**BL O/0355/26**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF**
**TRADE MARK APPLICATION NO. 4111127**
**IN THE NAME OF YUNNAN ENTREPRENEURSHIP LIGHTING SOUND ENGINEERING CO., LTD**

**TO REGISTER AS A TRADE MARK:**


**IN CLASS 9**

**AND**

**IN THE MATTER OF FAST TRACK OPPOSITION THERETO**
**UNDER NO. 600003515**
**BY TRONIOS GROUP INTERNATIONAL B.V.**

## BACKGROUND AND PLEADINGS

1. On 14 October 2024, Yunnan entrepreneurship lighting sound engineering Co., LTD ("the applicant") filed an application for the trade mark shown on the cover page of this decision ("the contested mark") in the UK. The trade mark was published for opposition purposes on 25 October 2024, and registration is sought for goods in class 9, as set out in paragraph 23 of this decision.

2. On 6 December 2024, under the fast track opposition procedure,[1] Tronios Group International B.V. ("the opponent"), opposed the application in full, based upon section 5(2)(b) of the Trade Marks Act ("the Act").[2] The opponent relies upon the following trade mark:


UK trade mark registration number 3647988;
Filing date: 27 May 2021;
Priority date: 23 April 2020;[3]
Registration date: 19 November 2021;
Relying on all of its goods in classes 9 and 15, as set out in paragraph 23 of this decision.

3. The above mark qualifies as an earlier mark under section 6(1) of the Act. As it had not completed its registration procedure more than five years before the application date for the contested mark, it is not subject to the use provisions contained in section 6A of the Act.

[1] Pursuant to The Trade Marks (Fast Track Opposition) (Amendment) Rules 2013.
[2] 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. See also Tribunal Practice Notice ("TPN") 2/2020 End of Transition Period – impact on tribunal proceedings.
[3] The earlier registration was filed pursuant to Article 59 of the Withdrawal Agreement between the United Kingdom and the European Union relying on and claiming priority from an earlier EU filing (018228822) of 23 April 2020.

4. The opponent submits that the goods at issue are either identical or highly similar, and that the marks are visually very similar on the basis that the ‘waveform’ and ‘MAX’ elements present in both marks are similarly positioned, leading consumers to imperfectly recall them and easily mistake one mark for the other, resulting in a likelihood of confusion.

5. The applicant filed a counterstatement admitting that some of the respective goods at issue may be deemed similar but denied that there exists a likelihood of confusion between the marks on the basis that they exhibit clear dissimilarities.

6. 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.”

7. The net effect of the above is to require parties to seek leave in order to file evidence in fast-track oppositions. No leave was sought in respect of these proceedings.

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 costs; otherwise, written arguments will be taken. A hearing was neither requested nor considered necessary.

9. Only the opponent chose to file written submissions in lieu of a hearing. This decision is taken following a careful review of the papers before me.

10. The applicant is represented by Pawel Wowra; the opponent is represented by Filemot Technology Law Limited.

## PRELIMINARY ISSUES

11. In its submissions[4] the opponent submits that this is their third opposition filed against virtually identical applications filed by the applicant. The previous oppositions were undefended by the applicant and were subsequently deemed withdrawn. As the oppositions were undefended, costs were not awarded. The opponent submits that the current contested application, as shown on the cover page of this decision, represents the third abusive application from the applicant and should therefore be refused and an award of costs made to the opponent, taking into account the fees paid by the opponent on the earlier withdrawn oppositions.

12. Whilst the opponent's comments are noted, the previous undefended applications/oppositions referred to are not relevant to these proceedings, and therefore, their prior existence will have no bearing on whether, for instance, there is a likelihood of confusion between the contested mark and the earlier mark in this decision, nor will the prior undefended applications/oppositions factor in any costs awarded in this present opposition.

## DECISION

### Section 5(2)(b)

13. Sections 5(2)(b) of the Act reads 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 trademark is protected,

[4] TM7F and statement of grounds and submissions in lieu of a hearing, dated 19 February 2025.

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 is 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 Pairs 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; and

k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

**Comparison of goods**

16. In *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc,* Case C-39/97, the Court of Justice of the European Union ("CJEU") stated that:

> "23. In assessing the similarity of the goods or services concerned, … all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary".

17. In *Gérard Meric v Office for Harmonisation in the Internal Market*, 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."

