O/0353/26

TRADE MARKS ACT 1994

IN THE MATTER OF
TRADE MARK APPLICATION NUMBER 4084339
BY SHENZHEN RUIJIA TRADING CO., LTD
TO REGISTER THE TRADE MARK:

IN CLASS 9

AND

IN THE MATTER OF OPPOSITION THERETO
UNDER NUMBER 450946
BY YETI COOLERS, LLC

BACKGROUND AND PLEADINGS

1. On 6 August 2024, Shenzhen Ruijia Trading Co., Ltd ("the Applicant") applied to register in the UK the trade mark shown on the cover page of this decision, under number 4084339 ("the contested mark"). The contested mark was published in the Trade Marks Journal for opposition purposes on 23 August 2024 in respect of the following goods:

   Class 9: Wireless headphones; External computer hard drives; Computer mainframes; Computers; Laptop computers; Laptop docking stations; Tablet computers; Computer keyboards; Computer mouses; Computer screens; Monitors; Screens; Touch screen pens; Wireless computer peripherals.

2. On 22 November 2024, YETI Coolers, LLC ("the Opponent") filed a notice of opposition, opposing the application in full under section 5(2)(b) of the Trade Marks Act 1994 ("the Act"). The Opponent relies upon the following UK trade mark:

   YETI
   UK registration number: 3845050
   Filing date: 2 November 2022
   Registration date: 11 August 2023
   Priority date: 7 June 2022[1]
   For the purposes of these proceedings, the Opponent relies upon the following goods for which the mark is registered:

Class 9: Downloadable multimedia products authenticated by non-fungible tokens (NFTs), all of the aforesaid being or related to […] downloadable virtual goods; downloadable audio and video recordings featuring music, musical bands, disc jockeys, and rock groups, live music performances, sports, and fishing authenticated by non-fungible tokens (NFTs); downloadable image files containing artwork authenticated by non-

[1] UNITED STATES OF AMERICA (US) 97446341.

fungible tokens (NFTs), all of the aforesaid being or related to […] downloadable virtual goods; downloadable multimedia files containing artwork, text, audio, and video authenticated by non-fungible tokens (NFTs) for representing a collectible item, all of the aforesaid being or related to […] downloadable virtual goods; digital materials, namely, downloadable digital tokens, and downloadable multimedia files containing digital collectable tokens featuring text, audio, and music, all authenticated by non-fungible tokens (NFTs); downloadable virtual goods.

3. In its notice of opposition, the Opponent claims that the published mark is highly similar to the earlier mark and that the Applicant's goods are highly similar to the goods for which the earlier mark is relied upon. Therefore, when confronted by the published mark, the relevant public in the UK would be highly likely to mistakenly believe that the goods applied for originate or emanate from the opponent, or an entity economically linked to the Opponent.[2]

4. The Applicant filed a defence and counterstatement denying the grounds of opposition.[3]

5. Given the filing dates, the Opponent's mark is an earlier mark, in accordance with section 6 of the Act. However, as it had not been registered for five years or more at the filing date of the application, it is not subject to the proof of use requirements specified within section 6A of the Act. As a consequence, the Opponent may rely upon all of the goods for which the earlier mark is registered without having to establish genuine use.

6. Only the Opponent chose to file evidence and submissions. Both parties were given the option of an oral hearing but neither requested to be heard on the matter and neither party filed written submissions in lieu of a hearing. This decision is taken following careful consideration of the papers.

[2] Form TM7, Q5 and Q9 continuation sheet.
[3] Form TM8, Q8 counterstatement.

7. The Opponent is represented by Dehns; the Applicant is represented by Eric Mo.

EVIDENCE AND SUBMISSIONS

8. As noted above, the Opponent provided evidence in the form of the witness statement of Charlotte Ginnaw, dated 26 March 2025. Ms Ginnaw is a Trade Mark Attorney acting on behalf of the Opponent. The witness statement is accompanied by seven exhibits (CG1 – CG7). The evidence appears to have been adduced in order to support the Opponent's claim that the respective marks at issue are similar and that the respective goods are identical or similar, resulting in a likelihood of confusion on the part of the public, including a likelihood of association. The Opponent filed written submissions at the same time.

