O/0360/26

TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK APPLICATION 4055694
IN THE NAME OF YASIR KHAN

FOR THE FOLLOWING TRADE MARK:

EchoEdge

IN CLASS 10

AND IN THE MATTER OF THE OPPOSITION THERETO
UNDER NO. 448869 BY
HEARING PRODUCTS INTERNATIONAL LIMITED

BACKGROUND AND PLEADINGS

1. On 24 May 2024, yasir khan ("the applicant") applied to register "EchoEdge" as a trade mark in the United Kingdom. Registration is sought for the following goods in class 10:

Hearing aids; Hearing aids for the deaf; Hearing apparatus for the deaf; Hearing protectors; Electronic hearing aids; Analog hearing aids; Electrical hearing aids; Digital hearing aids; Electric hearing aids; Hearing aids for the deaf [acoustic aids]; Programmable hearing aids; Ear adaptors for hearing aids; Acoustic amplifiers [hearing aids] for partially deaf persons; Electrically operated hearing aids; Hearing protection devices; Mobility aids.

2. The application was published for opposition purposes on 7 June 2024 and, on 29 July 2024, Hearing Products International Limited ("the opponent") opposed the application under sections 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994 ("the Act").

3. For the purpose of its opposition under sections 5(2)(b) and 5(3), the opponent relies upon the following trade mark and all goods set out below, for which it is registered:

United Kingdom Trade Mark ("UKTM") 2109104:

ECHO

Filing date: 4 September 1996
Registration date: 11 April 1997

Apparatus for the acoustic and inductive amplification of sound; amplification equipment and ancillary equipment for use in enhancing the performance of hearing aids; apparatus and instruments for use in conjunction with hearing aids; amplifiers; induction

loop amplifiers; inductive neckloops, inductive loop pads; acoustic amplifiers; microphones; headphones; power supply; batteries; cables and leads for use with the aforesaid goods; parts and fittings for all the aforesaid goods; all for use in conjunction with apparatus for the hearing impaired or by the hearing impaired. (Class 9)

4. The opponent's claim under section 5(2)(b) extends to all goods applied for with the exception of *mobility aids*. The opponent alleges that the similarity between the parties' marks and their respective goods gives rise to a likelihood of confusion on the part of the relevant public. In its Notice of Opposition, the opponent completed a statement of use in respect of the relied upon goods.

5. Under section 5(3), the opponent objects to all goods applied for. The opponent contends that its earlier mark has acquired a substantial reputation in the UK of which use of the applicant's mark would take unfair advantage, and that such use could be detrimental to the earlier mark's distinctiveness and cause reputational damage.

6. Under section 5(4)(a), the opponent claims to have used the sign ECHO throughout the UK "no later than 1996" in respect of *apparatus for the acoustic and inductive amplification of sound; amplification equipment and ancillary equipment for use in enhancing the performance of hearing aids; apparatus and instruments for use in conjunction with hearing aids; amplifiers; induction loop amplifiers; inductive neckloops, inductive loop pads; acoustic amplifiers; microphones; headphones; wireless home alert systems; wireless home alert systems utilizing vibrating pager receivers; sound sensors with built-in wireless transmitters; smoke alarms with built-in wireless transmitters; door bell buttons with built-in wireless transmitters; telephone relays with built-in wireless transmitters; vibrating pagers with built-in wireless receivers; power supply units; batteries; cables and leads for use with the aforesaid goods; parts and fittings for all the aforesaid goods; all for use in conjunction with apparatus for the hearing impaired or for use by the hearing impaired.* For the purpose of this ground, which extends to all goods, the opponent alleges that it has developed a substantial goodwill in its business, such that use of the applicant's mark would amount to a misrepresentation, leading to damage and dilution on the opponent's part.

7. In his counterstatement, the applicant makes a number of claims in defence of his application including a distinction between the parties' product offering, market segments and their respective target audience, as well as making some submissions concerning precedent use of "echo" and its descriptive nature. Mr Khan asks that the opposition therefore be dismissed. He also puts the opponent to proof in respect of the relied-upon goods.

8. The opponent is represented by Marks and Clerk LLP whilst the applicant is unrepresented. Both parties filed evidence during the course of the proceedings. Neither party requested a hearing, though both elected to file written submissions in lieu. This decision is taken following a careful perusal of the papers.

Relevance of EU Law

9 . 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.

Section 5(2)(b)

10. Section 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 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."

11. The trade mark relied upon by the opponent clearly qualifies as an earlier trade mark pursuant to section 6 of the Act. As it had been registered for more than 5 years at the application date of the contested mark it is subject to the proof of use provisions set out in section 6A of the Act. For the purpose of the present proceedings, the opponent may therefore only rely upon goods for which use is shown.