18. Additionally, the factors for assessing similarity between goods and services identified in *British Sugar Plc v James Robertson & Sons Limited ("Treat ")* [1996] R.P.C. 281 include an assessment of the users and the channels of trade of the respective goods or services.

19. For the purposes of considering the issue of similarity of goods and services, it is permissible to consider groups of terms collectively where appropriate: *Separode Trade Mark,* BL O-399-10.[5]

20. In the case of goods and services, the terms used should not be interpreted widely but confined to the core of the possible meanings attributable to the terms: *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1) [2024] UKSC 36*, at [365].

21. Pursuant to section 60A of the Act, I am mindful of the fact that the goods and services are not to be automatically regarded as being similar to each other on the ground that they appear in the same class, nor automatically regarded as dissimilar from each other on the ground that they appear in different classes.

22. I also note that in *Unicorn Studio Inc v Veronese* Case CH-2023-000214, Iain Purvis, KC, sitting as deputy High Court judge, stated that any finding of similarity (between goods and services) requires the exercise of common sense. Meanwhile, in

[5] Paragraph 5.

*RALEIGH INTERNATIONAL Trade Mark* [2001] RPC 11, Mr Geoffrey Hobbs QC (as he then was), sitting as the Appointed Person, observed that when goods or services are not identical or self-evidently similar, the opposition should be supported by evidence as to their similarity.

23. The competing goods are as follows:

| The opponent's goods | The applicant's goods |
|---|---|
| Class 9<br>Professional and consumer audio/video products being audio amplifiers, Amplifiers, Transmitters and receivers for audio and video purposes; Electronic apparatus and instruments for audio/video purposes; CD/DVD/MP3/ MP4 players and recorders; Sound processors; Equalisers; Audio mixers; Loudspeakers; Mobile sound systems; 100V amplifiers and speakers; Microphones; Headsets; Audio speaker stands and microphones and audio and video products; Computer accessories for audio and video purposes; Measuring apparatus for audio and video products; Apparatus for recording, transmission or reproduction of sound or images; Sound mixing devices; Record players; Portable hifi speakers; Wireless speakers; Wi-Fi speakers portable audio apparatus; Radio; Radio and receiving apparatus; Cabinets and stands for sound recording, reproducing and transmitting apparatus; Remote control apparatus; | Class 9<br>Horns for loudspeakers; DVD recorders; Cabinets for loudspeakers; Video recorders; Microphones; Audio recording equipment; Electrolysis apparatus for laboratory use; Power amplifiers; Electric and electronic effects units for musical instruments; Video screens; Car audio apparatus; Audio equipment; Adapter cables for headphones; Carrying cases for radios; Audio speakers for home; Digital sound processors; Electric and electronic musical effects equipment; Guitar effects processors; Tape recorders; Loud speakers. |

| | |
|---|---|
| Amplifiers; Cables; Connectors; Power adaptors; Coupling mechanisms; Karaoke systems; Accessories in this class for aforesaid goods including cables and dowel bars; Musical instrument amplifiers; Electrical amplifiers for use with musical instruments; Guitar cables; Electric plugs.<br><br><u>Class 15</u><br>Musical instruments; Electric and acoustic guitars, Keyboards, Electronic drum kits, Music stands, Accessories included in this class. | |

24. With regards to the similarity of the goods, in its counterstatement the applicant states:

> "Despite the possibility of certain goods being deemed similar to those of the Opponent, as they all fall within the same class for electronics, software, computers, smartphones, mobile apps, and fire extinguishers based on the Nice Classification - Class 9, some of them exhibit clear dissimilarities when evaluating their characteristics, such as nature, intended use, method of utilization, complementarity, and market competition. The goods in question operate within distinct spheres and do not naturally compete or overlap with the goods cited in this action by the Opponent, especially those that are not directly included in the Opponent's list of goods in Class 9, including: electrolysis apparatus for laboratory use, video screens, and car audio apparatus."

25. In its submissions,[6] with regards to the similarity between the respective class 9 goods, the opponent submits:

[6] Written submissions in lieu, dated 19 February 2025.

"They are all identical except for Electrolysis apparatus for laboratory use."

Horns for loudspeakers

26. The above contested goods fall within the broad terms *loudspeakers* and *accessories in this class for aforesaid goods […],* contained in the specification of the earlier mark. The goods are therefore identical in line with the principle set out in *Meric*.

Loud speakers

27. The above contested goods are directly replicated in the opponent's class 9 goods, therefore, the goods are identical.