9. Whilst I do not intend to summarise the evidence and submissions here, I have taken all of the evidence and submissions into consideration in reaching my decision and will refer to them where necessary below.

RELEVANCE OF EU LAW

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.

DECISION

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

11. Section 5(2)(b) and 5A of the Act is as follows:

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

(a)…

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.

[…]

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."

12. The following standard summary of the principles applicable to the assessment of the likelihood of confusion was approved by the Supreme Court in *Iconix Luxembourg Holdings SARL v Dream Paris Europe Inc & Anor*, [2025] UKSC 25:

a) the likelihood of confusion must be appreciated globally, taking account of all relevant factors;

b) the matter must be judged through the eyes of the average consumer of the goods or services in question. The average consumer is deemed to be reasonably well informed and reasonably circumspect and observant, but someone who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them they have kept in their 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 greater degree of similarity between the marks and vice versa;

h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;

i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;

j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;

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

13. Section 60A of the Act provides:

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

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

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

(2) In subsection (1), the "Nice Classification" means the system of classification under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, which was last amended on 28 September 1975."

14. In comparing the respective specifications, all relevant factors should be considered, as per *Canon Kabushiki Kaisha v Metro- Goldwyn-Mayer Inc,* Case C-39/97, where the Court of Justice of the European Union ("CJEU") stated at paragraph 23 of its judgment:

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

15. The relevant factors identified by Jacob J. (as he then was) in *British Sugar Plc v James Robertson & Sons Limited ("Treat")* [1996] R.P.C. 281, for assessing similarity were:

(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.

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

"29. 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."

17. Further, in *Kurt Hesse v OHIM*,[4] the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v OHIM*,[5] the General Court ("GC") stated that "complementary" means:

"…there is 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

[4] Case C-50/15 P
[5] Case T-325/06

may think that the responsibility for those goods lies with the same undertaking."

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

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

19. In *Sky v Skykick* [2020] EWHC 990 (Ch), Lord Justice Arnold considered the validity of trade marks registered for, amongst many other things, the general term 'computer software'. In the course of his judgment he set out the following summary of the correct approach to interpreting broad and/or vague terms:

> "…the applicable principles of interpretation are as follows: (1) General terms are to be interpreted as covering the goods or services clearly covered by the literal meaning of the terms, and not other goods or services. (2) In the case of services, the terms used should not be interpreted widely, but confined to the core of the possible meanings attributable to the terms. (3) An unclear or imprecise term should be narrowly interpreted as extending only to such goods or services as it clearly covers. (4) A term which cannot be interpreted is to be disregarded."

20. I bear in mind that it is permissible to group goods together for the purposes of assessment: *Separode Trade Mark*:[6]

> "The determination must be made with reference to each of the different species of goods listed in the opposed application for registration; if and to the extent that the list includes goods which are sufficiently comparable to be assessable for registration in essentially the same way for essentially the same reasons, the decision taker may address them collectively in his or her decision."

21. The competing goods are as follows:

Opponent's goods	**Applicant's goods**
Class 9: Downloadable multimedia products authenticated by non fungible tokens (NFTs), all of the aforesaid being or related to …… downloadable virtual goods; downloadable audio and video recordings featuring music, musical bands, disc jockeys, and rock groups, live music performances, sports, and fishing authenticated by non-fungible tokens (NFTs); downloadable image files containing artwork authenticated by non-fungible tokens (NFTs), all of the aforesaid being or related to …. downloadable virtual goods; downloadable multimedia files containing artwork, text, audio, and	Class 9: Wireless headphones; External computer hard drives; Computer mainframes; Computers; Laptop computers; Laptop docking stations; Tablet computers; Computer keyboards; Computer mouses; Computer screens; Monitors; Screens; Touch screen pens; Wireless computer peripherals.

[6] BL O/399/10

video authenticated by non-fungible tokens (NFTs) for representing a collectible item, all of the aforesaid being or related to … downloadable virtual goods; digital materials, namely, downloadable digital tokens, and downloadable multimedia files containing digital collectable tokens featuring text, audio, and music, all authenticated by non-fungible tokens (NFTs); downloadable virtual goods.	

