

O/0335/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00004187993

IN THE NAME OF

KWIKOMFI (LEOMINSTER) LTD

TO REGISTER THE FOLLOWING TRADE MARKS:

**UNITED OUTDOORS**

AND

**UNITED OUTDOOR**

(SERIES OF TWO)

IN CLASSES 4, 6, 8, 9, 11, 12, 18, 20, 21, 22, 24, 25, 27, 28, 35, 41 & 43

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. OP600003754

BY ZHONGCE RUBBER (TIANJIN) CO., LTD.

## **Background and pleadings**

1. On 11 April 2025, Kwikomfi (Leominster) Ltd (“the Applicant”) applied to register the series of two trade marks shown on the cover page of this decision in the UK. The application was accepted and published in the Trade Marks Journal on 02 May 2025 in respect of goods and services in classes 4, 6, 8, 9, 11, 12, 18, 20, 21, 22, 24, 25, 27, 28, 35, 41 and 43.
2. On 01 August 2025, ZHONGCE RUBBER (TIANJIN) CO., LTD. (“the Opponent”) partially opposed the application under the fast track opposition procedure based upon section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opposition is directed at all goods in class 12 of the application, as set out in paragraph 16 of this decision.
3. The Opponent relies upon the following International Registration (“Opponent’s mark”):



IR no. WO0000001805849

Designation date: 06 June 2024

Protection conferred date: 23 January 2025

Relying upon the following goods:

Class 12: Automobile tires; tires for vehicle wheels; pneumatic tires.

4. By virtue of its earlier filing and designation date, the Opponent’s mark constitutes an earlier mark within the meaning of section 6 of the Act. As the earlier mark had not completed its registration process more than five years before the filing date of the application in issue, it is not subject to the use provisions contained in section 6A of the Act. The Opponent can, therefore, rely upon all of the goods it has identified without having to demonstrate use.

5. The Opponent submits that the goods at issue are identical or similar and that the marks are highly similar.
6. The Applicant filed a counterstatement denying the claims made by the Opponent.
7. Rule 6 of the Trade Marks (Fast Track Opposition) (Amendment) Rules 2013, S.I. 2013 2235, disapplies paragraphs 1-3 of Rule 20 of the Trade Mark Rules 2008, but provides that Rule 20(4) shall continue to apply. Rule 20(4) states that:

“(4) The registrar may, at any time, give leave to either party to file evidence upon such terms as the registrar thinks fit.” The net effect of these changes is to require the parties to seek leave in order to file evidence in fast track oppositions.
8. Rule 62(5) (as amended) states that arguments in fast track proceedings shall be heard orally only if (i) the Office requests it or (ii) either party to the proceedings requests it and the registrar considers that oral proceedings are necessary to deal with the case justly and at proportionate cost; otherwise, written arguments will be taken. A hearing was neither requested nor considered necessary and neither party filed written submissions in lieu of a hearing. This decision is taken following a careful consideration of the papers.
9. The Applicant represents itself; the Opponent is represented by Wynne-Jones IP Limited.
10. 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.

## Preliminary Issues

11. In its counterstatement, the Applicant denies that its mark breaches section 5(2) of the Act on the basis that there are already various other trade marks on the register which use the word 'UNITED' for goods in class 12.<sup>1</sup> However, the existence of other trade marks on the register is not relevant to the decision I must make.<sup>2</sup> The outcome of this opposition will be determined based on the merits of the case and the assessment of similarity between the marks and their respective specifications at issue, amongst other considerations. The state of the register is not evidence of how many of such trade marks may be effectively used in the market, nor does it clarify whether consumers have or have not been confused by the presence of such marks. Thus, the state of the register is "irrelevant"<sup>3</sup> to this assessment, and, in any event, it is established that evidence of the state of the register is of little assistance or even "worthless"<sup>4</sup> in the context of an opposition of this nature.
12. The Applicant further claims that the Opponent's mark is an "invalid and cancellable" mark due to the presence of other marks in the same class that include the word "UNITED" on the register. According to Section 72 of the Act, registration serves as *prima facie* evidence of the validity of a registered mark. Thus, the Opponent's trade mark must be regarded as a validly registered mark. For completeness, I note that the Applicant has not sought to invalidate the earlier mark pursuant to section 47 of the Act, and I will say no more about it.

## DECISION

### Section 5(2)(b)

13. Section 5(2)(b) of the Act is as follows:

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

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<sup>1</sup> Applicant's TM8 and counterstatement (page 1 of continuation sheet).

<sup>2</sup> *Zero Industry Srl v OHIM*, Case T-400/06.

<sup>3</sup> *BREXIT* (O/262/18) at [10]; *British Sugar plc v James Robertson & Sons Ltd* [1996] RPC 281 at 305.

<sup>4</sup> *Lifestyle Equities CV v Royal County of Berkshire Polo Club Ltd* [2022] EWHC 1244 (Ch).

(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”.

14. Section 5A of the Act reads as follows:

“5A 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.”

15. 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**

16. The goods for comparison are as follows:

| <b>Opponent's goods</b>  | <b>Applicant's goods</b>  |
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| Class 12: Automobile tires; tires for vehicle wheels; pneumatic tires. | Class 12: Camping trailers; Camping vehicles; Camping cars; Combination |