EVIDENCE

12. The opponent's evidence in chief comes in the form of a witness statement from its managing director, Mr Grzegorz Kozlowski, alongside eight supporting exhibits. Mr Kozlowski has held this position since September 2024, and his statement is dated 4 November 2024. I take the following from his evidence:

- The opponent's company has specialized in the "*design and sale of nationally recognized aids for daily living since 1992."*[1]
- Mr Kozlowski estimates that the opponent enjoys a market share of "around 30%", stating that its company is "arguably the UK's premium supplier of hearing loops, induction loop systems, wireless television listeners, voice amplifiers, and home alert systems."
- Some of the opponent's products are marketed under the ECHO mark, whilst some are sold using ECHO as the lead brand, together with an additional sub-brand.
- The opponent's customers include occupational therapists, social services sensory teams, technical officers, technicians and installers.
- I reproduce below a sample of images from the opponent's product catalogues:

[1] The opponent has provided details of several of its other marks including, for example ECHOVOICE and ECHO ALERT. However, for the purpose of the present proceedings, the opponent relies on a single mark: "ECHO".

[2]

[3]

- Mr Kozlowski explains that the opponent distributes hard copies of its catalogue, as well as offering a digital version to view on its website. Hard copies are circulated amongst, for example, local authorities, hospitals and charities. Approximately 14,500 copies were distributed "over the past 5 years". This submission is supplemented by a table within which the opponent has set out the

[2] 2019
[3] 2022/23

receiving party, the number of catalogues respectively distributed and the date of distribution, with dates ranging from 10 February 2014 to 30 October 2024. These include, by way of example, 50 copies to Hearing Help UK on 21 May 2020, 50 copies to Croydon Hearing Resource Centre on 24 October 2022 and 190 copies to Birmingham Council on 20 December 2023. There are also entries pertaining to distribution at exhibitions or meetings with third parties ("KW took for her meeting in Leicester /Action Deafness (Qty 20), 13/04/2015" for example).

- To date, the opponent has invested roughly £95,000 in the promotion of its goods. I reproduce a table below capturing the respective activities attributable to each expense:

ACTIVITY	MARKETING EXPENDITURE
Google advertisements	Approximately £500 per month - £6,000 annually
Maintaining website/search engine optimisation/blogs	Approximately £1,000 per month - £12,000 annually
Producing and printing product catalogues	Approximately £900 annually
Marketing/merchandising materials including tote bags, pens, note pads, cups, pop stands etc.	Approximately £1,000 annually

- I summarise below the sample invoices enclosed at Exhibit GK6:

Order no.	**Date**	**Goods**	**Customer**
0000047147	14/10/2019	EchoChime 300v2 474-EchoChime300 Doorbell with BellPush and Telephone Signaler Set (Qty 5); EchoChime 300v2 (Qty 2); Echo Wireless Telephone Signaler (Qty 2)	Scottish Borders Council (MELROSE)

0000047179	18/10/2019	EchoChime 300v2 (Qty 4); Echo Wireless Telephone Signaler (Qty 3); Echo Iloop QR Neckloop (Qty 6)	BID Services for Deaf People (BIRMINGHAM)
0000047200	22/10/2019	EchoChime 300v2 (Qty 10); Echo MiniTechT Complete Set (Qty 10); Echo Megaloop Universal Room Loop System (Qty 6)	Sight for Surrey (FETCHAM)
0000049285	02/10/2020	Echo MiniTechT Complete Set (Qty 15)	Community Equipment Services (CROYDON)
0000049806	14/12/2020	EchoChime 300v2 (Qty 6); Echo MiniTechT Complete Set (Qty 1)	Millbrook Healthcare (SOUTHAMPTON)
000051519	15/10/2021	EchoFM Receiver (Qty 1)	Vision Links (HEREFORDSHIRE)
0000051660	05/11/2021	Echo MinitechT Complete Set (Qty 10)	East Sussex Hearing Resouce Centre (EAST SUSSEX)
0000051748	19/11/2021	Echo MiniTechT Complete Set (Qty 4); 474-EchoChime300 Door & Telephone Alert Set (Qty 10); EchoChime 300v2 (Qty 5); Echo Wireless Telephone Signaler; Echo 2.4G Wireless Underchin TV Listener (Qty 6)	Nottingham Rehab Supplies Ltd (LEICESTERSHIRE)
0000053563	21/10/2022	Echo MiniTechT Complete Set (Qty 10)	Medequip Assistive Technology (MIDDLESEX)
0000053783	29/11/2022	EchoChime 300v2 (Qty 20);	Action Deafness

		Echo Wireless Sound Sensor (Qty 20)	Tech, Leicester
0000054238	17/02/2023	Echo MiniTechT Complete Set (Qty 30)	University Hospitals of Leicester NHS Trust, Leicester
0000054844	27/06/2023	Echo MiniTechT Complete Set (Qty 4)	Deafness Support Network, Cheshire
0000054982	26/07/2023	Echolink Pro (Qty 15); Echo MiniTechT Complete Set (Qty 6)	SJS Services, Rossshire
0000055995	28/02/2024	Echo MiniTechT Complete Set (Qty 2)	Wakefield & District Society, Wakefield
0000056243	29/04/2024	Echo MiniTechT Complete Set (Qty 2)	Fiona McCormick (Sight Scotland Veterans), Edinburgh
0000056635	22/07/2024	Echolink Pro (Qty 10); Echo MiniTechT Complete Set (Qty 6)	SJS Services, Rossshire

