Ltd* [2024] EWCA Civ 262, where Arnold LJ said at §110 “It is common ground that, in so far as the appeals challenge findings of fact made by the judge, this Court is only entitled to intervene if those findings are rationally insupportable”.

23. I shall bear all the above in mind when reviewing the Decision.

## Discussion

### (1) The “drinking vessel” appeals

24. The appeals in relation to the third, fourth and fifth actions all relate to the same issue, so I shall deal with them together.

25. In its Grounds of Appeal, the Appellant used the term “drinking vessels” to refer to all the contested goods (*Decanters; Glasses [drinking vessels]; Tumblers; Drinking vessels* in the ‘798 Mark; *Decanters; Glasses [drinking vessels]; Tumblers; Drinking vessels; Bottles; Glass flasks [containers]; Heat-insulated containers for beverages; Insulating flasks; Tea cups; Teapots; Tea services [tableware]; Tea caddies*) in the ‘880 Mark), and I shall adopt that same terminology.

26. The Hearing Officer set out the relevant law in relation to comparison of goods at §§97-102 and §§108-110. No criticism is made of her account of the law. She noted at §121 the Appellant’s contention that water filters often include a drinking container. She then went on at §§124-127 to consider the evidence of products available on the market as relied upon by the Appellant.

27. At §128 she said “I accept that the registered term *water filters* would include water filtration jugs”. She then went on to consider the Respondent’s arguments at §§129-134. Her reasoning for the findings of dissimilarity in relation to each of the “drinking vessels” goods was as follows:

- *Decanters* are used only to store and serve alcoholic drinks, whereas water filter jugs are used to filter, store and serve alcoholic drinks. Water filter jugs use replaceable cartridges or some other forms of filter to remove contaminants and impurities from water and make it drinkable; they are normally kept in the fridge. Conversely, decanters are used to store and serve alcoholic drinks and are normally kept outside the fridge. The goods are neither complementary nor in competition and are not usually produced by the same manufacturers. The goods naturally target different consumers. Whilst the goods can all be sold in shops selling household goods, they are unlikely to be found in close proximity to each other (§§136-137).
- *Glasses [drinking vessels]; Tumblers; Drinking vessels* are all used to hold beverages or liquids for consumption and drinking. They are one step removed from the earlier water filter jugs which are used for filtering and pouring water (§138).
- The same reasoning applies to *Bottles; Glass flasks [containers]; Heat-insulated containers for beverages; Insulating flasks; Tea cups; Teapots; Tea services [tableware]; Tea caddies* (§147).

28. The Appellant makes four specific criticisms of the Decision which I now address. First, it contends in the Grounds of Appeal that the Hearing Officer failed to take account of the possibility of post-sale confusion, relying on the Supreme Court decision in *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc* [2025] UKSC 25. That is correct, however no such argument was run before Hearing Officer, who can hardly be criticised for failing to address unpleaded arguments. The Appellant contended during the appeal hearing that “post-sale

*confusion is part and parcel of consideration as to whether there is confusion*". I am unable to agree – on the contrary, post-sale confusion is a relatively niche area of trade mark law, and unless specifically relied upon I consider that a Hearing Officer is entitled not to take it into consideration.

29. Secondly, it contends that the Hearing Officer was wrong to conclude that *decanter*s are used to store and serve alcoholic drinks, as opposed to water. It contends that she was invited by the Respondent during the hearing to take judicial notice of the fact that it is a sort of container that is used for wine, and that she was wrong to do so. In that regard, the Appellant relies on the results of an Amazon search purportedly showing decantera used in relation to non-alcoholic beverages, including water.
30. However, whilst it is correct to say that the Hearing Officer was invited to take judicial notice in relation to *decantera*, her actual decision on the point was based upon a dictionary definition rather than judicial notice:

"Cambridge online dictionary defines a decanter as "*a decorative glass container for wine and other alcoholic drinks, with a part that fits into the top for closing it*". Hence, a decanter is only used for alcoholic drinks" (§136).

31. Neither party chose to file evidence in relation to the meaning of *decanter*, and the Hearing Officer was in the circumstances entitled to consult a dictionary for assistance. There is accordingly no error of principle.
32. Thirdly, with regard to *Heat insulated containers for beverages*, the Appellant contends that the Hearing Officer wrongly stated "there is no evidence that a water filter can heat water" (§150). Specifically, with regard to a product relied upon in the Appellant's filed evidence – shown below – she said "it is not described as a water filter" (§151).