DVD recorders

28. The above contested goods fall within the broad term *CD/DVD/MP3/ MP4 players and recorders,* contained in the specification of the earlier mark. The goods are therefore identical in line with the principle set out in *Meric*.

Cabinets for loudspeakers

29. The above contested goods fall within the broad term *cabinets and stands for sound recording, reproducing and transmitting apparatus,* contained in the specification of the earlier mark. The goods are therefore identical in line with the principle set out in *Meric*.

Video recorders; audio recording equipment; tape recorders

30. The above contested goods fall within the broad term *Apparatus for recording, transmission or reproduction of sound or images,* contained in the specification of the earlier mark. The goods are therefore identical in line with the principle set out in *Meric*.

Microphones

31. The above contested goods are directly replicated in the opponent's class 9 goods, therefore, the goods are identical.

Power amplifiers

32. The above contested goods fall within the broad term a*mplifiers,* contained in the specification of the earlier mark. The goods are therefore identical in line with the principle set out in *Meric*.

Electric and electronic effects units for musical instruments; electric and electronic musical effects equipment; guitar effects processors

33. Broadly speaking, the contested goods are electronic devices that alter the sound of musical instruments, for example guitars, through audio signal processing. Generally, these goods are used to create various sound effects such as distortion and reverb, etc. Whilst I note from their submissions that the opponent asserts that the contested goods are identical to *sound processors* found in the earlier specification, I am unable to agree with this viewpoint. It is my understanding that sound processors are devices that correct or control sound without adding any new sound and are used to equalise, compress, limit and expand, etc., the audio signal. Accordingly, although the goods at issue are not identical on the basis that they have slightly different purposes, I find that they share a similar nature and will likely coincide in producers, end users and trade channels. Overall, I find the goods at issue to be similar to a high degree.

Video screens; car audio apparatus; audio equipment

34. The above contested goods fall within the broad term *electronic apparatus and instruments for audio/video purposes,* contained in the specification of the earlier mark. The goods are therefore identical in line with the principle set out in *Meric*.

Adapter cables for headphones

35. The above contested goods fall within the broad term *cables,* contained in the specification of the earlier mark. The goods are therefore identical in line with the principle set out in *Meric*.

Carrying cases for radios

36. The above contested goods fall within the broad terms *radio* and *accessories in this class for aforesaid goods […],* contained in the specification of the earlier mark. The goods are therefore identical in line with the principle set out in *Meric*.

Audio speakers for home

37. The above contested goods overlap with the opponent's *[…] speakers*; *portable hifi speakers* and *wireless speakers.* As such, I find the goods at issue to be identical in line with the principle set out in *Meric*.

Digital sound processors

38. The above contested goods fall within the broad term *sound processors,* contained in the specification of the earlier mark. The goods are therefore identical in line with the principle set out in *Meric*.

Electrolysis apparatus for laboratory use

39. Generally speaking, the contested goods are devices used in a laboratory setup that enable electrolysis (a chemical process) by passing an electric current through and electrolyte to drive non-spontaneous chemical reactions, typically using a power source, electrodes, and a container (electrolytic cell). As mentioned above, the opponent acknowledges that the contested goods are not identical to any of the opponent's goods in classes 9 and 15. Broadly speaking, the opponent's class 9 goods can be described as audio/video equipment, apparatus and instruments and their associated accessories; and its class 15 goods can be described as musical

instruments and stands along with their associated accessories. I am of the view that the contested goods and the opponent's goods do not have the same nature, intended purpose or methods of use, and will target different consumers via different trade channels, and will be produced or provided by different undertakings. Furthermore, they are neither in competition, nor are they complementary. Accordingly, I find that the contested goods are dissimilar to all the opponent's goods in classes 9 and 15.

40. As some degree of similarity between the goods is necessary to engage the test for likelihood of confusion, my findings above mean that the opposition aimed against those goods I have found to be dissimilar will fail.[7] For ease of reference, the opposition under section 5(2)(b) fails against the following goods:

Class 9 Electrolysis apparatus for laboratory use.

**The average consumer and the nature of the purchasing act**

41. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question (see *Lloyd Schuhfabrik Meyer*, Case C-342/97).