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|  | camping recreational vehicle and horse trailer; Campers [recreational vehicles]; Truck campers [recreational vehicles]; Truck campers; Trailer tents; Camper vans; Recreational vehicles (RV); Caravan storage assemblies; Fishing boats; Ski lifts; Lifts (Ski -); Ski boats; T-bars for ski lifts; Ski racks for vehicles; Ski carriers for cars; Conveyor installations [ski lifts]; Ski carriers for vehicles; Ski racks for motor cars; Ski carriers for automobiles; Ski carriers for motor cars; Conveying installations [ski lifts]; Ski carriers for use on vehicles; Chairlifts; Snow sledges for transportation; Mountain bikes; Mountain bicycles; Snowmobiles; Recreational jet boats; Diving bells; Drive chains for driving ground vehicles; Shopping trolleys; Parachutes for sky-diving; Sliding roofs for vehicles; Sliding roofs for water vehicles; Sliding roofs for motor vehicles; Caravans; Motor caravans; Caravan spoilers; Mobile homes [caravans]; Levelling apparatus for caravans; Motor car derived vans; Motor vans; Trailer hitches for vehicles; Motor lorries; Trailers for motor land vehicles; Horse vans; Road trailers; Touring land vehicles; Trailer trucks; Vehicle trailers; Hitch stabilisers for use with motor land vehicles; Trailers for towing boats; Hitches for use with motor land vehicles; |
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|  | Lorries; Vehicles fitted with living accommodation; Vans; Vans [vehicles]; Trailer chassis for vehicles; Tow trucks; Cable car cabins; Carts being motorised land vehicles; Trailers for petrol tankers; Towing trucks; Motor land vehicles; Land motor vehicles; Tyres for motor vehicle wheels; Trailers [vehicles]; Go-kart transport trucks; Touring cars; Trailer hitches; Tyres for land vehicles; Vehicles for travel by land; Motor cars for transport on land; Motor car doors; Tyres for motor vehicles; Aeroplanes towing vehicles; Car transporters; Towed vehicles; Sand yachts; Paddle boats; Kayak paddles; Paddles [kayak equipment]; Water scooters [personal watercraft]; Kayaks; Water deflecting skirts [kayak equipment]; Vehicle running boards; Running boards (Vehicle -); Automobile running boards; Running boards [land vehicle parts]; Vehicles for travel by sea; Vehicles for travel by air; Vehicles for travel by rail; Bicycle water bottle cages; Water bottle cages for bicycles; Water bottle holders for bicycles; Bottle cages for bicycles; Pet strollers; Horse trailers; Horse drawn carriages; Motorcycle saddles; Bicycle saddles; Horse-drawn carriages; Sports bicycles; Sport utility vehicles; Sports cars; Sports utility vehicles; Canopies for trailers; Car seat canopies; Goods handling carts; Pallet |
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|  | <p>transfer trucks; Yachts; Motor yachts; Sailing boat masts; Sailing boats; Motorised yachts; Sail boats; Catamarans; Sailing vessels; Jet boats; Boat hulls; Boat rudders; Tiller connectors for use with yachts; Davits for boats [boat davits]; Boats; Sailboats; Pontoon boats; House boats; Personal jet boats; Ferry boats; Rowing boats; Davits for boats; Boat cleats; Vessels [boats and ships]; Powerboats; Tug boats; Masts for boats; Boats (Masts for -); Leisure boats; Hydrofoils being boats; Hydrofoils for boats; Propellers for boats; Boat tillers; Boat fenders; Boat chocks; Sailing craft; Pleasure boats; Inflatable boats; Ship hulls; Propeller shafts for boats; Inflatable dinghies [lifeboats]; Jon boats; Dredgers [boats]; Catboats; Ship propellers; Mast feet for boats; Speedboats; Rescue boats; Wheelchair cushions; Inflatable lifeboats; Self-inflating rafts for transportation; Fold-up pushchairs; Bicycle handlebars; Bicycle mudguards; Bike bags; Motorcycle handlebars; Bicycle tires; Bicycle tyres; Handlebars [bicycle parts]; Bicycle pedals; Bicycle kickstands; Road bikes; Bicycle rims; Bicycle wheels; Bicycle brakes; Bicycle sprockets; Bicycle cranks; Quad bikes; Bicycle handlebar grips; Bicycle gears; Mudguards for two-wheeled bicycles; Bicycle hubs; Bicycle</p> |
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|  | training wheels; Dirt bikes; Motorized dirt bikes for motocross; Road racing bicycles; Bicycle stabilisers; Bicycle spokes; Handlebars for bicycles, cycles; Mudguards for bicycles; Derailleurs for bicycles; Brakes [bicycle parts];Bicycle racks for vehicles; Rims for bicycle wheels; Racing bicycles; Hubs for bicycle wheels; Handlebar grips for bicycles; Bicycle tires [tyres];Motorcycle kickstands; Motorcycle tires; Pedal bicycles; Bicycle wheel rims; Gear wheels [bicycle parts]; Forks [bicycle parts]; Folding bikes; Bicycle frames; Pedals for bicycles; Bicycle wheel hubs; Spokes for bicycle wheels; Tubeless tires for bicycles; Bicycle trailers; Bicycles; Bicycle motors; Tires for bicycles; Bicycle saddle covers; Sprockets [bicycle parts];Pumps for bicycle tyres; Tubeless tyres for bicycles; Pumps for bicycle tires; Saddle covers for bicycles or motorcycles; Water bikes; Mudguards for two-wheeled motor vehicles or bicycles; Brake shoes [bicycle parts]; Brakes for bicycles; Bicycle seats; Motorcycle saddlebags; Hubs for motorcycle wheels; Bicycle stands [kickstands]; Wheels for bicycles; Toeclips for use on bicycles; Rims for bicycles; Bicycle pumps; Kickstands for bicycles; Freewheels for bicycles; Gear wheels for bicycles; Bicycle wheel |
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|  | <p>spokes; Panniers for motorcycles; Touring bicycles; Puncture repair outfits for bicycle tyres; Cranks for bicycles; Saddles for bicycles, cycles or motorcycles; Mudguards for motorcycles; Handlebar ends for bicycles; Bicycle carriers; Bicycle racks [carriers]; Bicycle chains; Bicycle bells; Handlebar grips for motorcycles; Handlebars; Tubeless tires [tyres] for bicycles, cycles; Bicycle stands; Bicycle horns; Inner tubes for bicycle tires; Pedals for motorcycles; Chainwheels for bicycles; Wheel rims for bicycles; Tandem bicycles; Covers for bicycle saddles; Tires for bicycles, cycles; Inner tubes for bicycle tyres; Saddles for bicycles; Drivetrains for bicycles; Rims for wheels of bicycles; Wheels for bicycles, cycles; Hubs for bicycles; Rims for wheels of bicycles, cycles; Wheel hubs for bicycles; Disk wheels [bicycle parts]; Drive trains [bicycle parts]; Bags [panniers] for bicycles; Wheels being parts of bicycles; Tyres for bicycles, cycles; Gears for bicycles; Saddle covers for bicycles; Spokes for bicycles; Spokes of bicycles; Motorcycle frames; Bicycle handle bars; Hubs for vehicle wheels (motorcycles); Brakes for bicycles, cycles; Motorcycles for motocross; Motorcycle foot pegs; Motorcycle sidecars; Motorised bicycles; Electric</p> |
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|  | bicycles; Chains [bicycle parts]; Bicycle trailers (riyakah); Folding bicycles; Collapsible bicycles; Inner tubes [for two-wheeled motor vehicles or bicycles]; Folding electric bicycles; Spoke caps for bicycle wheels; Bicycle seat posts; Change-speed gears [bicycle parts]; Frames for bicycles; Drive chains [bicycle parts]; Spokes for bicycles, cycles; Bicycle structural parts; Bicycle brake lever grips; Chair lifts; Push chairs; Transport chairs; Automobile seat cushions; Seat cushions for the seats of boats; Seat cushions for the seats of aircraft; Seat cushions for the seats of cars; Arm rests for wheelchairs; Seat cushions for the seats of vehicles; Vehicle safety seat cushions; Armrests for wheelchairs; Seat cushions for the seats of water vehicles; Armrests for automobile seats; Child booster cushions for vehicle seats; Car seat tidies; Safety chairs for vehicles; Cushions adapted for use with car seats; Car seat harnesses; Direction indicator signals for land vehicles; Direction indicators for land vehicles; Direction indicators for bicycles; Direction indicator signals for vehicles; Sleeping cars; Air bags; Motorbicycles; Handbarrows; Air cushion vehicles; Vehicles (Air cushion - );Air cushion borne vehicles; Hot air balloons; Air vehicles; Fishing trolleys; |
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|  | <p>Ultralight aircraft; Car body modification parts for sale in kit form; Vehicle safety restraints for use with safety seats; Vehicle safety harness for safety seats for children; Safety restraints for use in vehicles; Safety harnesses for vehicles; Safety alarms for vehicles; Restraints for use with vehicle safety belts; Safety belts for vehicles; Vehicle safety harness for children; Vehicle safety belts for children; Vehicle safety seats; Restraints (safety - ) [for vehicle seats]; Safety belt supports; Anti-theft, security and safety devices and equipment for vehicles; Safety seats for children; Vehicle safety restraints for use with carry cots; Safety seats for vehicles; Safety harnesses for auto racing; Safety harnesses for vehicle seats; Harnesses (Safety -) for vehicle seats; Vehicle safety seats for children; Child safety seats for use in vehicles; Automobile safety seats for children; Safety belts for vehicle seats; Child safety harnesses for vehicle seats; Vehicle safety harness for carry cots; Vehicle safety restraints for use with pram bodies; Safety seats for use in cars; Safety harnesses for the seats of vehicles; Pet safety seats for use in vehicles; Safety belts adapted for use in vehicles; Children's safety belts for use in vehicles; Safety seats for children, for vehicles; Safety seats for children for use</p> |
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|  | <p>in vehicles; Seats (Safety -) for children, for vehicles; Safety belts for the seats of vehicles; Motor car seats; Car seats; Convertible car seats; Motor car windows; Motor car convertible tops; Passenger motor cars; Car tidies; Passenger cars; Rear car windows; Car creepers for use in inspecting the underneath of cars; Cars; Car seat covers; Children's car seats; Automobile tyres; Brakes for motor cars; Motor cars; Windscreens for motor cars; Automobile tires; Windscreen wipers for motor cars; Vehicle windscreens; Vehicle windshields; Vehicle tyres; Coverings for car seats; Vehicle tires; Motor cars for racing; Racing motor cars; Motor racing cars; Vehicle cabs; Wheel tyres (Vehicle -); Vehicle wheel tyres; Wipers for car head lamps; Car theft alarms; Wheel rims for motor cars; Automobile wheels; Wheel tires (Vehicle -); Vehicle wheel tires; Vehicle wheels; Wheels (Vehicle -); Head-rests for car seats; Automobile chassis; Chassis (Automobile -); Railway passenger cars; Vehicle seats; Seats (Vehicle -); Bodywork (Vehicle -); Vehicle chassis; Chassis (Vehicle -); Vehicle bumpers; Steering wheel locks; Anti-theft locks for use on automobile steering wheels; Disc brake locks for motorcycles; Tool trolleys; Mud flap hold-downs; Mud flap holders; Mud flap</p> |
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|  | weights; Tyre protection chains; Mud flap hangers; Passenger seat belt pretensioners; Passenger seat belt retractors; Belt pulleys for land vehicles; Vehicle seat belts; Passenger seat belt presenters; Restraints for use with vehicle seat belts; Seat belts for use in vehicles; Passenger seat belts; Treads for vehicles [roller belts]; Child safety belt holders for automobile seats; Rubber belts for land vehicle transmissions; Safety belt installations for the seats of vehicles; Drive belts [land vehicle parts]. |
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17. 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”.<sup>5</sup>

18. When making the comparison, all relevant factors relating to the goods 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, [...], 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

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<sup>5</sup> Paragraph 29.

purpose and their method of use and whether they are in competition with each other or are complementary.

19. 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.”

20. 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 and services. In *Boston Scientific Ltd v OHIM*, Case T-325/06, the 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”.

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

22. While making my comparison, I bear in mind the comments of Floyd J. (as he then was) in *YouView TV Ltd v Total Ltd* [2012] EWHC 3158 (Ch):

"12. ... Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise. ... Nevertheless the principle should not be taken too far. ... 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."

23. The Opponent submits in general terms that its goods are identical to the Applicant's goods which relate to tyres. Similarly, the Opponent submits its goods are similar to the Applicant's goods which relate to vehicles or their parts and/or accessories.<sup>6</sup> However, the Opponent does not identify its best case for specific goods, nor the level of similarity between specific goods. On this point, I refer to the case of *SmartX* (BL O/0911/24) wherein Mr Iain Purvis K.C., sitting as the Appointed Person, addressed the issue of an Opponent's failure to identify similarity in respect of long specifications. Mr Purvis K.C. said:

"28. [...] it is for the Opponent to put forward the combinations of goods on which it relies for similarity (or identity). If it fails to identify a particular combination, it cannot expect the Hearing Officer to do the job for it. The approach [...] would place an intolerable burden on Hearing Officers in cases of this nature in which there will be thousands of potential combinations of goods which could be relied on, and for each combination a slightly different argument for similarity could be made. Furthermore, such an approach would be unfair on the Applicant for the mark, since they will have had no opportunity to address points on similarity taken by the Hearing Officer if those points are not first raised by the Opponent."

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<sup>6</sup> Form TM7, question 13.

24. Further on in this decision, Mr Purvis K.C. stated:

“31(v). In fact (as I have pointed out) the Hearing Officer went beyond the written submissions in making findings of similarity in respect of a number of groups of goods on the basis of arguments which had not been raised by the Opponent. If the Applicant had complained about this by way of an Appeal, there would probably have been a good argument that he had been the victim of procedural unfairness. But this has of course not happened and to this extent the Opponent has benefited from the Hearing Officer’s generosity. However, it would obviously be perverse to say that the Hearing Officer ought therefore to have taken every other unpleaded and unargued point in the Opponent’s favour.”

25. I bear in mind the above when considering the Opponent’s submissions regarding the similarity of their goods in general terms. I will therefore proceed on the basis of the Opponent’s submissions, and I will only consider similarities where it is obvious to do so; otherwise, the goods will be found to be dissimilar.

26. The Applicant submits that ‘*except the TYREs, the Contested Goods are neither identical nor similar to the Earlier Goods*’.<sup>7</sup> On this point, I refer to the guidance of Professor Phillip Johnson, sitting as the Appointed Person, in *SKYCLUB*, BL O/044/21, at paragraph 24 states:

“The position in the Civil Procedure Rules (CPR) is clear; namely, a defendant must state which allegations are denied, which allegations a defendant is unable to admit or deny, and which allegations the defendant admits (CPR, 16.5(1)). Where a defendant fails to deal with an allegation it is taken to be admitted (CPR 16.5(5)). This is subject to the rule that where an allegation is not dealt with, but the defence sets out the nature of his case in relation to the issue to which that allegation is relevant, then the allegation must be proved by the Claimant (CPR 16.5(3)). Thus, the filing of a “blank” defence would lead to the whole of the Claimant’s case being admitted.”

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<sup>7</sup> Applicant’s TM8 and counterstatement, page 4.

27. As such, in the absence of a denial, I consider that the Applicant accepts the Opponent's position in relation to 'tyres'.<sup>8</sup> I bear this in mind when carrying out the comparisons below.

***Automobile tyres; Automobile tires.***

28. The above goods are explicitly named in both the Applicant's and the Opponent's specifications. They are self-evidently identical.

***Vehicle wheel tyres; Wheel tyres (Vehicle -); Wheel tires (Vehicle -); Vehicle wheel tires.***

29. Although expressed slightly differently, the Applicant's above goods are self-evidently identical to the Opponent's "tires for vehicle wheels".

***Tyres for motor vehicle wheels; Tyres for land vehicles; Tyres for motor vehicles; Vehicle tires; Vehicle tyres; Motorcycle tires.***

30. I consider that the Opponent's "tires for vehicle wheels" would encompass the Applicant's above goods. They are therefore identical on the principle outlined in *Meric*.

