

O/0327/26

TRADE MARKS ACT 1994

IN THE MATTER OF THE UK DESIGNATION
OF THE INTERNATIONAL REGISTRATION

NO. 1781823

IN THE NAME OF NIO NEXTEV EUROPE HOLDING B.V.

FOR THE TRADE MARK:

FIREFLY

IN CLASSES

1, 3, 4, 5, 7, 8, 9, 10, 11, 12, 14, 16, 18, 20, 22, 24, 25, 26, 27, 28,
30, 33, 35, 36, 37, 38, 39, 40, 41, 42, 43, AND 45

AND

IN THE MATTER OF THE OPPOSITION THERETO

UNDER NO. 449913

BY EV TRANSPORTATION SERVICES, INC

Background & Pleadings

1. NIO Nextev Europe Holding B.V. (“the holder”) has sought protection in the UK for the International Registration no. WO0000001781823 (“the contested mark”) in respect of the word mark shown on the front page of this decision with a UK designation date of 17 April 2023 and a priority date of 18 October 2022 from the European Union Intellectual Property Office (EUIPO). The contested mark was accepted and published in the Trade Marks Journal for opposition purposes on 28 June 2024 in respect of various goods and services in classes 1, 3, 4, 5, 7, 8, 9, 10, 11, 12, 14, 16, 18, 20, 22, 24, 25, 26, 27, 28, 30, 33, 35, 36, 37, 38, 39, 40, 41, 42, 43 and 45. However, this partial opposition is directed against the following goods only:

Class 12: Cars; sports cars; motors for land vehicles; cycles; tires for vehicle wheels; water vehicles; steering wheels for vehicles; electric vehicles; cycle cars; motorcycles; apparatus for locomotion by land, air or water; vehicles; motor vehicles; land vehicles; electric motors for land vehicles; vehicle axles; bodies for electric vehicles; brake shoes and brake linings for vehicles; brake calipers for vehicles, brake systems, bumpers, couplings for land vehicles, differential gears for land vehicles, drive gears for land vehicles, drive shafts for land vehicles, motors for land vehicles, gear change selector for land vehicles, transmissions for land vehicles, transmission shafts for land vehicles, brake cylinders and motors for land vehicles, carrying bearings [parts of vehicles], all for vehicles; chassis for vehicles; manual and power steering apparatus for land vehicles, safety restraints for use in vehicles, vehicle seats, sliding roofs for vehicles, steering columns for vehicles, all for vehicles; hubs for vehicle wheels; vehicle wheels; chain deflectors for vehicles, wind deflectors for vehicles; air deflectors for vehicles; draught deflectors for vehicles; direction indicators, doors, hatches for vehicles, upholstery for vehicles, handles for doors, horns, mirrors [rearview mirror], luggage

racks, ski racks, mudguards, snow chains for motor vehicles, anti-skid chains, head restraints, seat belts, safety seats for children, mudflaps, roof racks, shock absorbing springs for automobiles; coil springs for vehicle suspension; leaf-springs for vehicle suspension; suspension springs for motor cars; vehicles, stabilizer bars for use on bicycle, starters, steering wheels, steering linkages, suspensions, torsion bars, connecting rod for land vehicles, other than parts of motors and engines, windows, window winding mechanisms, windshield wipers, all for vehicles; arm rests for vehicles; lead weights for balancing vehicle wheels; protective covers, radiator grilles, fluid containers, storage boxes and boxes, spare wheel carriers, all being parts of vehicles; trim panels for vehicle bodies; parts and fittings for vehicles, particularly motor vehicles and electric vehicles; brakes, clutches, accelerator pedals and gearboxes, engine mounts, all for vehicles; automobile windshields; parts and fittings for motorized land vehicles.

2. On 30 September 2024, EV TRANSPORTATION SERVICES, INC (“the opponent”) partially opposed the application on the basis of Sections 5(1) and 5(2)(a) of the Trade Marks Act 1994 (“the Act”)¹. The opposition is directed solely against the applied-for Class 12 goods.² The opponent is the holder of the International Registration number WO0000001593392 for the following mark:

FIREFLY

¹ 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.