22. With regards to the term 'NFT' (non-fungible token) present in the Opponent's specification, this is essentially a digital certificate of ownership for digital content, stored on a blockchain. Although the Opponent's specification states that the relevant files are authenticated by NFTs, this authentication method does not alter the fundamental nature of the goods being relied upon. For the purposes of comparing the parties' specifications, the fact that the files are authenticated by non-fungible tokens does not expand or change the scope of the terms. They remain, in substance, downloadable virtual goods, including multimedia and collectible digital files.

23. With regards to the similarity between the Applicant's *wireless headphones* and *wireless computer peripherals*, and the Opponent's *downloadable audio and video recordings featuring music, musical bands, disc jockeys, and rock groups, live music performances, sports, and fishing authenticated by non-fungible tokens (NFTs)*, the Opponent submits:[7]

> *"..the respective goods are complementary insofar as there is a close connection between them, and one is indispensable or important for the use of the other (Boston Scientific Ltd v OHIM T-325/06). Wireless headphones*

[7] Opponent's submissions dated 26 March 2025, pages 3 & 4

and/or wireless speakers are of limited value, and are unable to be used as intended (i.e. to listen to audio), in the absence of audio recordings/music files. Similarly, it is not possible to listen to audio recordings (thereby rendering them unusable/useless) in the absence of some sort of audio apparatus, such as wireless headphones or a wireless speaker. In addition to the complementarity of these goods, the goods can also coincide in their manufacturers, distribution channels and consumers (Shenzhen Mengkeling Electronic Commerce Co., Ltd. v Tectronics Global Limited, 003062706). For example, companies such as Amazon and Apple manufacture/produce and sell wireless headphones and wireless speakers, as well as downloadable audio and video recordings."

24. Regarding the similarity between the Applicant's *Computers; Laptop computers; Tablet computers; Computer screens; Monitors; Screens,* and all of the earlier goods, the Opponent submits:

"… the respective goods are complementary insofar as the Applicant's goods are used to view/access the Opponent's goods. […] the Opponent's image/video files cannot be accessed/viewed in the absence of screens, monitors or other display apparatus, such as that for which protection is sought under the Contested Application"

25. Additionally, with regards to the Applicant's *Wireless headphones; Computers; Laptop computers; Tablet computers; Computer screens; Monitors; Screens; Computer keyboards; Computer mouses; Touch screen pens; Laptop docking stations; External computer hard drives; Computer mainframes,* and the Opponent's *virtual goods insofar as the latter includes the virtual components of these goods,* the Opponent submits:

"The UKIPO has issued little guidance regarding the comparison of virtual goods versus their real-world counterparts, though the EUIPO has included some helpful guidance in Part C, Section 2, Part 5, 5.9 of the Trade Mark Guidelines. In particular, the EUIPO notes that whilst "the fact that virtual goods depict or emulate the function of real-world goods does not make them identical

to their real-world counterparts, […] similarity between these goods is possible and must be assessed" (emphasis added)."

26. Further, in regard to the Applicant's *External computer hard drives; Computer mainframes; Computers; Laptop computers; Tablet computers*, and all of the earlier goods relied on, the Opponent submits:

"[…] *the Applicant's goods are devices which have the ability to perform numerous tasks, including but not limited to, the processing, recording, organisation, transmission and manipulation of or review of data, text, image or audio (i.e. the Opponent's goods). The Applicant's goods are therefore complementary to the Opponent's goods*."

Wireless headphones; Wireless computer peripherals.

27. In its submissions,[8] the Opponent claims that the above goods are similar to its '*downloadable audio and video recordings featuring music, musical bands, disc jockeys, and rock groups, live music performances, sports, and fishing authenticated by non-fungible tokens (NFTs)*'. While I note that wireless headphones are a type of wireless peripheral, the term "wireless computer peripherals" also encompasses other hardware, such as speakers, printers and keyboards. The Applicant's goods are physical hardware devices used to enhance interaction with digital systems. Wireless headphones provide audio output and other wireless peripherals provide hardware functionality via wireless connection, whereas the Opponent's goods are downloadable multimedia products, namely, digital audio and video content intended to be listened to, viewed or stored electronically. The Opponent's goods are therefore content, while the Applicant's goods are devices through which such content may be accessed. As a result, the respective goods differ in nature, purpose and method of use. I acknowledge the Opponent's evidence,[9] which demonstrates that both sets of goods may be available on the same online platforms. However, downloadable digital content is

[8] Opponent's submissions dated 25 March 2025, page 3
[9] Exhibit CG1 of Annex 1.

likely to be listed in categories separate from hardware, which is likely to appear under electronics or computer equipment. As such, there is no overlap in trade channels. The goods are also not in competition with each other.