***Bicycle tyres; Bicycle tires [tyres]; Tubeless tyres for bicycles; Tubeless tires [tyres] for bicycles, cycles; Tyres for bicycles, cycles; Bicycle tires; Tubeless tires for bicycles; Tires for bicycles; Tires for bicycles, cycles.***

31. I understand "pneumatic tires" to be a broad category of goods which encompasses any tyre filled with air, including those for vehicles and bicycles. In view of this, and in the absence of any submissions from the parties, I consider that the Applicant's

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<sup>8</sup> See paragraphs 26 and 27 of *SkyClub* (BL O/44/21) wherein Professor Phillip Johnson (sitting as the Appointed Person) set out that there is a positive duty on a defendant to admit or deny matters and that the purpose of pleadings is to define the issues and give the other party fair notice of the case which it is required to meet.

above goods would all be encompassed by the Opponent's "pneumatic tires". They are therefore identical on the principle outlined in *Meric*.

32. I will now conduct my assessment as to the remaining terms for which the Applicant has denied similarity.

***Wheels for bicycles, cycles; Wheels being parts of bicycles; Bicycle wheels; Wheels for bicycles.***

33. The Applicant's above goods are all wheels for bicycles. I consider these goods overlap in user with the Opponent's "pneumatic tires" (to the extent that those tires are for bicycles), being cyclists seeking to repair or maintain their bicycles, or professionals who provide repair and maintenance services for bicycles. There is an overlap in general purpose, as the goods at issue are all essential components of bicycles, which allow a bicycle to move efficiently and safely. However, I consider that the goods differ in method of use as a wheel is fixed to the bicycle and provides a structure to which a tyre is attached. The tyre itself is placed around the outside of a wheel and provides a cushioned surface which touches the ground. The nature of the goods also differs, as tyres are generally made of rubber and filled with air, while wheels are rigid structures generally made of metal. There is an overlap in trade channels, as I consider that it is common in trade for pneumatic tires and wheels to be provided by the same undertakings and sold within the same specialist retailers of bicycle and/or vehicles parts, where they will likely be placed within close proximity to one another. I do not consider the goods to be in competition, as a tyre will not be purchased in place of a wheel. However, the goods are important and indispensable to one another; it is not possible to use a wheel without a tyre, and vice versa. In addition, I consider that the average consumer is likely to believe that the goods originate from the same undertaking, they are complementary. Overall, I consider the goods to be similar to a medium degree.

***Mountain bikes; Mountain bicycles; Sports bicycles; Road bikes; Dirt bikes; Road racing bicycles; Racing bicycles; Pedal bicycles; Folding bikes; Bicycles; Touring bicycles; Tandem bicycles; Motorised bicycles; Electric bicycles; Folding bicycles; Collapsible bicycles; Folding electric bicycles.***

34. The Applicant's above goods are all types of bicycles. I consider the Opponent's best-case lays in "pneumatic tires". As set out in *Les Éditions Albert René v OHIM*, it is clear that just because a particular good is used as a part, element or component of another, it should not result in a finding of identity/similarity between those goods. However, it does not mean that there can never be similarity between such goods where there is overlap in the factors identified in *Treat*.
35. I consider that the nature, method of use and purpose of the Opponent's "pneumatic tires" will differ to the Applicant's range of pre-assembled bicycles. However, there will be an overlap in user, as bicycle owners will, at times, need to replace their tyres. I do not consider that the goods are in competition as a consumer would not decide to buy a pneumatic tyre in place of a pre-assembled bicycle. The respective goods are complementary as tyres are important and indispensable to the function of a bicycle. I consider that it is commonplace in trade for undertakings which sell bicycles to also sell parts, including tyres, for those bicycles. I am therefore satisfied that a consumer would expect the same undertaking to provide both goods, which will both be sold in specialist bicycle retailers, or placed within close proximity to one another within more general sporting retailers. Overall, I consider the goods to be similar to a medium degree.

***Inner tubes for bicycle tyres; Inner tubes [for two-wheeled motor vehicles or bicycles].***

36. I understand inner tubes to be inflatable liners which are a component part within some, but not all, pneumatic tyres (as explained below). I consider that the goods overlap with the user of the Opponent's "pneumatic tires" (to the extent that those tires are for bicycles), being cyclists seeking to repair or maintain their bicycles, or professionals who provide repair and maintenance services for bicycles. The respective goods all hold pressurized air and share the overall purpose of being used together in the construction of a bicycle. There is, however, a difference in the nature and method of use of the goods. I say this because an inner tube is made from an elastic material which is placed inside a tyre, while a tyre is made of a durable rubber material and is placed around the outside of a wheel to provide a

point of contact with the ground. There is an overlap in trade channels, as tyres and inner tubes are likely to be provided by the same undertakings and sold within the same specialist retailers of bicycles and/or sporting goods, where they will likely be placed within close proximity to one another. I do not consider the goods to be in competition, as an inner tube will not be purchased in place of a complete tyre. The earlier term “pneumatic tyres” is a broad term that includes both tube-type and tubeless tyres. For the former, there is a degree of complementarity as the contested inner tubes will be indispensable to the performance of a tyre, and the consumers will believe that they originate from the same undertaking.. In view of this, I do not consider that the goods are complementary in the way set out in caselaw. Overall, I consider the goods to be similar to a medium degree.

***Vehicles for travel by air; Air vehicles; Ultralight aircraft.***

37. The Applicant’s above goods are air vehicles and aircraft, which I consider to generally have tyres incorporated into the landing gear. In view of this, I consider the Opponent’s best-case lays in “tyres for vehicle wheels”. However, bearing in mind the direction of *Les Éditions Albert René v OHIM*, I consider that the nature, method of use and purpose of the Opponent’s tyres for vehicle wheels will differ to the Applicant’s pre-assembled air vehicles and aircraft. There will be an overlap in user, as owners of air vehicles may need to replace tyres on those vehicles. I do not consider that the goods are in competition, as a consumer would not decide to buy a tyre, in place of a complete air vehicle. The respective goods are complementary, as tyres for vehicle wheels are indispensable to vehicles which require tyres as part of the landing gear. In the absence of any submissions from the parties, I consider that the average consumer would expect air vehicles and parts for those vehicles (including tyres) to come from the same undertakings and be sold through the same specialist aviation retailers. Overall, I consider the goods to be similar to a low to medium degree.

***Wheel rims for motor cars; Hubs for vehicle wheels (motorcycles).***

38. The Applicant’s above goods are all component parts of vehicle wheels. I consider the user of these goods overlaps with the user of the Opponent’s “tyres for vehicle

wheels", being car or motorbike owners seeking to repair or maintain their vehicles, or professionals who provide repair and maintenance services for cars or motorbikes. There is a degree of overlap in general purpose, as the goods at issue are all component parts of vehicles, which enable efficient and safe motion. However, I consider that the goods differ in method of use as the Applicant's goods are structural or functional elements of a wheel, usually made of metal, while a tyre (being made of rubber and filled with air) is placed around the outside of an assembled wheel and provides a cushioned surface which touches the ground. There is an overlap in trade channels, as an undertaking responsible for tyres is likely to also produce other component parts for vehicle wheels. The goods are likely to both be sold within garages or retailers of vehicle parts, where they will likely be placed within close proximity to one another. I do not consider the goods to be in competition, as a tyre will not be purchased in place of a rim or hub. The Applicant's component parts for vehicles will be used alongside tyres, however, I do not consider they are complementary in the way set out in caselaw. While the respective goods are all vital to the proper functioning of a bicycle, I do not consider them to be important and indispensable to one another. Overall, I consider the goods to be similar to a low to medium degree.

***Bicycle pumps; Pumps for bicycle tyres; Pumps for bicycle tires.***

39. The Applicant's above goods are bicycle accessories specifically for inflating tyres. I consider the user of these goods overlaps with the user of the Opponent's "pneumatic tires" (to the extent that those tires are for bicycles), being cyclists seeking to repair or maintain their bicycles. The Applicant's bicycle pumps clearly differ in nature to the Opponent's tyres. Further to this, there is a clear difference in purpose and method of use. Tyres are attached to wheels and are integral to the proper functioning of a bicycle, while a bicycle pump is a tool which is separate to the bicycle itself and used for the purpose of maintenance. Further to this, the goods will likely be sold within the same specialist bicycles shops and/or retailers of sporting goods, where they will likely be placed within close proximity to one another. The goods are not in competition, as the average consumer will not purchase a bicycle pump in place of a tyre. However, there is a low degree of complementarity, as pumps for bicycle tires are important to the use of a tyre itself.

In the absence of any submissions or evidence from the parties, I consider that the average consumer will likely expect an undertaking responsible for pneumatic tyres to also manufacture the tools used to inflate those tyres. Overall, I consider the goods to be similar to a medium degree.

***Puncture repair outfits for bicycle tyres.***

40. The Applicant's above goods are bicycle accessories specifically repairing tyres. I consider the user of these goods overlaps with the user of the Opponent's "pneumatic tires" (to the extent that those tires are for bicycles), being cyclists seeking to repair or maintain their bicycles. The Applicant's puncture repair kits clearly differ in nature to the Opponent's tyres. Further to this, there is a clear difference in purpose and method of use. Tyres are attached to wheels and are integral to the proper functioning of a bicycle, while puncture repair kit are tools which are separate to the bicycle itself and are used for the purpose of repair and maintenance. I consider that the goods will likely be sold within the same specialist bicycles shops and/or retailers of sporting goods, where they will likely be placed within close proximity to one another. The goods are not in competition, as the average consumer will not purchase a puncture repair kit in place of a tyre. However, there is a low degree of complementarity, as puncture repair kits are important to the use of tyres. In the absence of any submissions or evidence from the parties, I consider that the average consumer will likely expect an undertaking responsible for pneumatic tyres to also manufacture the tools used to repair those tyres. Overall, I consider the goods to be similar to a medium degree.

***Automobile wheels; Vehicle wheels; Wheels (Vehicle -).***

41. The Applicant's above goods are all wheels for vehicles. I consider these goods overlap in user with the Opponent's "tires for vehicle wheels", being vehicle owners seeking to repair or maintain their vehicles, or professionals who provide repair and maintenance services for vehicles. There is an overlap in general purpose, as the goods at issue are all essential components of a vehicle, to ensure efficient and safe movement. However, I consider that the goods differ in method of use as a wheel is fixed to the vehicle and provides a structure to which a tyre is attached.

The tyre itself is placed around the outside of a wheel and provides a cushioned surface which touches the ground. The nature of the goods also differs, as tyres are generally made of rubber and filled with air, while wheels are rigid structures generally made of metal. There is an overlap in trade channels, as I consider that it is common in trade for tyres and other car parts (including wheels) to be sold within the same garages and specialist retailers of vehicles parts, where they will likely be places within close proximity to one another. I do not consider the goods to be in competition, as a tyre will not be purchased in place of a wheel. The goods are important and indispensable to one another; it is not possible to use a wheel without a tyre, and vice versa, however, I do not consider the average consumer will expect the goods to originate from the same undertaking. It is more likely that the average consumer will expect a wheel to come from a vehicle manufacturer, rather than a manufacturer of tyres. Overall, I consider the goods to be similar to a low degree.