² I note that the holder has amended the contested specification in more than one occasion in relation to goods and services other than Class 12. In this regard, the opponent confirmed the amendments to the specification do not overcome the opposition, maintaining the opposition proceedings.

3. The mark designated the UK on 19 March 2021, and protection of the International Registration in the UK was conferred on 06 January 2022 for the following goods:

Class 12: Electric utility vehicles.

4. Under Section 6(1) of the Act, the opponent's trade mark clearly qualifies as an earlier trade mark by virtue of its designation date preceding the designation date of the earlier International Registration. Further, as the registration of the opponent's earlier mark was completed less than five years before the priority date of the contested mark, proof of use is not relevant in these proceedings as per Section 6A of the Act.
5. The opponent, in its notice of opposition, claims that the contested mark is identical to the earlier mark and the goods listed in the holder's specification in Class 12 are identical and highly similar to the earlier goods in the same Class. Therefore, registration of the contested mark should be refused under Sections 5(1) and 5(2)(a) of the Act.
6. The holder filed a defence and counterstatement, denying all the grounds of the opposition.
7. Upon the filing of the counterstatement in this matter and in accordance with Rule 19 of the Trade Marks Rules 2008 and Tribunal Practice Notice 3/2007, the Tribunal issued a preliminary indication on 23 December 2024. The preliminary indication was that due to the similarity of the marks and the similarity of the goods at issue, there was a likelihood of confusion. On 23 January 2025, the holder filed a Form TM53. I confirm that the finding of the preliminary indication is not binding upon me.
8. None of the parties filed evidence. Only the holder filed written submissions in lieu of a hearing, which will not be summarised but will be referred to as and where appropriate throughout this decision.

9. The holder initially requested a hearing but subsequently withdrew the request. Thus, this decision has been taken following a careful consideration of the papers.
10. In these proceedings, the opponent is represented by Harper James, and the holder is represented by Bristows LLP.

Decision

Sections 5(1) and 5(2)(a)

11. Section 5(1) of the Act states:

“5(1) A trade mark shall not be registered if it is identical with an earlier trade mark and the goods or services for which the trade mark is applied for are identical with the goods or services for which the earlier trade mark is protected.”

12. Section 5(2)(a) of the Act is as follows:

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

(a) it is identical with an earlier trade mark and is to be registered for goods or services 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.”

13. Section 5A states:

“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.”

14. 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 Trade Marks



15. It is a pre-requisite of Sections 5(1) and 5(2)(a) that the marks be identical. I will begin by assessing whether they are identical within the meaning of the case law. In *S.A. Société LTJ Diffusion v. Sadas Vertbaudet SA*, Case C-291/00, the Court of Justice of the European Union held that:

“54 [...] a sign is identical with the trade mark where it reproduces, without any modification or addition, all the elements constituting the trade mark or where, viewed as a whole, it contains differences so insignificant that they may go unnoticed by an average consumer.”

16. The competing marks appear on the register in the form shown below:

Earlier Mark	Contested Mark
FIREFLY	FIREFLY

17. The search results for the parties’ respective international registrations are displayed on the Word Intellectual Property Organisation (“WIPO”) register:

Trademark	Image	Status	Or	Holder	Req. No	Req. Date	Nice Cl.
FIREFLY		 Active	US	EV TRANSPORTATION SERVICES, INC.	1593392	2021-03-19	12
FIREFLY		 Active	EM	NIO Nextev Europe Holding B.V.	1781823	2023-04-17	1, 3, 4, 5, 7, 8, 9, 10, 11, 12, 14, 16, 18, 20, 22, 24, 25, 26,...

18. As can be seen, the marks are shown in a plain typeface, and there is no representation in the “image” field. For both marks, the official request for the extension of protection also indicates that “*the applicant declares that they wish the mark to be considered as a mark in standard characters (only if word mark)*”. I also note that the holder refers to its mark as being a word mark. For these reasons, both the earlier and the contested mark are plain word marks, consisting of the word “FIREFLY”. As a result, they are self-evidently identical.