42. In *Iconix Luxembourg Holdings SARL v Dream Paris Europe Inc & Anor*, [2025] UKSC 25, the Supreme Court approved the comments of Arnold LJ in *Lidl Great Britain Ltd & Anor v Tesco Stores Ltd & Anor (Rev1)* [2024] EWCA Civ 262, where he pointed out that:

> (a) Consumers who are ill-informed or careless, or consumers with specialised knowledge or who are excessively careful are excluded from consideration;

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

(b) The average consumer provides a standard which enables the courts to strike a balance between the competing interests involved, such as trade mark owners, their competitors and consumers;

(c) The average consumer is neither a single hypothetical person nor a mathematical average; assessment from the perspective of the average consumer does not involve a statistical test. There is no single meaning rule and if, having regard to the perceptions and expectations of the average consumer, the court considers that a significant proportion of the relevant public is likely to be confused, a finding of infringement may properly be made;

(d) Assessment from the perspective of the average consumer is intended to facilitate adjudication of trade mark disputes by providing an objective criterion, by promoting consistency of assessment and by and enabling courts and tribunals to determine such issues so far as possible without the need for evidence;

(e) The average consumer's level of attention varies according to the category of goods or services in question; and

(f) the average consumer rarely has the opportunity to make direct comparisons between trade marks (or between trade marks and signs) and must instead rely upon the imperfect picture of the trade mark they have kept in their mind.

43. The average consumer for the goods at issue will be members of the general public, however I do not discount that it could also include professional users such as musicians and recording studios, etc. Due to the range of goods at issue, their price will likely vary from relatively inexpensive e.g. in relation to cables, or expensive, e.g. in relation to amplifiers and loudspeakers, etc. When selecting the goods the average consumer is likely to consider various factors, such as cost, quality, functionality, compatibility and suitability, etc. Consequently, I consider that at least a medium degree of attention will be paid during the purchasing process, although, in my view, not the highest.

44. The goods are likely to be purchased from the shelves of general music retail stores, specialist audio equipment stores, musical instrument stores, or their online equivalents. Alternatively, the goods may be purchased following perusal of advertisements or via inspection of a catalogue. Consequently, visual considerations will dominate the selection process. However, I do not discount an aural component to the purchase given that advice may be sought from retail assistants and word-of-mouth recommendations may be made.

**Comparison of the marks**

45. It is clear from *Sabel BV v. Puma AG* that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the trade marks must be assessed by reference to the overall impressions created by them, bearing in mind their distinctive and dominant components. The CJEU stated in *Bimbo SA v OHIM*, that:

> "34. […] it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion."

46. It would be wrong, therefore, to artificially dissect the trade marks, although it is necessary to take into account their distinctive and dominant components and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the trade marks.

47. The trade marks to be compared are as follows:

| The opponent's mark | The applicant's mark |
| --- | --- |
|  |  |

48. With regards to the similarity of the marks, both parties have provided comments in their submissions.[8] Whilst I do not intend to discuss these here, I can confirm that I have given them due consideration in making the following comparisons.

Overall impression

49. The applicant's mark contains the word 'MAX', presented in a large white uppercase font. Directly below the word 'MAX' is the word 'woodworxmax', presented in a much smaller lowercase white cursive italic font. Also present in the mark is a device element in the form of a straight and wavy red line, reminiscent of a sound wave. The wavy part of the device appears before the words, and the long flat straight part of the device runs between the words. The word and device elements sit upon a black background. Due to their size and position within the mark both the wavy device element and the word 'MAX' feature prominently in forming the overall impression, however, I find that the eye is initially naturally drawn to the element of the mark that can be easily read, namely 'MAX',[9] and the word 'woodworxmax' plays a lesser role. The colours, background and stylised font present in the mark play a much lesser role.

50. The opponent's mark contains the word 'max', presented in a large black lowercase font. Below the word 'max' is the word 'MUSIC' presented in a much smaller black uppercase font. Preceding the words is a device element in the form of a black wavy line, reminiscent of a sound wave. In addition, a small black circular device element is present above the letter 'X'. Due to their size and position in the mark I am of the view that both the wavy device element and the word 'max' feature prominently in forming the overall impression, however, I find that the eye is initially naturally drawn

[8] Via the applicant's counterstatement and the opponent's written submissions in lieu, dated 19 February 2025.
[9] *MigrosGenossenschafts-Bund v EUIPO*, T-68/17.

to the element of the mark that can be easily read, namely ‘max’. With regards to the word ‘MUSIC’, I find this to be allusive in nature, as such, this word, along with the colour, stylisation and very small black circular device present in the mark, plays a much lesser role.