***Bicycle rims; Bicycle hubs; Bicycle spokes; Rims for bicycle wheels; Hubs for bicycle wheels; Bicycle wheel rims; Bicycle wheel hubs; Spokes for bicycle wheels; Sprockets [bicycle parts]; Rims for bicycles; Bicycle wheel spokes; Wheel rims for bicycles; Rims for wheels of bicycles; Disk wheels [bicycle parts]; Hubs for bicycles; Rims for wheels of bicycles, cycles; Wheel hubs for bicycles; Spokes for bicycles; Spokes of bicycles; Spoke caps for bicycle wheels; Spokes for bicycles, cycles.***

42. The Applicant's above goods are all component parts of bicycle wheels. I consider the user of these goods overlap with the user of the Opponent's "pneumatic tires" (to the extent that those tires are for bicycles), being cyclists seeking to repair or maintain their bicycles, or professionals who provide repair and maintenance services for bicycles. The goods share the overall purpose of being used together in the construction of a bicycle, however, they differ in nature and method of use as the Applicant's goods are structural or functional elements of a bicycle wheel, usually made of metal, while a tyre (being made of rubber and filled with air) is placed around the outside of an assembled wheel and provides a cushioned surface which touches the ground. There is an overlap in trade channels, as I consider that it is common in trade for tires and component parts for bicycles to be provided by the same undertakings and sold within the same specialist retailers of bicycles

and/or sporting goods, where they will likely be placed within close proximity to one another. I do not consider the goods to be in competition, as a tyre will not be purchased in place of a rim or sprocket, for example. The Applicant's component parts for bicycles will be used alongside a pneumatic tyre; however, I do not consider they are complementary in the way set out in caselaw. While the respective goods are all vital to the proper functioning of a bicycle, I do not consider them to be important and indispensable to one another. Overall, I consider the goods to be similar to a low degree.

***Bicycle saddles; Bicycle handlebars; Bicycle mudguards; Handlebars [bicycle parts]; Bicycle pedals; Bicycle kickstands; Bicycle brakes; Bicycle sprockets; Bicycle cranks; Bicycle handlebar grips; Bicycle gears; Mudguards for two-wheeled bicycles; Bicycle stabilisers; Handlebars for bicycles, cycles; Mudguards for bicycles; Derailleurs for bicycles; Brakes [bicycle parts]; Handlebar grips for bicycles; Gear wheels [bicycle parts]; Forks [bicycle parts]; Bicycle frames; Pedals for bicycles; Bicycle motors; Brake shoes [bicycle parts]; Brakes for bicycles; Bicycle seats; Bicycle stands [kickstands]; Toeclips for use on bicycles; Kickstands for bicycles; Freewheels for bicycles; Gear wheels for bicycles; Cranks for bicycles; Saddles for bicycles, cycles or motorcycles; Handlebar ends for bicycles; Bicycle chains; Handlebars; Chainwheels for bicycles; Saddles for bicycles; Drivetrains for bicycles; Drive trains [bicycle parts]; Gears for bicycles; Bicycle handle bars; Brakes for bicycles, cycles; Chains [bicycle parts]; Bicycle seat posts; Change-speed gears [bicycle parts]; Frames for bicycles; Drive chains [bicycle parts]; Bicycle structural parts; Bicycle brake lever grips.***

43. The Applicant's above goods are all component parts for bicycles. I consider the user of these goods overlap with the user of the Opponent's "pneumatic tires" (to the extent that those tires are for bicycles), being cyclists seeking to repair or maintain their bicycles, or professionals who provide repair and maintenance services for bicycles. For the same reasons set out in paragraph 42, there is an overlap in user and trade channels, however, the goods differ in purpose, nature and method of use. I do not consider the goods to be in competition, and I do not

consider they are complementary in the way set out in caselaw. Overall, I consider the goods to be similar to a low degree.

***Camping vehicles; Camping cars; Combination camping recreational vehicle and horse trailer; Campers [recreational vehicles]; Truck campers [recreational vehicles]; Truck campers; Camper vans; Recreational vehicles (RV); Motor caravans; Mobile homes [caravans]; Motor car derived vans; Motor vans; Motor lorries; Horse vans; Touring land vehicles; Trailer trucks; Lorries; Vehicles fitted with living accommodation; Vans; Vans [vehicles]; Tow trucks; Carts being motorised land vehicles; Towing trucks; Motor land vehicles; Land motor vehicles; Go-kart transport trucks; Touring cars; Vehicles for travel by land; Motor cars for transport on land; Aeroplanes towing vehicles; Car transporters; Sport utility vehicles; Sports cars; Sports utility vehicles; Sand yachts; Quad bikes; Motorized dirt bikes for motocross; Passenger motor cars; Passenger cars; Cars; Motor cars; Motor cars for racing; Racing motor cars; Motor racing cars; Motorcycles for motocross; Pallet transfer trucks; Motorbicycles.***

44. The Applicant's above goods are all motorised vehicles, which rely upon wheels for movement. I consider the Opponent's best-case lays in "tires for vehicle wheels". I consider that the nature, method of use and purpose of the Opponent's tires for vehicle wheels will differ to the Applicant's range of pre-assembled vehicles. However, there will be an overlap in user, as vehicle owners will, at times, need to replace their tyres. I do not consider that the goods are in competition, as a consumer would not decide to buy a tyre in place of a complete vehicle. Although tyres for vehicle wheels are indispensable to vehicles, in the absence of any evidence, I am not prepared to find that manufacturers of motor vehicles commonly also manufacture and market tyres, nor that consumers would expect tyres and vehicles to originate from the same undertaking. Although the respective goods may be sold through overlapping trade channels (such as specialist vehicle retailers or their online equivalents), this alone is insufficient to establish complementarity. Overall, bearing in mind the direction of *Les Éditions Albert René v OHIM*, I consider the goods to be similar to a low degree.

***Camping trailers; Caravans; Goods handling carts; Trailer tents; Trailers for towing boats; Trailers for motor land vehicles; Road trailers; Vehicle trailers; Trailers for petrol tankers; Trailers [vehicles]; Horse trailers; Bicycle trailers; Towed vehicles; Bicycle trailers (riyakah).***

45. The Applicant's above goods are all types of trailers or other towed vehicles. I understand these goods to fall within the definition of a 'vehicle' being 'any conveyance in or by which people or objects are transported (especially ones fitted with wheels)',<sup>9</sup> which I consider can be both motorised and non-motorised. In view of this, I consider the Opponent's best-case lays in "tires for vehicle wheels". Following the same reasoning set out in paragraph 44, I consider the goods to be similar to a low degree.

***Horse drawn carriages; Horse-drawn carriages.***

46. I consider that horse drawn carriages fall within the definition of a vehicle, and as such I consider the Opponent's best-case lays in "tires for vehicle wheels". While traditionally horse drawn carriages have wooden wheels, I am mindful that modern equivalents can incorporate tyres to improve speed and comfort for the passengers. In view of this, and in the absence of any submissions from the parties, I consider that the same reasoning set out in paragraph 44 applies here. I therefore consider that the goods are similar to a low degree.

***Tyre protection chains.***

47. The Applicant's above goods are accessories which are attached to tires to protect them from damage and enhance grip, particularly in industrial settings. The users of these goods overlap with the Opponent's "tires for vehicle wheels", being owners of heavy-duty industrial vehicles wishing to increase the longevity of their tyres. However, I consider that the goods differ in nature, purpose and method of use. Tyres are integral to the proper functioning of a vehicle, while tyre protection chains

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<sup>9</sup> See Collins Dictionary, <https://www.collinsdictionary.com/dictionary/english/vehicle>. Accessed 19 March 2026.

are removable metal accessories which are attached to the outside of tyres to protect them from damage. I do not consider that the average consumer would expect an undertaking responsible for tyres for vehicles to also manufacture tyre protection chains. However, I consider that tyre protection chains are likely to be sold by the same specialist retailers of tyres for heavy-duty industrial vehicles. The goods are not in competition, as the average consumer will not purchase a protection chain in place of a tyre. The goods are not complementary in the way set out in caselaw. Overall, I consider the goods to be similar to a low degree.

***Bicycle water bottle cages; Water bottle cages for bicycles; Water bottle holders for bicycles; Bottle cages for bicycles; Bike bags; Bicycle carriers; Bicycle racks [carriers]; Bicycle bells; Bicycle racks for vehicles; Bicycle stands; Bicycle horns; Bicycle saddle covers; Saddle covers for bicycles or motorcycles; Mudguards for two-wheeled motor vehicles or bicycles; Covers for bicycle saddles; Saddle covers for bicycles; Bags [panniers] for bicycles; Direction indicators for bicycles.***

48. The Applicant's above goods are all accessories for bicycles. I consider the user of these goods overlaps with the user of the Opponent's "pneumatic tires" (to the extent that those tires are for bicycles), being owners of bicycles. The goods differ in nature, purpose and method of use. Tyres are core structural components which are essential to the proper functioning of a bicycle. The Applicant's goods are optional accessories which can be added to a bicycle to suit the preferences of a user (such as to enhance comfort or ease of use), however, they are not essential to the functioning of a bicycle. I do not consider that the average consumer would expect the goods at issue to come from the same undertaking, however, I consider that the goods are likely to be sold within the same specialist bicycles shops and/or retailers of sporting goods. The goods are not in competition, as the average consumer will not purchase a bicycle accessory (such as a saddle cover or bicycle stand) in place of a tyre, and I do not consider the goods to be complementary, in the way set out in caselaw. Overall, I consider the goods to be similar to a low degree.

***Bicycle training wheels.***

49. The Applicant's above goods are bicycle training wheels, which I understand to be additional wheels added to bicycles for stability when learning to ride. I consider the Opponent's best-case lays in "pneumatic tires" (to the extent that those tires are for bicycles). The users of the respective goods will be bicycle owners. I consider that there is a degree of overlap in nature, however, the method of use of the respective goods differ. While there is a degree of overlap in general purpose, being to enable motion, when the goods at issue are all attached to a bicycle and act as a point of contact with the ground, tyres are essential to the function of the bicycle, while training wheels are an optional accessory that can be added to a bicycle to prevent it falling over while being ridden. I do not consider that the goods are in competition, as a consumer would not buy a pneumatic tyre, in place of training wheels. While the goods can be used alongside one another, they are not complementary in the way set out in caselaw. Further to this, I do not consider that a consumer would expect the same undertaking to provide both goods. Although the respective goods may both be sold within the same bicycle shops, I do not consider that they would be placed in close proximity to one another. Overall, I consider the goods to be similar to a low degree.