Preferred Approach

19. I will deal with Section 5(2)(a) of the Act first; starting with the assessment as to the identity/similarity of the goods, given that any findings on identity will also satisfy Section 5(1).

Comparison of Goods

20. When making the comparison, all relevant factors relating to the goods/services in the specifications should be taken into account. In *Canon Kabushiki Kaisha*, the European Court of Justice (“CJEU”) stated that:

“23. In assessing the similarity of the goods or services concerned, [...], 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 complementary.”

21. Guidance on this issue was also given by Jacob J (as he then was) in *British Sugar Plc v James Robertson & Sons Limited* (“*Treat*”) [1996] RPC 281. At [296], he identified the following relevant factors:

- “(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.”

22. The General Court ('GC') confirmed in *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, paragraph 29, that, even if goods or services are not worded identically, they can still be considered identical if one term falls within the scope of another, or vice versa:

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

23. In *YouView TV Ltd v Total Ltd*, [2012] EWHC 3158 (Ch), paragraph 12, Floyd J (as he then was) gave the following guidance on construing the words used in specifications:

“[...] 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.”

24. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU held that complementarity is an autonomous criterion capable of being the sole

basis for the existence of similarity between goods or services. The GC clarified the meaning of “complementary” goods or services in *Boston Scientific Ltd v OHIM*, Case T-325/06, at paragraph 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. The competing goods are shown in the following table:

Earlier Goods	Contested Goods
Class 12: Electric utility vehicles.	Class 12: Cars; sports cars; motors for land vehicles; cycles; tires for vehicle wheels; water vehicles; steering wheels for vehicles; electric vehicles; cycle cars; motorcycles; apparatus for locomotion by land, air or water; vehicles; motor vehicles; land vehicles; electric motors for land vehicles; vehicle axles; bodies for electric vehicles; brake shoes and brake linings for vehicles; brake calipers for vehicles, brake systems, bumpers, couplings for land vehicles, differential gears for land vehicles, drive gears for land vehicles, drive shafts for land vehicles, motors for land vehicles, gear change selector for land vehicles, transmissions for land vehicles, transmission shafts for land vehicles, brake cylinders and motors for land vehicles, carrying bearings [parts of vehicles], all for vehicles; chassis for vehicles; manual and power steering apparatus for land vehicles, safety restraints for use in vehicles, vehicle seats, sliding roofs for vehicles, steering columns for vehicles, all for vehicles; hubs for vehicle wheels; vehicle wheels; chain deflectors for vehicles, wind deflectors for vehicles; air deflectors for vehicles; draught deflectors for vehicles; direction indicators, doors, hatches for vehicles, upholstery for vehicles, handles for doors, horns, mirrors

	<p>[rearview mirror], luggage racks, ski racks, mudguards, snow chains for motor vehicles, anti-skid chains, head restraints, seat belts, safety seats for children, mudflaps, roof racks, shock absorbing springs for automobiles; coil springs for vehicle suspension; leaf-springs for vehicle suspension; suspension springs for motor cars; vehicles, stabilizer bars for use on bicycle, starters, steering wheels, steering linkages, suspensions, torsion bars, connecting rod for land vehicles, other than parts of motors and engines, windows, window winding mechanisms, windshield wipers, all for vehicles; arm rests for vehicles; lead weights for balancing vehicle wheels; protective covers, radiator grilles, fluid containers, storage boxes and boxes, spare wheel carriers, all being parts of vehicles; trim panels for vehicle bodies; parts and fittings for vehicles, particularly motor vehicles and electric vehicles; brakes, clutches, accelerator pedals and gearboxes, engine mounts, all for vehicles; automobile windshields; parts and fittings for motorized land vehicles.</p>
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26. The opponent has claimed that the contested terms “*electric vehicles*”, “*vehicles*”, “*motor vehicles*”, and “*land vehicles*” are identical to the earlier goods, while the remaining contested goods are highly similar due to their complementarity to the goods protected by the earlier mark. As to the aforesaid remaining goods claimed to be highly similar, although some comparisons have been made, the opponent has not provided particularised submissions or explanations as to *why* it considers the competing terms to be similar.
27. The holder made lengthy submissions in relation to the identity and/or similarity of the respective goods. I have considered these submissions, but I do not propose to reproduce them in full here.