Portable Reverse Osmosis (



Waterdrop K19 Instant Hot Water  
Reverse Osmosis System  
★★★★★ 12 reviews  
£359.99

33. The Appellant contends that a "reverse osmosis system" is by definition a water filtration system. Whereas that is correct, the Hearing Officer's analysis in full at §151 states:

*"First, the item shown in this evidence is not described as a water filter; it is a hot water dispenser, though it might be possible that it incorporates a filtering system. Consequently, it cannot be said that water filter includes hot water dispensers with a filtering system. Accordingly, I reject the argument that both set of goods can be heat-insulated containers for beverages"* (my underlining).

34. Accordingly, the Hearing Officer expressly took into account that a filtering system might be included in the product, and therefore made no error in her analysis.
35. The fourth criticism arose during the appeal hearing itself. The Appellant's advocate said "Our criticism is not that the hearing officer failed to consider the facts put to her, it is given the facts she accepted and the products she is comparing, the conclusion of dissimilarity is outside the range of a reasonable outcome". That therefore is an argument that the Hearing Officer's finding of dissimilarity between *water filters* and the various "drinking vessels" was "outside the bounds within which reasonable disagreement is possible" (*Actavis Group* at §81).
36. The Respondent complained that no such argument was pleaded in the Appellant's Grounds of Appeal. The Appellant denied that contention, relying on the following passage in its Grounds:

"Paragraph 138 of the Decision concludes, with little or no justification, that: "goods ... used to hold beverages or liquids for consumption and drinking ... are one step removed from the earlier water filter jugs which are used for filtering and pouring water (as opposed to drinking). These goods are dissimilar".

37. The issue of the level of detail required in an appellant's Grounds of Appeal was addressed by Simon Thorley QC (as he then was), sitting as the Appointed Person, in *COFFEEMIX Trade Mark* [1998] R.P.C. 717. Mr Thorley QC, after citing the relevant parts of the Trade Mark Rules 1994 (which were then in force) said:

"It will thus be seen that the Statement of Grounds of Appeal and Statement of Case form an important part in the appeal procedure. The provisions of the Act providing for a right of appeal to the Appointed Person are significant in that they provide for a quick and cheap method of testing any decision of the registrar. The fact that no appeal lies from the decision of the Appointed Person enables finality at an early date. In the case of a trade mark application, this is important not only to the applicant but also in the wider public interest, so that the interested public may know at an early date the extent to which a monopoly by way of trade mark rights are to be granted to rival traders.

Rule 58 provides both the registrar and the Appointed Person with the opportunity, having considered the Statement of Grounds of Appeal and Statement of Case, to conclude, pursuant to section 76(3) of the Act, that a point of general legal importance may be involved which justifies any additional delay and expense which would be occasioned by a reference to the High Court followed, possibly, by an appeal to the Court of Appeal and beyond.

It is plain from section 76(3) and from rules 57 and 58 that, if a matter is one which either the registrar or the Appointed Person believes might properly be transferred to the Court, observations by the other parties should be made at an early date so that no unnecessary delays occur.

The above considerations highlight the importance of a full Statement of Grounds of Appeal and Statement of Case being served pursuant to rule 57. When I say full, I do not mean that the document should be prolix or, indeed, drafted with any degree of formality, such as might be the case as with a Notice of Appeal to the Court of Appeal. It must be full in the sense that it must outline each of the grounds of appeal relied upon and state the case relied upon in support of those grounds. It should be as succinct as possible but it must be complete".

38. Applying the above, I do not consider that the passage in the Appellant's Grounds cited at §36 above comes anywhere close to sufficiently pleading an argument that a finding was "outside the bounds within which reasonable disagreement is possible". As I explained in *ONE FOR O/1211/23* at §17:

"The Grounds of Appeal are arguably a more important document in appeals to the Appointed Person than in appeals to the High Court or Court of Appeal. Unlike the latter, the Grounds of Appeal in appeals to the Appointed Person are not accompanied by a skeleton argument, and there are no sequential skeleton arguments – rather, each party files its skeleton argument shortly before the hearing. Consequently, a very important purpose of the Grounds of Appeal in appeals to the Appointed Person is to properly delineate the arguments on appeal so that the Respondent is given good advance notice of the points they have to address in their skeleton argument and at the hearing".

39. The Respondent would have had no forewarning, from reading the Grounds, that the Appellant was intending to make the above argument. The Respondent's skeleton argument, unsurprisingly, does not address any such argument. In my view it would be most unfair, and not in the interests of justice, to permit the Appellant to advance such an unpleaded argument for the first time at the hearing.