***Car body modification parts for sale in kit form.***

50. The Applicant's above goods are all kits for the modification of the body of a vehicle. I consider that these goods overlap in user with the Opponent's "tires for vehicle wheels", being vehicle owners or professionals who repair or modify vehicles. While at a very general level the respective goods are all parts for vehicles, the specific nature, method of use and purpose of the goods differs. Tyres are attached to wheels and are essential to the proper functioning of a vehicle, while the Applicant's goods are optional aftermarket parts used to modify the aesthetics or performance of a vehicle. The goods are not in competition, as an individual will not purchase a body modification kit in place of a tyre, and the goods are not complementary in the way set out in caselaw. The average consumer would not expect an undertaking responsible for tyres to also produce parts for car body modification. While the goods will all be sold within motor parts retailers, I do not consider that the goods

will be placed within the same aisles or within close proximity to one another. Overall, I consider the goods to be similar to a very low degree.

***Air bags; Sliding roofs for vehicles; Sliding roofs for motor vehicles; Caravan spoilers; Trailer hitches for vehicles; Hitch stabilisers for use with motor land vehicles; Hitches for use with motor land vehicles; Trailer chassis for vehicles; Trailer hitches; Motor car doors; Vehicle running boards; Running boards (Vehicle -); Automobile running boards; Running boards [land vehicle parts]; Armrests for automobile seats; Direction indicator signals for land vehicles; Direction indicators for land vehicles; Direction indicator signals for vehicles; Safety belts for vehicle seats; Safety belts for the seats of vehicles; Motor car seats; Car seats; Convertible car seats; Motor car windows; Motor car convertible tops; Rear car windows; Brakes for motor cars; Windscreens for motor cars; Windscreen wipers for motor cars; Vehicle windscreens; Vehicle windshields; Vehicle cabs; Wipers for car head lamps; Car theft alarms; Head-rests for car seats; Automobile chassis; Chassis (Automobile -); Vehicle seats; Seats (Vehicle -); Bodywork (Vehicle -); Vehicle chassis; Chassis (Vehicle -); Vehicle bumpers; Mud flap hold-downs; Mud flap holders; Mud flap weights; Mud flap hangers; Passenger seat belt pre-tensioners; Passenger seat belt retractors; Belt pulleys for land vehicles; Vehicle seat belts; Passenger seat belt presenters; Restraints for use with vehicle seat belts; Seat belts for use in vehicles; Passenger seat belts; Treads for vehicles [roller belts]; Rubber belts for land vehicle transmissions; Drive chains for driving ground vehicles; Safety belt installations for the seats of vehicles; Safety alarms for vehicles; Drive belts [land vehicle parts]; Motorcycle saddles; Motorcycle handlebars; Motorcycle kickstands; Hubs for motorcycle wheels; Mudguards for motorcycles; Handlebar grips for motorcycles; Pedals for motorcycles; Motorcycle frames; Motorcycle foot pegs; Motorcycle sidecars.***

51. The Applicant's above goods are all parts for vehicles. I consider that these goods overlap in user with the Opponent's "tires for vehicle wheels", being vehicle owners, professionals who repair or maintain vehicles. While at a very general level the respective goods are all parts or accessories for vehicles, the specific nature, method of use and purpose of the goods will differ. The goods are not in

competition, as an individual will not purchase handlebars or windscreen wipers, for example, in place of a tyre. I do not consider the goods to be complementary in the way set out in caselaw. I consider there to be an overlap in trade channels, as it is commonplace in trade for the same undertaking to provide a range of vehicle parts, however, while the goods will all be sold in motor parts retailers, I do not consider that the goods will be placed within close proximity to one another. Overall, I consider the goods to be similar to a very low degree.

***Child booster cushions for vehicle seats; Safety chairs for vehicles; Cushions adapted for use with car seats; Car seat harnesses; Vehicle safety restraints for use with safety seats; Vehicle safety harness for safety seats for children; Safety restraints for use in vehicles; Safety harnesses for vehicles; Restraints for use with vehicle safety belts; Safety belts for vehicles; Vehicle safety harness for children; Vehicle safety belts for children; Vehicle safety seats; Restraints (safety -) [for vehicle seats]; Safety belt supports; Safety seats for children; Vehicle safety restraints for use with carry cots; Safety seats for vehicles; Safety harnesses for auto racing; Safety harnesses for vehicle seats; Harnesses (Safety -) for vehicle seats; Vehicle safety seats for children; Child safety seats for use in vehicles; Automobile safety seats for children; Child safety harnesses for vehicle seats; Vehicle safety harness for carry cots; Vehicle safety restraints for use with pram bodies; Safety seats for use in cars; Safety harnesses for the seats of vehicles; Pet safety seats for use in vehicles; Safety belts adapted for use in vehicles; Children's safety belts for use in vehicles; Safety seats for children, for vehicles; Safety seats for children for use in vehicles; Seats (Safety -) for children, for vehicles; Child safety belt holders for automobile seats; Children's car seats.***

52. The Applicant's above goods are all booster seats, safety seats or harnesses for use in vehicles. I consider that these goods overlap in user, at a broad level, with the Opponent's "tires for vehicle wheels", being vehicle owners. While the respective goods are all for use with vehicles, I consider that the goods differ in nature, purpose and method of use. Tyres are structural components (attached to wheels) which are essential to the proper functioning of a vehicle, while the Applicant's goods are safety accessories which are placed inside a vehicle to enhance protection to the user from injury. I do not consider that the average

consumer would expect the goods at issue to come from the same undertaking, and although the goods may be sold within the same retailers of vehicle parts and accessories, in the absence of evidence, I do not consider that they would be placed in close proximity to one another. The goods are not in competition, as the average consumer will not purchase a safety seat, for example, in place of a tyre. I also do not consider the goods to be complementary, as they are not important or indispensable to one another. Overall, I consider the goods to be dissimilar.

***Anti-theft, security and safety devices and equipment for vehicles; Steering wheel locks; Anti-theft locks for use on automobile steering wheels; Disc brake locks for motorcycles.***

53. The Applicant's above goods are all security or anti-theft accessories for use in vehicles. I consider that these goods overlap in user, at a broad level, with the Opponent's "tires for vehicle wheels", being vehicle owners. While the respective goods are all for use with vehicles, I consider that they differ in nature, purpose and method of use. Tyres are structural components (attached to wheels) which are essential to the proper functioning of a vehicle, while the Applicant's goods are security accessories which are used on/in a vehicle to enhance protection against theft. I do not consider that the average consumer would expect the goods at issue to come from the same undertaking, and although the goods may be sold within the same retailers of vehicle parts and accessories, in the absence of evidence, I do not consider that they would be placed in close proximity to one another. The goods are not in competition, as the average consumer will not purchase a steering wheel lock, for example, in place of a tyre. I also do not consider the goods to be complementary, as they are not important or indispensable to one another. Overall, I consider the goods to be dissimilar.

***Car seat tidies; Car tidies; Car creepers for use in inspecting the underneath of cars; Car seat covers; Ski racks for vehicles; Ski carriers for cars; Ski carriers for vehicles; Ski racks for motor cars; Ski carriers for automobiles; Ski carriers for motor cars; Ski carriers for use on vehicles; Levelling apparatus for caravans; Automobile seat cushions; Seat cushions for the seats of cars; Seat cushions for the seats of vehicles; Canopies for trailers; Vehicle safety seat***

***cushions; Coverings for car seats; Car seat canopies; Motorcycle saddlebags; Caravan storage assemblies; Panniers for motorcycles.***

54. The Applicant's above goods are all accessories for vehicles. I consider the user of these goods overlaps with the user of the Opponent's "tires for vehicle wheels" being owners of vehicles. The goods differ in nature, purpose and method of use. Tyres are structural components which are attached to the wheels and are essential to the proper functioning of a vehicle. The Applicant's goods are optional accessories which can be added to a vehicle to suit the preferences of a user (to change the appearance or provide storage solutions, for example); however, they are not essential to the functioning of a vehicle. I do not consider that the average consumer would expect the goods at issue to come from the same undertaking, and, even if they are sold by the same retailers, in the absence of evidence, I do not consider that they would be placed in close proximity to one another. The goods are not in competition, as the average consumer will not purchase a car tidy, for example, in place of a tyre. I do not consider the goods to be complementary, as they are not important or indispensable to one another. Overall, I consider the goods to be dissimilar.

***Fishing boats; Ski boats; Recreational jet boats; Sailing boats; Motorised yachts; Sail boats; Catamarans; Sailing vessels; Jet boats; Boats; Sailboats; Pontoon boats; House boats; Personal jet boats; Ferry boats; Vessels [boats and ships]; Powerboats; Tug boats; Leisure boats; Hydrofoils being boats; Sailing craft; Pleasure boats; Inflatable boats; Inflatable dinghies [lifeboats]; Jon boats; Dredgers [boats]; Catboats; Yachts; Motor yachts; Speedboats; Rescue boats; Inflatable lifeboats; Self-inflating rafts for transportation; Vehicles for travel by sea; Rowing boats; Paddle boats; Kayaks; Water bikes; Water scooters [personal watercraft].***

55. The Applicant's above goods are all types of boat or watercraft. I consider the Opponent's best case lays in "tires for vehicle wheels". However, In the absence of any submissions or evidence to the contrary, I consider that tyres are not an integral part of any of the Applicant's above goods. In view of this, I consider that the goods differ in purpose, method of use and nature. While at a very general level the goods

will be used by the general public, this is not sufficient to engage a finding of similarity. The goods are not in competition, nor are they complementary in the way set out in caselaw. I do not consider that an undertaking responsible for boats and/or watercraft will also be responsible for tyres for vehicle wheels, nor do I consider that the goods will be sold within the same retail outlets. Overall, I consider the goods to be dissimilar.

***Air cushion vehicles; Vehicles (Air cushion -); Air cushion borne vehicles.***

56. I understand the Applicant's above goods to be vehicles that travel just above the surface of land or water on a cushion of air. I consider the Opponent's best case lies in "tires for vehicle wheels", however the Applicant's goods do not use tyres. In view of this, and for the same reasons set out in paragraph 55, I consider the goods to be dissimilar.

***Snowmobiles; Snow sledges for transportation.***

57. The Applicant's above goods are vehicles designed to move on snow. I consider that these goods usually do not use tyres but rather utilise skis and tracks to enable movement across snow. In view of this, and for the same reasons set out in paragraph 55, I consider the goods to be dissimilar to the Opponent's goods.

***Vehicles for travel by rail; Railway passenger cars; Sleeping cars.***

58. The Applicant's above goods are vehicles for travel on rails. In the absence of any submissions from the parties, I consider that these goods do not usually use tyres but instead use solid metal wheels which run along railway tracks. In view of this, and for the same reasons set out in paragraph 55, I consider the goods to be dissimilar to the Opponent's goods.

***Hot air balloons.***

59. As hot air balloons do not use tyres, I consider that the same rationale set out in paragraph 55 applies to the Applicant's above goods. In view of this, I consider the goods to be dissimilar to the Opponent's goods.