28. Turning to the Opponent's submissions[10] on complementarity as noted above in paragraph [23], I am minded not to agree with the Opponent, as I do not consider the goods at issue to be indispensable or important to one another. I come to this conclusion on the basis that downloadable multimedia may be enjoyed through various means, including via built-in device speakers, and therefore the use of wireless headphones or other wireless peripherals such as wireless speakers, is not necessary to access downloadable multimedia content. Furthermore, I do not consider that the average consumer would expect responsibility for the production of wireless headphones or other wireless peripherals and downloadable multimedia content to lie with the same undertaking. Therefore, I find the goods are not complementary. Although there may be a general overlap in end users, this overlap is not sufficient on its own to establish similarity between the respective goods. Overall, I find the respective goods to be dissimilar.

Computers; Laptop computers; Tablet computers; Computer mainframes.

29. The Opponent claims in its written submissions[11] that the Applicant's *computers, laptop computers* and *tablet computers* are similar to all the earlier goods. The Applicant's goods are physical electronic devices designed to assist the user in accessing and processing digital information, with laptops and tablets offering portable access to these functions. With regards to the Applicant's *computer mainframes*, whilst these are also physical computing devices, they are larger and, more powerful systems, built for heavy duty management and processing. In contrast, the Opponent's goods consist of downloadable virtual goods and digital content that are accessed online and intended to be viewed, listened to or collected. Therefore, the Opponent's goods provide the content, whereas the Applicant's goods are the devices by which such content may be accessed.

[10] Opponent's submissions dated 25 March 2025, page 3
[11] Opponent's submissions dated 25 March 2025, page 3

Accordingly, the respective goods differ in nature, purpose and method of use. Although the parties' goods may be available on the same online platforms, under electronics or as demonstrated in the opponent's evidence,[12] downloadable digital content is likely to be listed in categories separate from hardware, which is likely to appear under electronics or computer equipment. As such, there is no overlap in trade channels.

30. With regards to complementarity, whilst I acknowledge the Opponent's submissions,[13] as referred to above in paragraph [24], I am of the view that the Applicant's goods are not sufficient in themselves to access the Opponent's goods. While computers may access downloadable digital goods and collectibles, they can only do so when used with the required software and internet connection. Moreover, the Opponent's downloadable digital content and virtual collectibles may be accessed through a range of devices, including via smart phones, smart TVs and VR Headsets. The Applicant's goods are therefore not indispensable or important to the use of the Opponent's goods. Furthermore, I do not consider that the average consumer would expect responsibility for the production of hardware and downloadable digital content and virtual collectibles to lie with the same undertaking. Therefore, I find the goods are not complementary. Nor are they competitive. Although there may be a general overlap in users, this overlap is not sufficient on its own to establish similarity between the respective goods. Consequently, I find the goods to be dissimilar.

Computer keyboards; Computer mouses; Computer screens; Monitors; Screens; Touch screen pens.

31. In its written submissions[14], the Opponent claims the above goods are "*similar to the Opponent's* '*virtual goods insofar as the latter includes the virtual components of these goods.*' When comparing virtual goods versus their real world counterparts, the Opponent refers to EUIPO guidance,[15] as noted above in

[12] Exhibit CG2 of Annex 1.
[13] Opponent's submissions dated 25 March 2025, page 3
[14] Opponent's submission filed 26 March 2025, page 3.
[15] Opponent's submission filed 26 March 2025, pages 3 & 4.