40. Given that the Appellant's four specific criticisms of the Decision fall away, I now turn to the remainder of the Appellant's arguments. It contends as follows:

- In the relevant industry, filtration devices and drinking containers are closely related. Water filters often include a container such as a pitcher or decanter to hold the filtered water, which is then used for drinking;
- Consumers are entitled to assume – and would assume – that two similarly-branded drinking vessels – one with and one without integrated water filtration functionality – derive from the same commercial source;
- The goods all overlap in trade channels: there will be an overlap in users and the goods are complementary;
- Accordingly, drinking vessels are similar to water filters, and there is a likelihood of confusion.

41. The primary difficulty for Appellant is that all the above was argued before the Hearing Officer and rejected by her in the Decision. Other than the four specific criticisms of the Decision which I addressed above, the Appellant's Grounds of Appeal simply reiterate submissions made before the Hearing Officer, and no error of principle is identified in relation to the same. The Hearing Officer was required to take into account the evidence and arguments submitted by both sides and make a decision. Whereas a different Hearing Officer may have come to a different conclusion in relation to similarity of goods, that is not a valid reason to overturn the Decision. Indeed, for what it is worth, I agree with the Hearing Officer and will add a few words of my own on the matter. The Hearing Officer accepted the Appellant's contention that *water filters* would include water filtration jugs. She was then required to consider whether the various "drinking vessels" are similar to water filtration jugs. Whereas, *prima facie*, "drinking vessels" could be said to be similar to jugs, the critical point is that none of the drinking vessels incorporate a water filter, and therefore the integer of commonality with the registered goods

is lost. That is what I understand the Hearing Officer to have meant when she said that drinking vessels are “one step removed” from water filtration jugs.

42. The appeals in relation to the third and fourth actions are accordingly dismissed. Furthermore, given that the appeal in relation to the fifth action was conditional on the ‘880 Mark being invalidated in relation to the Class 21 goods, that appeal is also dismissed.

**(2) Appeal in relation to the sixth action**

43. The Grounds of Appeal in relation to the sixth action are concise, and read:

“Our submission is that the Hearing Officer erred in finding similarity between the Opponent’s goods in class 32 “*Preparations for making beverages; Essences for making beverages; Pastilles for effervescing beverages, Powders for the preparation of beverages*” on the one hand and the Appellant’s goods in class 7 “*Machines for the production of soda water and sparkling beverages, beverage preparation machines, electromechanical*” on the other. The degree of complementarity is low – especially so in relation to *Machines for the production of sparkling beverages* – because the Opponent’s goods clearly have a commercial life entirely independent from machines. The finding (paragraph 202 of the Decision) that the Opponent’s “preparations are sufficiently broad to include carbon dioxide for making soda water” in machines in class 7 stretches the interpretation of complementarity too far given there is no evidence to indicate that the Opponent’s goods might be, or in fact are, used in machines”.

44. The Appellant’s skeleton argument, however, states that it “identifies three main appeal issues:

- a. Whether the Hearing Officer erred in law in her treatment of the specification of the earlier mark UK00003696880, in particular by effectively re-expanding the class 32 terms to cover “carbon dioxide for making soda water” contrary to her own fair-specification reasoning elsewhere in the decision.
- b. Whether the Hearing Officer misapplied the Canon / Extreme Networks / Unicorn line of authority on similarity of goods by finding “low to medium” similarity on the basis of an over-extended notion of complementarity, unsupported by evidence and assessed at too high a level of generality.
- c. Whether, having found only low to medium similarity between consumable flavour preparations and electromechanical beverage machines, the Hearing Officer erred in concluding that there was a likelihood of confusion simply because the marks are identical, without a proper, reasoned global appreciation”.

45. As with the “drinking vessel” appeal, the Respondent objected at the hearing that the Appellant’s skeleton argument raised unpleaded arguments. Specifically, that issues (a) and (c) above were not foreshadowed in the Grounds.

46. I agree with the Respondent. §§201-202 of the Decision, the latter of which is expressly referred to in the Grounds, read:

“201. In relation to *beverage preparation machines, electromechanical*, I accept that they are sufficiently broad to include machines that make beverages using WMG’s preparations. Hence, whilst the nature, purpose and method of use of the goods might differ, they are complementary 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. Further, the goods are likely to be distributed through the same trade channels and manufactured by the same producers. Overall, I consider the goods to be similar to a low to medium degree.