28. For the purpose of considering the issue of similarity of goods (and services), it is permissible to consider groups of terms collectively where they are sufficiently comparable to be assessed in essentially the same way for the same reasons.³

29. Before I conduct my assessment, I will set out what the earlier term “*Electric utility vehicles*” encompasses. The opponent has not provided any evidence or particularised submissions as to the meaning of the term. The holder submits that:

“An Electric Utility Vehicle (“**EUV**”) is a battery-powered, compact, versatile work vehicle designed for transporting goods, tools, or people in commercial, industrial, or recreational settings, offering zero emissions, quiet operation, and lower running costs than gas equivalents, used for tasks like campus maintenance, park management, or resort logistics.”

30. I note that the Cambridge English Dictionary defines the term ‘utility vehicle’ as “*a vehicle that is designed to carry out a particular task, often a small truck with an open back and low sides that is able to travel easily over rough ground*”⁴. In considering the above definition and the ordinary meaning of the term, the earlier “*electric utility vehicles*” (“EUVs”) goods are battery-powered vehicles designed to perform certain tasks, such as cargo transport or maintenance.

Vehicles; electric vehicles; motor vehicles; land vehicles

31. The contested terms are broad terms that encompass the earlier term “*Electric utility vehicles*”. Thus, the respective goods will be identical as per the *Meric* principle.

³ *Separode* Trade Mark, BL O-399-10; and *BVBA Management, Training en Consultancy v BeneluxMerkenbureau* [2007] ETMR 35 at paragraphs 30 to 38.

⁴ See Cambridge Dictionary, April 2026, <https://dictionary.cambridge.org/dictionary/english/utility-vehicle>

Apparatus for locomotion by land [...]

32. The word 'locomotion' is defined as "*movement of a [...] vehicle, [...] from one place or position to another*"⁵. The EUVs are particular vehicles or apparatus facilitating the movement of goods or people. It is my view that the earlier goods will, as a matter of fact, be encompassed by the contested goods and that the parties' offerings are identical according to *Meric*. However, I am prevented from making such a finding in the light of the opponent's pleadings that the goods are highly similar. Consequently, I find the goods to be highly similar.

Cars

33. The competing goods will share the same general nature, as both are wheeled road vehicles. In addition, the competing goods coincide in the general purpose in that both are modes of transport. However, I find that, in most cases, EUVs will be used for task-specific purposes, whereas cars are typically used to transport passengers, in which case, their specific purposes will differ to an extent. The users of the earlier goods will likely be professionals or business users, but I do not exclude the general public. Therefore, there is some overlap in users. Without any evidence to the contrary, it is my view that the competing goods may be sold through overlapping trade channels, such as specialist traders/dealers and online sales platforms. The method of use will overlap to the extent that both goods will be driven. I consider that, in some instances, there might be a limited degree of competitive relationship, as one may choose a car, such as a hatchback, over an EUV. However, there is no complementarity between the goods. Overall, I find the competing goods to be similar to between a medium and high degree.

⁵ See Oxford English Dictionary, April 2026, <https://doi.org/10.1093/OED/1055494808>.

Sports cars

34. The holder submits that:

“A sports car is a type of automobile that is designed with an emphasis on dynamic performance, such as handling, acceleration, top speed, the thrill of driving, and racing capability. Most sports cars are built as a two-door coupe or a convertible roadster. They are often smaller and more compact than muscle cars and typically only have two seats, prioritising performance and driving experience.” (sic)

It further claims that the competing terms are dissimilar as they have different natures and purposes, as the EUVs are task-specific vehicles, whereas sports cars are built for high-performance driving. It also argues that they are not in competition, and they differ in manufacturers, trade channels and users.