paragraph [25]. I recognise that the EUIPO defines virtual goods in their guidelines as "*non-physical items for use in online and/or virtual environment*", and that they are treated as digital content or images. In contrast, the Applicant's goods are electronic hardware and display equipment that allows the user to control and interact with digital information and media. As such, I find no overlap in nature as the Opponents goods are essentially digital versions of the Applicant's physical hardware that users can interact with inside a virtual space. I do not consider that the goods share the same purpose or method of use, on the basis that the respective goods will exist in different realities, the Opponent's existing in the virtual world and the Applicant's existing in the real world. Both parties' goods may be available to purchase on online platforms, however, they are unlikely to appear in the same online marketplace category. Therefore, I do not consider that there is an overlap in trade channels. The goods are not in competition nor complementary. Although I appreciate that there may be an overlap in general user between the respective goods, this overlap is not sufficient on its own to establish similarity. Taking all the above factors into account, I find the goods to be dissimilar.

External computer hard drives.

32. The Opponent claims in its written submissions[16] that the above goods are similar to all the earlier goods relied on in this opposition. The Opponent's downloadable multimedia and virtual products are downloadable virtual goods and digital content that are accessed online and intended to be viewed, listened to or collected. In contrast, the Applicant's goods are physical data-storage devices used to store digital information outside of a computer's internal storage. They are used to save, transfer or back up data and are generally connected to a computer via a cable. As such, the goods differ in nature, purpose and method of use. The goods are unlikely to appear in the same online market place, therefore trade channels do not overlap.

[16] Opponent's submission filed 26 March 2025, page 4.

33. I refer to the Opponent submissions on complementarity,[17] as referred to above in paragraph [26]. I am minded not to agree with the Opponent, as external hard drives simply store data and cannot download, view or play content by themselves. Therefore, I find the goods are not complementary. Nor are they competitive. Although there may be a general overlap in users, this overlap is not sufficient on its own to establish similarity between the respective goods. Consequently, I find the goods to be dissimilar.

Laptop docking stations.

34. A laptop docking station is a physical hardware accessory that enables a laptop computer to connect easily to multiple devices, such as monitors, keyboards and power, through a single connection. In its written submissions,[18] the Opponent claims that these goods are *"similar to the Opponent's virtual goods insofar as the latter includes the virtual components of these goods".* For the reasons provided in paragraph [31] above, I find no overlap in nature, purpose or method of use. Although both parties' goods may be available via online platforms, they are unlikely to appear in the same marketplace categories, therefore trade channels differ. The goods are neither competitive nor complementary. Although I appreciate that there may be an overlap in general user between the respective goods, this overlap is not sufficient on its own to establish similarity. Taking all of the above factors into account, I find the goods to be dissimilar.

35. In light of the above, I find that there is no similarity between any of the Applicant's goods and the Opponent's goods. Since some degree of similarity between the goods is necessary in order to consider the likelihood of confusion under section 5(2)(b) of the Act, a finding of no similarity between them means that there is no likelihood of confusion to be considered.[19] Therefore the opposition must fail. I note that no degree of similarity between the competing marks will have any consequence on this outcome since the competing goods are not similar.

[17] Opponent's submission filed 26 March 2025, page 4.
[18] Opponent's submission filed 26 March 2025, page 3.
[19] *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA, paragraph 49

CONCLUSION

36. The opposition under section 5(2)(b) of the Act has failed in its entirety. Subject to any successful appeal, the application by Shenzhen Ruijia Trading Co., Ltd may proceed to registration for all the applied for goods.

Costs

37. Awards of costs are governed by Tribunal Practice Notice (TPN) 1/2023. The Applicant has been successful and would normally be entitled to a contribution towards its costs. However, as the Applicant is unrepresented, at the conclusion of the evidence rounds, the official letter, dated 11 June 2025, advised the Applicant that, if it intended to make a request for an award for costs it should complete and return the relevant costs proforma by 9 July 2025. The same letter stated, inter alia, that:

> *"If the pro-forma is not completed and returned, costs, other than official fees arising from the action (excluding extensions of time), may not be awarded."*

38. No costs proforma has been filed by the Applicant in response to the abovementioned letter. That being the case, and as no official fee has been paid by the Applicant, I make no award of costs in respect of these proceedings.

Dated this 28th day of April 2026

Mrs Joanne Roberts
For the Registrar