***Pet strollers; Push chairs; Fold-up pushchairs; Transport chairs.***

60. The Applicant's above goods are all types of chairs for transporting people or pets. I consider the Opponent's best-case lays in "pneumatic tires". However, in the absence of any evidence to the contrary, I consider that the wheels of the Applicant's goods are not usually filled with air but rather made of a rigid material such as plastic or rubber. In view of this, I consider that the same rationale set out in paragraph 55 applies here. In view of this, I consider the goods to be dissimilar.

***Diving bells.***

61. A diving bell is defined as 'a container shaped like a bell, in which people can breathe air while they work under water'.<sup>10</sup> I can see no obvious similarity between this and any of the Opponent's goods. In the absence of any submissions from the Opponent as to where the similarity lies, I find that the goods are dissimilar.

***Parachutes for sky-diving.***

62. I can see no obvious similarity between the Applicant's above goods and any of the Opponent's goods. In the absence of any submissions from the Opponent as to where the similarity lies, I find that the goods are dissimilar.

***Sliding roofs for water vehicles.***

63. The Applicant's above goods are parts for water vehicles. I consider that the Opponent's best case lay in "tires for vehicle wheels", however I bear in mind that marine vehicles do not usually have tires. I consider that the goods differ in user,

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<sup>10</sup> See Collins Dictionary, <https://www.collinsdictionary.com/dictionary/english/diving-bell>. Accessed 16 March 2026.

nature, purpose and method of use. The Applicant's sliding roofs are specifically designed to provide cover for marine vehicles; made from rigid materials they are intended to offer protection from environmental factors, such as rain. In contrast, tyres for vehicles act as a point of contact between a vehicle and the ground; made of rubber they provide a durable cushioned surface to enable movement of the vehicle. I do not consider that the goods will come from the same undertaking, nor be sold within the same retailers. The goods are not in competition, nor are they complementary in the way set out in caselaw. Overall, I consider the goods to be dissimilar.

### ***Shopping trolleys; Fishing trolleys; Tool trolleys.***

64. The Applicant's above goods are all types of trolleys. I consider the Opponent's best-case lays in "pneumatic tires". However, in my comparison I bear in mind that the wheels of trolleys are not usually filled with air but rather made of a rigid material such as plastic or metal. In the absence of any submissions from the parties, I consider that the nature, method of use and purpose of the Opponent's "pneumatic tires" will differ to the Applicant's range of trolleys. While the user will overlap on a very general level, to the extent that they are used by the general public, this is insufficient to engage a finding of similarity. I do not consider that the goods are in competition, as a consumer would not decide to buy a pneumatic tyre, in place of a trolley. I do not consider the goods to be complementary. Although the respective goods may both be sold within general retail stores, I do not consider that they would be placed in close proximity to one another. Overall, I consider the goods to be dissimilar.

### ***Handbarrows.***

65. A handbarrow is defined as "a flat tray for transporting loads, usually carried by two people".<sup>11</sup> In view of this, and in the absence of any submissions/evidence from the parties, I can see no obvious similarity between the Applicant's above goods and any of the Opponent's goods. I find that the goods are dissimilar.

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<sup>11</sup> <https://www.collinsdictionary.com/dictionary/english/handbasket> Accessed 19 March 2026

***Wheelchair cushions; Arm rests for wheelchairs; Armrests for wheelchairs.***

66. The Applicant's above goods are accessories for wheelchairs. In the absence of any submissions/evidence from the parties, I can see no obvious similarity between the Applicant's above goods and any of the Opponent's goods. I find that the goods are dissimilar.

***Ski lifts; Lifts (Ski -); Conveyor installations [ski lifts]; Conveying installations [ski lifts]; T-bars for ski lifts; Chairlifts; Chair lifts.***

67. I can see no obvious similarity between the Applicant's above goods and any of the Opponent's goods. In the absence of any submissions from the Opponent as to where the similarity lies, I find that the goods are dissimilar.

***Cable car cabins.***

68. I understand the Applicant's above goods to be cabins which are suspended from an arial wire system and used to transport people up mountains or hills. I can see no obvious similarity between the Applicant's above goods and any of the Opponent's goods. In the absence of any submissions from the Opponent as to where the similarity lies, I find that the goods are dissimilar.

***Davits for boats [boat davits]; Davits for boats; Boat cleats; Masts for boats; Boats (Masts for -); Hydrofoils for boats; Propellers for boats; Boat tillers; Boat fenders; Boat chocks; Propeller shafts for boats; Sailing boat masts; Boat hulls; Boat rudders; Tiller connectors for use with yachts; Ship hulls; Ship propellers; Mast feet for boats; Kayak paddles; Paddles [kayak equipment]; Water deflecting skirts [kayak equipment]; Seat cushions for the seats of boats; Seat cushions for the seats of water vehicles.***

69. The Applicant's above goods are all parts and accessories for boats and other watercraft. In the absence of any submissions from the parties and bearing in mind that boats do not usually have tyres, I can see no obvious similarity between the

Applicant's above goods and any of the Opponent's goods. I find that the goods are dissimilar.

***Seat cushions for the seats of aircraft***

70. The Applicant's above goods are accessories for aircraft. I consider that there is a very broad overlap in user with the Opponent's "tires for vehicle wheels" on the basis that the user of the respective goods will be owners of aircrafts. However, the goods clearly differ in nature, purpose and method of use as seat cushions are typically interior fittings rather than functional components of an aircraft. I do not consider the goods to be in competition as an individual will not choose to buy a seat cushion over a tyre. Although the goods could be used on the same vehicle, I do not consider the goods to be complementary in the way set out in caselaw. Due to the specialist nature of aviation goods, they are likely to be sold within the same retailers of aircraft parts and accessories, however I see no reason why they would be placed within close proximity to one another. Overall, I consider the goods to be dissimilar.

71. It is a prerequisite of section 5(2)(b) of the Act that the goods be identical or at least similar. As per *eSure*,<sup>12</sup> in relation to the goods which I have found to be dissimilar, as there can be no likelihood of confusion under section 5(2) of the Act, I will take no further account of such goods, with the opposition failing to that extent. The opposition under section 5(2)(b) of the Act, therefore, fails at this juncture for the following goods:

*Class 12:*

*Child booster cushions for vehicle seats; Safety chairs for vehicles; Cushions adapted for use with car seats; Car seat harnesses; Vehicle safety restraints for use with safety seats; Vehicle safety harness for safety seats for children; Safety restraints for use in vehicles; Safety harnesses for vehicles; Restraints for use with vehicle safety belts; Safety belts for vehicles; Vehicle safety harness for children; Vehicle safety belts for children; Vehicle safety seats; Restraints (safety -) [for vehicle seats]; Safety belt supports; Safety seats for children; Vehicle safety*

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<sup>12</sup> *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA

*restraints for use with carry cots; Safety seats for vehicles; Safety harnesses for auto racing; Safety harnesses for vehicle seats; Harnesses (Safety -) for vehicle seats; Vehicle safety seats for children; Child safety seats for use in vehicles; Automobile safety seats for children; Child safety harnesses for vehicle seats; Vehicle safety harness for carry cots; Vehicle safety restraints for use with pram bodies; Safety seats for use in cars; Safety harnesses for the seats of vehicles; Pet safety seats for use in vehicles; Safety belts adapted for use in vehicles; Children's safety belts for use in vehicles; Safety seats for children, for vehicles; Safety seats for children for use in vehicles; Seats (Safety -) for children, for vehicles; Child safety belt holders for automobile seats; Children's car seats; Anti-theft, security and safety devices and equipment for vehicles; Steering wheel locks; Anti-theft locks for use on automobile steering wheels; Disc brake locks for motorcycles; Car seat tidies; Car tidies; Car creepers for use in inspecting the underneath of cars; Car seat covers; Ski racks for vehicles; Ski carriers for cars; Ski carriers for vehicles; Ski racks for motor cars; Ski carriers for automobiles; Ski carriers for motor cars; Ski carriers for use on vehicles; Levelling apparatus for caravans; Canopies for trailers; Automobile seat cushions; Seat cushions for the seats of cars; Seat cushions for the seats of vehicles; Vehicle safety seat cushions; Coverings for car seats; Car seat canopies; Motorcycle saddlebags; Caravan storage assemblies; Panniers for motorcycles; Fishing boats; Ski boats; Recreational jet boats; Sailing boats; Motorised yachts; Sail boats; Catamarans; Sailing vessels; Jet boats; Boats; Sailboats; Pontoon boats; House boats; Personal jet boats; Ferry boats; Vessels [boats and ships]; Powerboats; Tug boats; Leisure boats; Hydrofoils being boats; Sailing craft; Pleasure boats; Inflatable boats; Inflatable dinghies [lifeboats]; Jon boats; Dredgers [boats]; Catboats; Yachts; Motor yachts; Speedboats; Rescue boats; Inflatable lifeboats; Self-inflating rafts for transportation; Vehicles for travel by sea; Rowing boats; Paddle boats; Kayaks; Water bikes; Water scooters [personal watercraft]; Air cushion vehicles; Vehicles (Air cushion -); Air cushion borne vehicles; Snowmobiles; Snow sledges for transportation; Vehicles for travel by rail; Railway passenger cars; Sleeping cars; Hot air balloons; Diving bells; Parachutes for sky-diving; Sliding roofs for water vehicles; Shopping trolleys; Fishing trolleys; Tool trolleys; Pet strollers; Push chairs; Fold-up pushchairs; Transport chairs; Handbarrows; Ski lifts; Lifts (Ski -); Conveyor installations [ski lifts]; Conveying installations [ski lifts]; T-bars for ski lifts; Chairlifts; Chair lifts; Cable*

*car cabins; Davits for boats [boat davits]; Davits for boats; Boat cleats; Masts for boats; Boats (Masts for -); Hydrofoils for boats; Propellers for boats; Boat tillers; Boat fenders; Boat chocks; Propeller shafts for boats; Sailing boat masts; Boat hulls; Boat rudders; Tiller connectors for use with yachts; Ship hulls; Ship propellers; Mast feet for boats; Kayak paddles; Paddles [kayak equipment]; Water deflecting skirts [kayak equipment]; Seat cushions for the seats of boats; Seat cushions for the seats of water vehicles; Wheelchair cushions; Arm rests for wheelchairs; Armrests for wheelchairs; Seat cushions for the seats of aircraft.*

### **Average consumer and the purchasing act**

72. As the case law above indicates, it is necessary to determine who the average consumer is for the goods at issue. I must then determine the manner in which the goods are likely to be selected by the average consumer.
73. 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 in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97.
74. 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 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.


75. I find that the average consumer will be members of the general public, professionals who, for example, offer repair/maintenance of vehicles/bicycles, or manufacturers of vehicles/bicycles. The goods will be self-selected from car showrooms, catalogues/brochures, garages and physical stores, or their online equivalents. Given the process of selection, the marks' visual impact is likely to play the greater role, though I do not discount the opportunity for aural recommendations made, for example, by salespeople.