Visual comparison

51. Visually, the marks overlap to the extent that they both contain the word max/MAX. I do not consider the distinction in letter case to be a point of significant difference between them. In addition, the marks both contain wavy line device elements, though I acknowledge that they are not identically replicated. The colours (both the text and background), and the font in both marks, along with the word MUSIC and the circular device in the earlier mark, and the word ‘woodworxmax’ in the contested mark, are all points of visual difference. Nevertheless, in my view the marks are visually similar to a medium degree.

Aural comparison

52. Aurally, the word max/MAX will be pronounced identically in both marks. The word MUSIC in the opponent’s mark and the word ‘woodworxmax’ in the applicant’s mark are points of aural difference. The device elements in the marks will not be articulated. I consider the marks to be aurally similar to a medium degree.

Conceptual comparison

53. For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer. This is highlighted in numerous judgments of the GC and the CJEU including *Ruiz Picasso v OHIM* [2006] E.C.R.-I-643; [2006] E.T.M.R 29. The assessment must, therefore, be made from the point of view of the average consumer.

54. The word max/MAX will be given its ordinary dictionary meaning, namely as an abbreviation for maximum, which will be identical for both marks. Likewise, the word MUSIC in the opponent’s mark will also be given its ordinary dictionary meaning, i.e. organised sound that people listen to for enjoyment or expression, etc. Whilst this word

acts as a point of conceptual difference, bearing in mind the goods at issue, it is not a distinctive one. An additional conceptual difference is created by the word 'woodworxmax' present in the applicant's mark which appears to be an invented word. Even if it is broken down into 'wood / worx (possible misspelling of works) / max', as a whole, the combination of words has no obvious meaning, but perhaps being vaguely allusive/laudatory of the material from which the applicant's goods are made or the craftsmanship involved in making them. With regards to the 'sound wave' device elements present in both marks, bearing in mind the goods at issue, I am of the view that they will be perceived as just that. The colour, fonts, background and circular device elements do not add any conceptual meaning. Overall, I find that the marks are conceptually similar to a medium degree.

**Distinctive character of the opponent's mark**

55. The distinctive character of a trade mark can be measured only, first, by reference to the goods or services in respect of which registration is sought and, second, by reference to the way it is perceived by the relevant public. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, 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 *WindsurfingChiemsee 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)."

56. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because 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 distinctive character of a mark can be enhanced by virtue of the use that has been made of it. The opponent has not claimed that its mark has acquired enhanced distinctiveness through use, nor have they filed evidence to support such a finding. Consequently, I have only the inherent position to consider.

57. With regards to the inherent distinctive character, in its counterstatement the applicant submits:

"[…] the distinctiveness of the Opponent's mark is heavily limited and should be considered to be very low, at best, since both words included in it have a generic and descriptive character – "MAX MUSIC". The word "MAX" will most likely be associated with the commonly used abbreviation "MAX" for the English word "maximum" […]. It may be perceived as referring to some characteristics of the relevant goods (their size, power, quality, positive effects, etc.), and its distinctiveness is heavily limited. Additionally, the word "MUSIC" directly points towards the goods covered by the Opponent's mark, describes them, and is therefore essentially devoid of distinctive character. The combination of the words "MAX MUSIC," composing the earlier mark, is of very limited distinctiveness for consumers who understand the meaning of these two words, as they may be perceived as referring to the size of the goods, the intended users, the maximal significance, the good quality of the goods, or the positive results that can be achieved by using them. The Applicant argues that, had the Opponent's mark not been stylized, it would have been refused as being too generic, descriptive, and thus non-distinctive."

58. The earlier mark contains the words ‘max MUSIC’, which, whilst not directly descriptive, in the context of the goods at issue, such as amplifiers, players, loudspeakers and headphones, etc, may be perceived as alluding to certain characteristics of the goods, for example, that they are capable of playing music at its highest possible level, etc. With regard to the figurative wavy line device element in the mark, as previously stated, this will likely be perceived as representing a ‘sound wave’, again alluding to certain characteristics of the goods, i.e. that they are concerned with the production of sound. With regards to the circular device element, it will likely be overlooked as it is de minimis within the mark. Even if it is noticed, it does not add any distinctive character to the mark. Overall, I find that the mark is inherently distinctive to a low degree.