35. Whilst the contested term suggests goods designed for high-performance driving aimed at speed and driving experience, there is still a diverse range of cars varying in build, features, and size, which would fall within the term “*sports cars*”. Nonetheless, the contested goods denote a performance-focused subcategory of cars rather than encompassing cars in general. Accordingly, I consider that the competing goods fulfil the same general purpose of transportation. They share the same basic method of use and general nature (both being motorised land vehicles). Moreover, there might be an overlap in users and trade channels for the same reasons explained in the preceding paragraph. However, in the absence of evidence, I do not consider that there is a degree of competition or that the goods are interchangeable with each other. Further, I do not consider that there is complementarity between the goods. Overall, I find the competing terms to be similar to a low degree.

Cycle cars

36. The holder submits that the contested goods refer to “*a small, lightweight and inexpensive motorised car manufactured in Europe and the United States between 1910 and the early 1920s.*” It also argues that the competing goods do not share nature or method of use, and they are not in competition, and they do not coincide in manufacturers, distribution channels or consumers.
37. The Oxford Dictionary defines the term “cycle cars” as “*a light motor-driven vehicle chiefly designed on motorcycle principles, popular mainly between 1910 and the mid 1920s as an economical alternative to a standard car.*”⁶ Taking this into account, and following the same approach in the preceding paragraph, I find the competing goods to be similar to a low degree. This is because there is an overlap in the general nature, purpose, method of use, users, and trade channels. However, there is no degree of competition or complementarity between the competing goods.

Motorcycles

38. The holder submits that the contested goods are “*a two-wheeled motor vehicle, typically with an engine, frame, and steering, designed for transport, sport, or recreation*”. Thus, they are dissimilar, differing in nature, method of use, trade channels, users, manufacturers, and they are not in competition.
39. Again, in this case, even though there are structural differences between motorcycles and EUVs, I find that there is some similarity in the general nature between the goods. Both are land vehicles that typically consist of automotive components, such as a chassis, an engine, a suspension and braking system and wheels/tyres. The general purpose of the respective goods is the same, namely for transport. The users may overlap,

⁶ See *Oxford English Dictionary*, March 2026, <https://doi.org/10.1093/OED/1657542989>.

particularly motorists who can drive EUVs and ride motorcycles. While there may be potential crossover in trade channels, in the absence of evidence, it is my view that there is no direct competition or complementarity between the respective goods. Overall, I find the respective goods to be similar to a low degree.

Water vehicles; apparatus for locomotion by [...], air or water

40. The holder submits that the contested goods operate in different environments, namely water and atmosphere, to the land-based EUVs, and they do not share the same nature, method of use, trade channels, consumers, nor are they in competition. I agree, the contested goods are vehicles, albeit not land ones. Their nature is fundamentally different (although vehicles for locomotion by air have wheels, that is not the primary mode of locomotion). However, the general purpose is shared because vehicles for locomotion by air, water and EUVs will all be for carrying freight or passengers (or both). Methods of use will be different as entirely different skills (and qualifications) are required to drive, fly or sail. The goods are not in competition and are not complementary. Taking a common sense approach,⁷ I find the competing goods to be dissimilar.

Cycles

41. The holder submits that the contested “cycles” are human-powered two-wheeled vehicles that people sit on and move by turning the two pedals, while EUVs are battery-powered work vehicles. Thus, they differ in nature, method of use, users, trade channels, and they are not in competition.

42. I consider that the contested goods do not share the same nature and purpose with the opponent’s goods, other than as a means of general locomotion, all having wheels and tyres. In the absence of evidence, I

⁷ *Unicorn Studio Inc v Veronese (Société par Actions Simplifiée)* [2024] EWHC 1098 (Ch), at [24].

consider that there is no overlap in trade channels, as the contested goods are not usually traded in the same places as EUVs. Although there may be some overlap in users and method of use, there is no competition or complementary relationship. Taking a common sense approach,⁸ I consider that the goods are dissimilar.

Stabilizer bars for use on bicycle

43. The holder submits that these “*are training wheels for children’s bikes. Clearly, these goods have nothing in common with “electric utility vehicles” and are not in competition. Therefore, these goods are different.*” I agree and consider that there is no obvious similarity between the competing goods other than an overlap in users at a very general level. They differ in nature, purpose, method of use, trade channels, and they are not in competition or complementary. I find the competing goods to be dissimilar.