76. The costs of the goods will vary, from relatively low-cost parts such as inner tubes for bicycle tyres, to higher cost fully assembled vehicles. The goods will likely be purchased infrequently; however, I consider that parts of vehicles/bicycles will be purchased more frequently than a vehicle or bicycle itself. Various factors are likely to be taken into consideration during the purchasing process, including the cost, aesthetic appearance, durability and suitability for the consumer's needs. I find that,

where the average consumer is a member of the general public, they will apply a medium degree of attention to the purchase of most of the goods at issue, however, for high-cost items, such as vehicles, a high level of attention will be paid. Where the average consumer is a business, they will pay a higher degree of attention during the purchasing process due to the impact that poor quality goods could have on the reputation of their business. I bear in mind that the likelihood of confusion will be assessed from the perspective of the former (i.e. the general public), since they are the group who will pay the lower degree of attention.<sup>13</sup>

### Comparison of the marks

77. The respective trade marks pleaded under 5(2)(b) are shown below:

| Opponent's trade mark   | Applicant's trade marks<br>(series of 2 marks)             |
|---|--|
|  | <p><b>UNITED OUTDOORS</b></p> <p><b>UNITED OUTDOOR</b></p> |

78. The Opponent's mark is comprised of a figurative device and the word "UNITED". The device element is a grey shield-like shape. To the right of the device is the word 'UNITED', presented in capital letters in a black and bold font, and a standard typeface. Despite the placement of the device at the beginning of the mark, and its size, the word occupies a greater part of the mark. While not negligible, the colours have a minimal impact on the mark. Bearing this in mind, and considering that the eye is naturally drawn to elements of marks that can be read,<sup>14</sup> I find that the word

<sup>13</sup> Case T-356/14, *CareAbout v OHMI - Florido Rodríguez (Kerashot)*, paragraph 25

<sup>14</sup> *Migros-Genossenschafts-Bund v EUIPO*, T-189/16, [52]

“UNITED” will play a more dominant role in the overall impression, with the figurative element playing a lesser role.

79. The Applicant’s mark consists of a series of two marks. The first mark in the series features the words “UNITEDOUTDOORS” and the second mark in the series features the words “UNITED OUTDOOR”. Both marks in the series are word only marks presented in capital letters, absent of any stylisation or embellishment.<sup>15</sup> The Applicant submits that the distinctive element of the marks is “OUTDOOR”/“OUTDOORS”, with “UNITED” being ‘a merely decorative word to somehow limit the nature or scope of the key word’.<sup>16</sup> In the absence of evidence, I do not consider the words, when placed together, form a unit to which the average consumer would be able to identify such a concept. Instead the average consumer will see the mark as being comprised of two separate words. Further to this, I consider that the word “OUTDOOR”/“OUTDOORS” is allusive to goods for use outdoors (such as bicycles). Bearing this in mind, I find that the “UNITED” plays a greater role in the overall impression of the mark, with “OUTDOOR”/“OUTDOORS” playing a lesser role.

80. Visually, the marks coincide in the word “UNITED”, which is presented in capital letters in both marks<sup>17</sup>. The figurative element in the Opponent’s mark is a point of visual difference. However, I note that this plays a lesser role in the overall impression of the Opponent’s mark. Another point of visual difference is the presence of the word “OUTDOORS” or “OUTDOOR” at the end of the Applicant’s series of marks. Overall, I consider the marks to be visually similar to a medium degree.

81. Aurally, both marks contain the word “UNITED”, which will be pronounced in the ordinary way. However, the additional words “OUTDOORS” or “OUTDOOR” at the end of the Applicant’s series of marks, which will be pronounced in the ordinary

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<sup>15</sup> Registration of a word mark protects the words themselves. See *LA Superquimica v EUIPO*, T-24/17, para 39; and *Bentley Motors Limited v Bentley 1962 Limited*, BL O/158/17, paragraph 16.

<sup>16</sup> Applicant’s TM8 and counterstatement (page 1 of continuation sheet)

<sup>17</sup> I note that the Applicant’s mark is registered as a word only mark, which is protected for use in any standard typeface and case.

way, creates a point of aural difference. The figurative element in the Opponent's mark will not be articulated. Overall, I consider the marks are aurally similar to a medium degree.

82. Conceptually, the ordinary dictionary word "UNITED" appears in both marks. I consider the average consumer will recognise the word "UNITED" in both marks as referring to the two or more things which are joined up or combined. The shield-like device in the Opponent's mark will, in my view, be perceived as such without conveying any further message to the consumer. The words "OUTDOORS" or "OUTDOOR" in the Applicant's mark introduces a conceptual difference. I consider the average consumer will apply the usual definition to these words, as reference to "taking place, existing, or intended for use in the open air". Bearing this in mind, I consider that the word 'outdoors' when viewed in relation to goods, such as bicycles, alludes to the fact these goods are for use in the outdoors. Overall, I consider the marks to be conceptually similar to a medium degree based on the shared word element "UNITED".

#### **Distinctive character of the earlier trade mark**

83. The distinctive character of a trade mark can be appraised only, first, by reference to the goods 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).”

84. Registered trade marks possess varying degrees of inherent distinctive character, being lower where they are suggestive or allusive of a characteristic of the goods, 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.
85. As these are fast track proceedings in which the Opponent has filed no evidence of any use it may have made of its earlier trade mark, I have only its inherent distinctiveness to consider.
86. The Opponent’s mark comprises of the ordinary dictionary word “UNITED” and a figurative device element, having no obvious allusive or descriptive meaning in connection to the goods for which the mark is registered. Overall, the combination of the word element and the figurative element render the mark as a whole inherently distinctive to a medium degree.

### **Likelihood of confusion**

87. 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 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.*).

88. 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.

89. The following factors must be considered to determine if a likelihood of confusion can be established:

- I have found the marks to be visually similar to a medium degree.
- I have found the marks to be aurally similar to a medium degree.
- I have found the marks to be conceptually similar to a medium degree.
- I have found the earlier mark to be inherently distinctive to a medium degree.
- I have identified the average consumer to be members of the general public and professions who repair/ maintain vehicles and bicycles. Both sets of consumers will select the goods primarily by visual means, although I do not discount an aural component.
- I have concluded that (while bearing in mind that the likelihood of confusion must be assessed from the perspective of the group who will pay the lower degree of attention) a medium degree of attention will be paid during the purchasing process for most goods, which a high degree of attention will be paid to high-cost goods (such as fully constructed vehicles).
- I have found the parties' goods to be between identical and similar to a very low degree.

90. Taking into account the above, particularly the visual differences between the marks, namely the additional words 'OUTDOOR/OUTDOORS' present in the

Applicant's mark, and the addition of the device element in the Opponent's mark, I am satisfied that the marks are unlikely to be mistakenly recalled or misremembered as each other. Accordingly, I do not consider there to be a likelihood of direct confusion.

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

“16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: “The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark.

17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:

(a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right (“26 RED TESCO” would no doubt be such a case).

(b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand

or brand extension (terms such as “LITE”, “EXPRESS”, “WORLDWIDE”, “MINI” etc.).

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

92. These three categories are not exhaustive; rather, they were intended to be illustrative of the general approach, as has been confirmed by the Court of Appeal. I recognise that a finding of indirect confusion should not be made merely because the competing marks share a common element. In this connection, it is not sufficient that a mark merely calls to mind another mark: this is mere association not indirect confusion.<sup>18</sup>
93. Furthermore, in *Liverpool Gin*,<sup>19</sup> Arnold LJ referred to the comments of James Mellor QC (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at [16] that “a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion”. Arnold LJ agreed, pointing out that there must be a “proper basis” for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.
94. Taking all of the above into account, the average consumer will identify the differences in the marks emanating from the words “OUTDOORS/OUTDOOR” and the presence/absence of the device, but I consider that the shared use of the word “UNITED” (which I found to play a greater role in the respective marks, and its position at the beginning of the Applicant’s mark) will lead the average consumer to conclude that the marks originate from the same or economically linked undertakings. This is because the average consumer will likely attribute trade mark significance to the commonly shared word element “UNITED”, which creates a conceptual hook between the competing marks, and treat it as the ‘house’ brand. In my view, the word “OUTDOOR”/“OUTDOORS” in the Applicant’s series of marks

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<sup>18</sup> *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17

<sup>19</sup> *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207

will be seen as an indication that it is a brand extension of the “UNITED” mark, focused on outdoor goods. In light of the above, I find that there is a likelihood of indirect confusion between the marks at issue for all goods that are similar to any degree, due to the effect of the interdependency principle.

## Conclusion

95. The opposition based upon 5(2)(b) has partially succeeded. Therefore, subject to any successful appeal against my decision, the application will be refused for the following goods:

*Class 12: Automobile tyres; Automobile tires; Vehicle wheel tyres; Wheel tyres (Vehicle -); Wheel tires (Vehicle -); Vehicle wheel tires; Tyres for motor vehicle wheels; Tyres for land vehicles; Tyres for motor vehicles; Vehicle tires; Vehicle tyres; Motorcycle tires; Bicycle tyres; Bicycle tires [tyres]; Tubeless tyres for bicycles; Tubeless tires [tyres] for bicycles, cycles; Tyres for bicycles, cycles; Bicycle tires; Tubeless tires for bicycles; Tires for bicycles; Tires for bicycles, cycles; Wheels for bicycles, cycles; Wheels being parts of bicycles; Bicycle wheels; Automobile wheels; Vehicle wheels; Wheels (Vehicle -); Wheels for bicycles; Mountain bikes; Mountain bicycles; Sports bicycles; Road bikes; Dirt bikes; Road racing bicycles; Racing bicycles; Pedal bicycles; Folding bikes; Bicycles; Touring bicycles; Tandem bicycles; Motorised bicycles; Electric bicycles; Folding bicycles; Collapsible bicycles; Folding electric bicycles; Inner tubes for bicycle tyres; Inner tubes [for two-wheeled motor vehicles or bicycles]; Bicycle rims; Bicycle hubs; Bicycle spokes; Rims for bicycle wheels; Hubs for bicycle wheels; Bicycle wheel rims; Bicycle wheel hubs; Spokes for bicycle wheels; Sprockets [bicycle parts]; Rims for bicycles; Bicycle wheel spokes; Inner tubes for bicycle tires; Wheel rims for bicycles; Rims for wheels of bicycles; Disk wheels [bicycle parts]; Hubs for bicycles; Rims for wheels of bicycles, cycles; Wheel hubs for bicycles; Spokes for bicycles; Spokes of bicycles; Spoke caps for bicycle wheels; Spokes for bicycles, cycles; Bicycle saddles; Bicycle handlebars; Bicycle mudguards; Handlebars [bicycle parts]; Bicycle pedals; Bicycle kickstands; Bicycle brakes; Bicycle sprockets; Bicycle cranks; Bicycle handlebar grips; Bicycle gears; Mudguards for two-wheeled bicycles; Bicycle stabilisers; Handlebars for bicycles, cycles;*