202. Lastly, *machines for the production of soda water and sparkling beverages*. I found this to be one of the trickiest comparisons. Ms Fuller argued that these goods do not require additives and should be considered together with the apparatus for aerating water because “if you are just making fizzy water you are explicitly not using any additives because you are just making water”. Conversely, Mr Meale argued that these goods are closely related to at least “preparations for making beverages” and are “are two sides of the same coin”. In this connection, he argued that they can both be used to make the same product or, more likely, they will use those class 32 goods in the class 7 goods to make beverages. Collins online dictionary describe soda water as “an effervescent beverage made by charging water with carbon dioxide under pressure” indicating that the product is made using an additive, i.e. carbon dioxide and mechanical pressure. On that basis, I think the same reasons as those I set out above apply, on the basis that WMG’s preparations are sufficiently broad to include carbon dioxide for making soda water using Quindao’s machines in class 7. Overall, I consider the goods to be similar to a low to medium degree”.

47. Even reading the Grounds alongside those paragraphs, there is no indication at all that the Appellant objects to the “re-expansion” of the Respondent’s Class 32 goods, nor that it contends that the Hearing Officer erred in her analysis of likelihood of confusion. Again, it would be unfair, and contrary to the interests of justice, to permit the Appellant to advance those two arguments for the first time at the hearing.
48. Accordingly, I shall confine my analysis to issue (b) cited at §44 above, read alongside the Grounds. The Appellant makes three criticisms of the finding of low to medium similarity: i) it involved an over-extended notion of complementarity (I interpret “assessed at too high a level of generality” as meaning the same thing); ii) it was unsupported by evidence; and iii) the Respondent’s goods clearly have a commercial life entirely independent from machines. I shall address each in turn.
49. The Hearing Officer set out the law in relation to comparison of goods at §§97-102. At §99 she said:

“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 GC stated that “complementary” means:

“[...] 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.”
50. It is clear from §§201-202 that the Hearing Officer was of the view that *Preparations for making beverages; Essences for making beverages; Pastilles for effervescing beverages, Powders for the preparation of beverages* (“**Respondent’s Goods**”) could be used in the Appellant’s class 7 machines, and were in fact indispensable as the machines could not be operated without such preparations. If she was justified in that finding (which I address next), it seems to me that her

analysis and conclusions in §§201-202 were entirely in line with the approach in *Boston Scientific*.

51. The Appellant complains that there is no evidence to support the Hearing Officer's finding that the Respondent's Goods could be used in the Appellant's machines. Neither party filed any evidence in relation to this issue below, so the Hearing Officer was required to do her best, based on her interpretation of the ordinary meaning of the words used. In my view, the conclusions she reached were rational and sensible. Clearly, both *beverage preparation machines, electromechanical and machines for the production of sparkling beverages* will require ingredients to be added, and these will include *Preparations for making beverages, Essences for making beverages* and *Powders for the preparation of beverages*. The Appellant contended at the hearing that the situation regarding *Machines for the production of soda water* is different, because soda water is simply fizzy water, with no additives. However, this argument was raised before the Hearing Officer, who rejected it at §202 on the basis of a dictionary definition which stated that soda water is made fizzy by the additional of carbon dioxide. The Hearing Officer was entitled to use that dictionary definition, and was further entitled to find that the Respondent's Goods are broad enough to include carbon dioxide for making soda water.
52. Finally, the Appellant contends that the Respondent's goods clearly have a commercial life entirely independent from machines. That may be true, but I fail to understand its relevance. The Respondent relied on its registration rather than any actual products sold, and therefore it makes no difference whether any of the Respondent's products are, in practice, sold for use other than with a machine.
53. I accordingly dismiss the appeal in relation to the sixth action.

#### **Conclusion**

54. This was a complicated and interrelated series of actions, which the Hearing Officer, in her impressive Decision, approached in a careful and methodical manner. She made no error of principle or law, and arrived at a balanced series of decisions. The appeals are dismissed.

#### **Costs**

55. Clearly, the Respondent has been the successful party in this appeal. In accordance with the scale costs in TPN 1/2023, I order that the Respondent should pay the Appellant the sum of £2,000.
56. The Hearing Officer ordered that each party should bear its own costs below, which I do not disturb. Accordingly, the Appellant must pay the Respondent the sum of £2,000 within 21 days of this decision.

**Dr. Brian Whitehead**

**28 March 2026**

#### **Representation**

Mr Tom Brand, trade mark attorney, of Brand Murray Fuller LLP, for the Appellant

Mr Darren Meale, solicitor, of Simmons & Simmons LLP for the Respondent