Motors for land vehicles; tires for vehicle wheels; steering wheels for vehicles; electric motors for land vehicles; vehicle axles; bodies for electric vehicles; brake shoes and brake linings for vehicles; brake calipers for vehicles, brake systems, bumpers, couplings for land vehicles, differential gears for land vehicles, drive gears for land vehicles, drive shafts for land vehicles, motors for land vehicles, gear change selector for land vehicles, transmissions for land vehicles, transmission shafts for land vehicles, brake cylinders and motors for land vehicles, carrying bearings [parts of vehicles], all for vehicles; chassis for vehicles; manual and power steering apparatus for land vehicles, safety restraints for use in vehicles, vehicle seats, sliding roofs for vehicles, steering columns for vehicles, all for vehicles; hubs for vehicle wheels; vehicle wheels; chain deflectors for vehicles, wind deflectors for vehicles; air deflectors for vehicles; draught deflectors for vehicles; direction indicators, doors, hatches for vehicles, [...], handles for doors, horns, mirrors [rearview mirror], [...], mudguards, snow chains for motor vehicles, anti-skid chains, head restraints, seat

⁸ Ibid.

belts, safety seats for children, mudflaps, [...], shock absorbing springs for automobiles; coil springs for vehicle suspension; leaf-springs for vehicle suspension; suspension springs for motor cars; vehicles, [...], starters, steering wheels, steering linkages, suspensions, torsion bars, connecting rod for land vehicles, other than parts of motors and engines, windows, window winding mechanisms, windshield wipers, all for vehicles; arm rests for vehicles; lead weights for balancing vehicle wheels; protective covers, radiator grilles, fluid containers, storage boxes and boxes, spare wheel carriers, all being parts of vehicles; trim panels for vehicle bodies; parts and fittings for vehicles, particularly motor vehicles and electric vehicles; brakes, clutches, accelerator pedals and gearboxes, engine mounts, all for vehicles; automobile windshields; parts and fittings for motorized land vehicles.

44. The holder submitted that the earlier specification is registered for EUVs and not “*parts and fittings for motorised vehicles*” or “*parts and fittings for electric utility vehicles*”, claiming that it was not the intention of the opponent to protect such goods. In addition, the holder submitted that the competing goods are dissimilar as they do not coincide in nature, method of use, users, and trade channels.
45. I keep in mind the case of *Les Éditions Albert René v OHIM*, Case T-336/03, where the General Court found that:

“61[...] The mere fact that a particular good is used as a part, element or component of another does not suffice in itself to show that the finished goods containing those components are similar since, in particular, their nature, intended purpose and the customers for those goods may be completely different.”

However, this does not mean that there can never be similarity between such goods where there is overlap in the factors identified in *Treat*.

46. Although the opponent has not sought protection for parts and fittings, that does not rule out a finding of similarity. The contested goods listed above are a wide range of parts, fittings, and components intended to be used in vehicles. Where specified that the contested terms relate to, for example, land, motor or motorised vehicles, they can include parts for the earlier goods. Thus, all the contested goods could be used for or are designed to fit the earlier goods. The method of use, nature and purpose of the goods may differ. However, there is a degree of complementarity between the contested goods and the earlier goods, as they are important or indispensable to the operation and proper functionality of the EUVs such that the average consumer would consider that they come from the same or economically linked undertakings, i.e. the vehicle manufacturer. Moreover, the end consumer of the goods would be the same, and I consider that there is likely to be at least some overlap in trade channels as companies selling EUVs will often also provide the aftercare services which includes fixing such vehicles and selling and fitting such parts or components for those vehicles. However, the goods are clearly not competitive as they cannot perform the function of the other. Overall, I consider these goods to be similar to between a low and medium degree.

Luggage racks; ski racks; roof racks

47. The contested goods are all accessories for vehicles. The method of use, nature and purpose of the competing goods would be different. Further, I do not consider that such goods are important or indispensable to the functionality or operation of the earlier goods. Thus, they are not complementary. However, the same undertaking may supply both EUVs themselves and accessories for them. Consequently, there will be an overlap in trade channels and users. Overall, I find them to be similar to a low degree.