*Mudguards for bicycles; Derailleurs for bicycles; Brakes [bicycle parts]; Handlebar grips for bicycles; Gear wheels [bicycle parts]; Forks [bicycle parts]; Bicycle frames; Pedals for bicycles; Bicycle motors; Brake shoes [bicycle parts]; Brakes for bicycles; Bicycle seats; Bicycle stands [kickstands]; Toeclips for use on bicycles; Kickstands for bicycles; Freewheels for bicycles; Gear wheels for bicycles; Cranks for bicycles; Saddles for bicycles, cycles or motorcycles; Handlebar ends for bicycles; Bicycle chains; Handlebars; Chainwheels for bicycles; Saddles for bicycles; Drivetrains for bicycles; Drive trains [bicycle parts]; Gears for bicycles; Bicycle handle bars; Brakes for bicycles, cycles; Chains [bicycle parts]; Bicycle seat posts; Change-speed gears [bicycle parts]; Frames for bicycles; Drive chains [bicycle parts]; Bicycle structural parts; Bicycle brake lever grips; Camping vehicles; Camping cars; Combination camping recreational vehicle and horse trailer; Campers [recreational vehicles]; Truck campers [recreational vehicles]; Truck campers; Camper vans; Recreational vehicles (RV); Motor caravans; Mobile homes [caravans]; Motor car derived vans; Motor vans; Motor lorries; Horse vans; Touring land vehicles; Trailer trucks; Lorries; Vehicles fitted with living accommodation; Vans; Vans [vehicles]; Tow trucks; Carts being motorised land vehicles; Towing trucks; Motor land vehicles; Land motor vehicles; Go-kart transport trucks; Touring cars; Vehicles for travel by land; Motor cars for transport on land; Aeroplanes towing vehicles; Car transporters; Sport utility vehicles; Sports cars; Sports utility vehicles; Sand yachts; Quad bikes; Motorized dirt bikes for motocross; Passenger motor cars; Passenger cars; Cars; Motor cars; Motor cars for racing; Racing motor cars; Motor racing cars; Motorcycles for motocross; Pallet transfer trucks; Motorbicycles; Camping trailers; Caravans; Goods handling carts; Trailer tents; Trailers for towing boats; Trailers for motor land vehicles; Road trailers; Vehicle trailers; Trailers for petrol tankers; Trailers [vehicles]; Horse trailers; Bicycle trailers; Towed vehicles; Bicycle trailers (riyakah); Horse drawn carriages; Horse-drawn carriages; Vehicles for travel by air; Air vehicles; Ultralight aircraft; Wheel rims for motor cars; Hubs for vehicle wheels (motorcycles); Tyre protection chains; Bicycle pumps; Pumps for bicycle tyres; Pumps for bicycle tires; Puncture repair outfits for bicycle tyres; Car body modification parts for sale in kit form; Bicycle water bottle cages; Water bottle cages for bicycles; Water bottle holders for bicycles; Bottle cages for bicycles; Bike bags; Bicycle carriers; Bicycle racks [carriers]; Bicycle bells; Bicycle racks for vehicles; Bicycle stands; Bicycle horns; Bicycle saddle covers; Saddle covers for bicycles or*

*motorcycles; Mudguards for two-wheeled motor vehicles or bicycles; Covers for bicycle saddles; Saddle covers for bicycles; Bags [panniers] for bicycles; Direction indicators for bicycles; Air bags; Sliding roofs for vehicles; Sliding roofs for motor vehicles; Caravan spoilers; Trailer hitches for vehicles; Hitch stabilisers for use with motor land vehicles; Hitches for use with motor land vehicles; Trailer chassis for vehicles; Trailer hitches; Motor car doors; Vehicle running boards; Running boards (Vehicle -); Automobile running boards; Running boards [land vehicle parts]; Armrests for automobile seats; Direction indicator signals for land vehicles; Direction indicators for land vehicles; Direction indicator signals for vehicles; Safety belts for vehicle seats; Safety belts for the seats of vehicles; Motor car seats; Car seats; Convertible car seats; Motor car windows; Motor car convertible tops; Rear car windows; Brakes for motor cars; Windscreens for motor cars; Windscreen wipers for motor cars; Vehicle windscreens; Vehicle windshields; Vehicle cabs; Wipers for car head lamps; Car theft alarms; Head-rests for car seats; Automobile chassis; Chassis (Automobile -); Vehicle seats; Seats (Vehicle -); Bodywork (Vehicle -); Vehicle chassis; Chassis (Vehicle -); Vehicle bumpers; Mud flap hold-downs; Mud flap holders; Mud flap weights; Mud flap hangers; Passenger seat belt pretensioners; Passenger seat belt retractors; Belt pulleys for land vehicles; Vehicle seat belts; Passenger seat belt presenters; Restraints for use with vehicle seat belts; Seat belts for use in vehicles; Passenger seat belts; Treads for vehicles [roller belts]; Rubber belts for land vehicle transmissions; Drive chains for driving ground vehicles; Safety belt installations for the seats of vehicles; Safety alarms for vehicles; Drive belts [land vehicle parts]; Motorcycle saddles; Motorcycle handlebars; Motorcycle kickstands; Hubs for motorcycle wheels; Mudguards for motorcycles; Handlebar grips for motorcycles; Pedals for motorcycles; Motorcycle frames; Motorcycle foot pegs; Motorcycle sidecars; Bicycle training wheels.*

96. The Applicant's mark, subject to any successful appeal, may proceed to registration for the following goods, for which the opposition was unsuccessful:

Class 12: *Child booster cushions for vehicle seats; Safety chairs for vehicles; Cushions adapted for use with car seats; Car seat harnesses; Vehicle safety restraints for use with safety seats; Vehicle safety harness for safety seats for children; Safety restraints for use in vehicles; Safety harnesses for vehicles;*

*Restraints for use with vehicle safety belts; Safety belts for vehicles; Vehicle safety harness for children; Vehicle safety belts for children; Vehicle safety seats; Restraints (safety -) [for vehicle seats]; Safety belt supports; Safety seats for children; Vehicle safety restraints for use with carry cots; Safety seats for vehicles; Safety harnesses for auto racing; Safety harnesses for vehicle seats; Harnesses (Safety -) for vehicle seats; Vehicle safety seats for children; Child safety seats for use in vehicles; Automobile safety seats for children; Child safety harnesses for vehicle seats; Vehicle safety harness for carry cots; Vehicle safety restraints for use with pram bodies; Safety seats for use in cars; Safety harnesses for the seats of vehicles; Pet safety seats for use in vehicles; Safety belts adapted for use in vehicles; Children's safety belts for use in vehicles; Safety seats for children, for vehicles; Safety seats for children for use in vehicles; Seats (Safety -) for children, for vehicles; Child safety belt holders for automobile seats; Children's car seats; Anti-theft, security and safety devices and equipment for vehicles; Steering wheel locks; Anti-theft locks for use on automobile steering wheels; Disc brake locks for motorcycles; Car seat tidies; Car tidies; Canopies for trailers; Car creepers for use in inspecting the underneath of cars; Car seat covers; Ski racks for vehicles; Ski carriers for cars; Ski carriers for vehicles; Ski racks for motor cars; Ski carriers for automobiles; Ski carriers for motor cars; Ski carriers for use on vehicles; Levelling apparatus for caravans; Automobile seat cushions; Seat cushions for the seats of cars; Seat cushions for the seats of vehicles; Vehicle safety seat cushions; Coverings for car seats; Car seat canopies; Motorcycle saddlebags; Caravan storage assemblies; Panniers for motorcycles; Fishing boats; Ski boats; Recreational jet boats; Sailing boats; Motorised yachts; Sail boats; Catamarans; Sailing vessels; Jet boats; Boats; Sailboats; Pontoon boats; House boats; Personal jet boats; Ferry boats; Vessels [boats and ships]; Powerboats; Tug boats; Leisure boats; Hydrofoils being boats; Sailing craft; Pleasure boats; Inflatable boats; Inflatable dinghies [lifeboats]; Jon boats; Dredgers [boats]; Catboats; Yachts; Motor yachts; Speedboats; Rescue boats; Inflatable lifeboats; Self-inflating rafts for transportation; Vehicles for travel by sea; Rowing boats; Paddle boats; Kayaks; Water bikes; Water scooters [personal watercraft]; Air cushion vehicles; Vehicles (Air cushion -); Air cushion borne vehicles; Snowmobiles; Snow sledges for transportation; Vehicles for travel by rail; Railway passenger cars; Sleeping cars; Hot air balloons; Diving bells; Parachutes for sky-diving; Sliding roofs for water*

*vehicles; Shopping trolleys; Fishing trolleys; Tool trolleys; Pet strollers; Push chairs; Fold-up pushchairs; Transport chairs; Handbarrows; Ski lifts; Lifts (Ski -); Conveyor installations [ski lifts]; Conveying installations [ski lifts]; T-bars for ski lifts; Chairlifts; Chair lifts; Cable car cabins; Davits for boats [boat davits]; Davits for boats; Boat cleats; Masts for boats; Boats (Masts for -); Hydrofoils for boats; Propellers for boats; Boat tillers; Boat fenders; Boat chocks; Propeller shafts for boats; Sailing boat masts; Boat hulls; Boat rudders; Tiller connectors for use with yachts; Ship hulls; Ship propellers; Mast feet for boats; Kayak paddles; Paddles [kayak equipment]; Water deflecting skirts [kayak equipment]; Seat cushions for the seats of boats; Seat cushions for the seats of water vehicles; Wheelchair cushions; Arm rests for wheelchairs; Armrests for wheelchairs; Seat cushions for the seats of aircraft.*

97. The Applicant's mark will also proceed to registration for all goods in classes 4, 6, 8, 9, 11, 18, 20, 21, 22, 24, 25, 27, 28, 35, 41 & 43, which were unopposed.

## **COSTS**

98. As the Opponent has achieved a greater degree of success overall, it is entitled to a contribution towards its costs. I base the costs awarded on the scale contained in TPN 1/2023, however my award takes into account the fact that the Opponent did not achieve outright success in the opposition. In the circumstances, I award the Opponent the sum of £315 as a contribution towards the costs of the proceedings. The sum is calculated as follows:

|               |      |
|---------------|------|
| Official fee: | £100 |
|---------------|------|

|   |      |
|---|------|
| Preparing a notice of opposition<br>and considering the counterstatement: | £250 |
|---|------|

|        |      |
|--------|------|
| Total: | £350 |
|--------|------|

|  |       |
|--|-------|
| I apply a 10% discount to these costs as the Opponent<br>not achieving outright success in these proceedings | - £35 |
|--|-------|

**Total:**

**£315**

99. I therefore order Kwikomfi (Leominster) Ltd to pay ZHONGCE RUBBER (TIANJIN) CO., LTD. the sum of £315. 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 21<sup>st</sup> day of April 2026**

**Emma Rees**

**For the Registrar**