**Likelihood of confusion**

59. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between them and the goods being down to the responsible undertaking being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the marks may be offset by a greater degree of similarity between the goods and vice versa. It is necessary for me to keep in mind the distinctive character of the earlier mark, the average consumer for the goods and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he has retained in his mind.

60. Earlier in the decision I found that:

- The goods are identical or highly similar (except where I have found them to be dissimilar).

- The average consumer for the goods is a member of the general public or a professional user, who will pay at least a medium degree of attention during the purchasing process (although not the highest).

- The purchasing process for the goods is predominantly visual, although I do not discount an aural component.

- The marks are visually, aurally and conceptually similar to a medium degree.

- The earlier mark is inherently distinctive to a low degree. On this point, it is acknowledged that a weaker degree of distinctive character in an earlier mark does not preclude a finding of confusion.[10]

61. Given that the sound wave elements and the word 'MAX' play a significant role in the overall impression of both marks, I consider that they are likely to be mistakenly recalled or misremembered as each other. This is particularly the case given that the marks are applied for/registered in relation to identical/highly similar goods. With regards to the additional word elements present in the marks, due to the size and position of the word 'woodworxmax' in the application, and the size, position and descriptive nature of the word 'MUSIC' in the earlier mark, I find that these elements along with the colours and stylisation in both marks will likely be overlooked or forgotten. Consequently, taking all the above factors into account, I consider there to be a likelihood of direct confusion. This is so even bearing in mind the earlier mark's low level of inherent distinctive character. In reaching this conclusion I note that a degree of caution is required before finding a likelihood of confusion on the basis of common elements which are either descriptive or are low in distinctive character.[11] Nevertheless, I maintain that there is a likelihood of direct confusion.

62. I will also assess if there is a likelihood of indirect confusion.

[10] *L'Oréal SA v OHIM*, Case C-235/05 P.
[11] *Nicoventures Holdings Limited v The London Vape Company Ltd* [2017] EWHC 3393 (Ch) and *Whyte and Mackay Ltd v Origin. Wine UK Ltd and Another* [2015] EWHC 1271 (Ch).

63. In *L.A. Sugar Limited v By Back Beat Inc,* Case BL O/375/10, Mr Iain Purvis Q.C. (as he then was), 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)."

64. It is not sufficient that a mark merely calls to mind another mark: *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17. This is mere association not indirect confusion.

65. Even if the differences between the marks are identified by the average consumer, I consider that the marks will be viewed as coming from the same or economically linked undertakings, notwithstanding the earlier mark's low degree of inherent distinctiveness. This is because, while the marks at issue do not fit neatly into the Purvis criteria, the criteria are not exhaustive, and the key point is that there are common elements in the marks (sound wave and word max/MAX): I am of the view that the additional figurative and word elements present in the marks will simply be perceived as variants of the same brand. Accordingly, I consider there to be a likelihood of indirect confusion.

**CONCLUSION**

66. The opposition filed against the application has achieved partial success based upon section 5(2)(b) of the Act. Accordingly, the applicant's mark is hereby, subject to any successful appeal of my decision, refused in respect of the following goods:

| | |
|---|---|
| Class 9 | Horns for loudspeakers; DVD recorders; Cabinets for loudspeakers; Video recorders; Microphones; Audio recording equipment; Power amplifiers; Electric and electronic effects units for musical instruments; Video screens; Car audio apparatus; Audio equipment; Adapter cables for headphones; Carrying cases for radios; Audio speakers for home; Digital sound processors; Electric and electronic musical effects equipment; Guitar effects processors; Tape recorders; Loud speakers. |

67. The goods for which the opposition has failed are as follows:

| | |
|---|---|
| Class 9 | Electrolysis apparatus for laboratory use. |

68. The opponent has achieved a greater measure of success and is entitled to a contribution towards its costs, in line with the scale set out in Tribunal Practice Notice

(TPN) 1/2023. In the circumstances, I award the opponent the sum of £650 as a contribution towards the costs of the proceedings. The sum is calculated as follows:

| | |
|---|---|
| Official fee | £100 |
| Preparing a notice of opposition and considering the applicant's counterstatement | £250 |
| Preparing written submissions in lieu of a hearing | £300 |
| Total: | £650 |

69. I therefore order Yunnan entrepreneurship lighting sound engineering Co., LTD to pay Tronios Group International B.V. the sum of £650. This sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

**Dated this 28th day of April 2026**

**Sam Congreve**
**For the Registrar**