Upholstery for vehicles

48. The contested goods are the soft, cushioned textiles used for example, on vehicle seats and other interior surfaces. Keeping in mind the principles set out in *Les Éditions*, the competing goods differ in nature, purpose, and method of use. I also note that the users may differ as the contested goods will be typically purchased by repairers/upholsterers. The respective trade channels will be different, with upholstery commonly supplied through interior-trim and repair channels as opposed to specialist traders/dealers of the earlier goods. In the absence of evidence, there is no competition or complementarity. I find that they are dissimilar.
49. The likelihood of confusion does not arise in relation to the contested goods which are dissimilar to the earlier goods.⁹ The opposition cannot succeed against dissimilar goods and, therefore, is dismissed.
50. For the contested goods that I have found to be identical to the earlier goods, the opposition succeeds as per Section 5(1) of the Act, given my earlier finding that the competing marks are also identical. Nevertheless, I will now move to the other considerations for the goods which are not identical that need to be considered under Section 5(2)(a) of the Act.

Average Consumer and the Purchasing Act

51. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purposes 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 and services in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97. In *Hearst Holdings & Anor v A.V.E.L.A. Inc & Ors*, [2014] EWHC 439 (Ch), at paragraph 70, Birss J described the average consumer in these terms:

⁹ Case C-398/07, *Waterford Wedgwood plc v OHIM*; and *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA, para 49.

“The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The word ‘average’ denotes that the person is typical. The term ‘average’ does not denote some form of numerical mean, mode or median.”

52. The average consumer for the goods will be a member of the general public or a business user/professionals. The goods are likely to be purchased from specialist retail outlets or an online or catalogue equivalent. Visual considerations are, therefore, likely to dominate the selection process. However, I do not discount that there will also be an aural component to the purchase, as advice may be sought from a sales assistant or representative. The price of the parts and components for vehicles is likely to vary from relatively inexpensive to some being highly expensive (e.g. chassis for vehicles). Further, the price of some goods, such as cars, could potentially be rather high. However, even for those goods that are of relatively low cost, various factors will still be taken into consideration such as performance, safety and aesthetic. Therefore, to my mind, these purchases will not be merely casual. For those goods that may have an impact upon the overall performance or reliability of the vehicle in which they are fitted, I consider that at least a medium degree of attention will be paid during the purchasing process. For those goods that are expensive and purchased infrequently, such as cars, a higher degree of attention will be paid.

Distinctive Character of the Earlier Trade Mark

53. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97, paragraph 22 and 23, the CJEU stated that:

“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).

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).”

54. Registered trade marks possess varying degrees of inherent distinctive character from the very low, because they are suggestive of, or allude to, a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities.
55. The opponent has filed no evidence to show any use made of the earlier mark. Therefore, I have only the inherent position to consider. The earlier mark is the dictionary and well-known word “FIREFLY” which will be understood in the ordinary way. I do not consider that the word will be allusive or suggestive of the EUV goods. As the word is not highly

distinctive or fanciful in the same way an invented word might be, I find the earlier mark to be inherently distinctive to a medium degree.

Likelihood of Confusion

56. In assessing the likelihood of confusion, I must adopt the global approach set out in the case law to which I have already referred earlier in this decision. Such a global assessment is not a mechanical exercise. I must also have regard to the interdependency principle, that 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.¹⁰ It is essential to keep in mind the distinctive character of the opponent's trade mark since the more distinctive the trade mark, the greater the likelihood of confusion. I must also keep in mind that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon imperfect recollection.¹¹

57. Earlier in this decision I have concluded that:

- The goods at issue are similar to various degrees;
- the average consumer of the parties' goods is a member of the general public and business users/professionals. The selection process is predominantly visual without discounting aural considerations. For some goods, at least a medium degree of attention will be paid during the purchasing process; and for the more expensive goods, a higher degree of attention will be paid;
- the competing marks are identical;
- the earlier mark has a medium degree of inherent distinctiveness.

58. Taking all of the above factors into account, particularly given the identity of the marks at issue, I am satisfied that the average consumer would likely

¹⁰ See *Canon Kabushiki Kaisha*, paragraph 17.

¹¹ See *Lloyd Schuhfabrik Meyer*, paragraph 27.

mistake the parties' marks for each other. I am, therefore, satisfied that there will be a likelihood of direct confusion between the parties' marks for similar goods. As a result, the opposition under Section 5(1) ground succeeds against the goods, which I found to be identical, and under Section 5(2)(a) ground against the goods which I found to be similar at any degree.

Outcome

59. **Part of the opposition has been successful.** Therefore, subject to any successful appeal, the application will be refused for the following terms in Class 12:

Vehicles; electric vehicles; motor vehicles; land vehicles; Apparatus for locomotion by land [...]; Cars; Sports Cars; Cycle Cars; Motorcycles; Motors for land vehicles; tires for vehicle wheels; steering wheels for vehicles; electric motors for land vehicles; vehicle axles; bodies for electric vehicles; brake shoes and brake linings for vehicles; brake calipers for vehicles, brake systems, bumpers, couplings for land vehicles, differential gears for land vehicles, drive gears for land vehicles, drive shafts for land vehicles, motors for land vehicles, gear change selector for land vehicles, transmissions for land vehicles, transmission shafts for land vehicles, brake cylinders and motors for land vehicles, carrying bearings [parts of vehicles], all for vehicles; chassis for vehicles; manual and power steering apparatus for land vehicles, safety restraints for use in vehicles, vehicle seats, sliding roofs for vehicles, steering columns for vehicles, all for vehicles; hubs for vehicle wheels; vehicle wheels; chain deflectors for vehicles, wind deflectors for vehicles; air deflectors for vehicles; draught deflectors for vehicles; direction indicators, doors, hatches for vehicles, [...], handles for doors, horns, mirrors [rearview mirror], [...], mudguards, snow chains for motor vehicles, anti-skid chains, head restraints, seat belts, safety seats for children, mudflaps, [...], shock absorbing springs for automobiles; coil springs for vehicle

suspension; leaf-springs for vehicle suspension; suspension springs for motor cars; vehicles, [...], starters, steering wheels, steering linkages, suspensions, torsion bars, connecting rod for land vehicles, other than parts of motors and engines, windows, window winding mechanisms, windshield wipers, all for vehicles; arm rests for vehicles; lead weights for balancing vehicle wheels; protective covers, radiator grilles, fluid containers, storage boxes and boxes, spare wheel carriers, all being parts of vehicles; trim panels for vehicle bodies; parts and fittings for vehicles, particularly motor vehicles and electric vehicles; brakes, clutches, accelerator pedals and gearboxes, engine mounts, all for vehicles; automobile windshields; parts and fittings for motorized land vehicles; Luggage racks; ski racks; roof racks.

60. **Part of the opposition has failed.** Therefore, subject to any successful appeal, the application will proceed to registration for the following terms in Class 12:

Cycles; Water vehicles; apparatus for locomotion by [...], air or water; Stabilizer bars for use on bicycle; Upholstery for vehicles.

61. The unopposed goods and services in Classes 1, 3, 4, 5, 7, 8, 9, 10, 11, 14, 16, 18, 20, 22, 24, 25, 26, 27, 28, 30, 33, 35, 36, 37, 38, 39, 40, 41, 42, 43, and 45 will also proceed to registration.

Costs

62. The opponent has been largely successful and is entitled to a contribution towards its costs. Awards of costs are governed by Annex A of Tribunal Practice Notice (TPN) 1/2023. I award costs to the opponent as a contribution towards the cost of the proceedings on the following basis:

Official opposition fee	£100
Preparing a statement and considering the counterstatement	£200¹²
Total	£300

63. I, therefore, order NIO Nextev Europe Holding B.V. to pay to EV TRANSPORTATION SERVICES, INC the sum of £300. 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 16th day of April 2026

Dr Stylianos Alexandridis
For the Registrar,
The Comptroller General

¹² Reduced to reflect the measure of success of the holder.