- Mr Kozlowski lists a number of events the opponent has attended to raise the profile of its company. These include, for example, an Open Day for Equality Together in Bradford in 2021, a See & Hear Exhibition in Stockport in 2022, Optelec in Manchester in 2023 and a Living and Learning with Hearing Loss Workshop in Wolverhampton in 2024. Mr Kozlowski encloses details of the opponent's participation in these events such as invoices noting their purchase of space at the respective locations and social media posts announcing or reflecting on the opponent's attendance.

- The opponent's turnover under its ECHO mark is presented in the table below, with annual figures spanning from 2016/17 to 2023/24:

YEAR	TURNOVER IN £
2016-2017	£867,402.62
2017-2018	£846,869.79
2018-2019	£868,509.75
2019-2020	£728,569.87
2020-2021	£734,385.21
2021-2022	£826,107.85
2022-2023	£912,726.85
2023-2024	£882,751.01

- Archived screenshots from the opponent's website *www.hear4you.com* are enclosed at GK8 showing an active page at dates 22 June 2003, 12 April 2004, 8 February 2011, 9 June 2012, 28 September 2013, 24 February 2014, 2 May 2015, 12 March 2016 and 11 February 2022. Some of the pages feature a figurative "echo" mark, whilst others feature the opponent's Echo products (such as the EchoIR Neckloop or the Echo Radiolink 2.4G). The opponent's domain was created in 2002 and updated to its current form in 2017. The average number of unique visitors to its site annually between 2020 and 2024 is 110,000. Mr Kozlowski sets out the precise number of unique visits attributable to each year in the below table:

YEAR	ANNUAL VISITS TO WEBSITE www.hear4you.com
2020	146,052
2021	108,648
2022	101,577
2023	102,857
2024	81,151 (to date)

The applicant's evidence

13. The applicant's evidence comes in the form of a witness statement from Mr Yasir Khan. His statement is dated 27 December 2024 and accompanied by exhibits S, E1-E2, F1-F2 and G1-G2. Mr Khan also filed submissions dated 27 December 2024. I take the following from his evidence:

- "EchoEdge" has been used consistently in the UK since May 2024, with the brand "associated with high-quality sound amplifying devices aimed at enhancing everyday audio experiences… and is not positioned as a medical-grade product."
- Over the past six months (presumably from the time of drafting), annual sales of goods under the applicant's EchoEdge mark amount to £52,741.06. Mr Khan forecasts that "we will reach £800,000 by bend (sic) of next year".
- The applicant's annual advertising expenditure comprises £3000 toward Amazon advertisements and £2000 for Google advertisements. Mr Khan submits that these appear "all over social media as well as influencers marketing".
- Mr Khan directs me to third party use of the term "Echo" "across various industries" including, for example, Amazon Echo or Echo Tools.[4]
- Mr Khan draws a distinction between the parties' goods on the basis that "The opponent's focus is on medical-grade hearing aids" whilst the applicant's goods are "design[ed] for everyday sound amplification".

The opponent's evidence in reply

14. The opponent's evidence comes in the form of a second witness statement from Mr Grzegorz Koslowski and four further exhibits (GKA to GKD).

- At Exhibit GKA, Mr Koslowski highlights an extract from the opponent's website which reads "Please note that our range of Echo products are not medical

[4] Screenshots are provided in evidence

devices, have no medical purpose and are not classified or registered as such devices." Mr Koslowski explains that, in 2021, the opponent commissioned a review of its products by external company MDR Regulator to confirm that they are not to be classified as "medical devices".[5] Amongst the findings, the report reads: "Based on an analysis of the intended use of Induction loop amplifiers, TV Listeners, Amplified Speaker, Personal Listeners, Alerting Devices provide by the manufacturer Hearing Products International Ltd, the above mentioned sound amplification products do not meet the definition of a medical device."

- Government guidance published by the Medicines & Healthcare Products Regulatory Agency in 2024 is enclosed at Exhibit GKC. An extract from the introduction is reproduced below:

> "The phrase 'assistive technology' is used to describe products or systems that support and assist individuals with disabilities, restricted mobility or other impairments to perform functions that might otherwise be difficult or impossible.
>
> It is important to be clear on terminology, just because a product is used in a healthcare environment or by a healthcare professional, this does not necessarily mean it is a medical device.
>
> An assistive technology product can be classed as a medical device, which requires it to be appropriately conformity marked and regulated through the UK Medical Devices Regulations 2002 (as amended) (UK MDR 2002) in Great Britain. However, assistive technology products can also be considered an 'aid for daily living', and these products will only be considered a medical device if the manufacturer has stated that they have a medical purpose."

- Screenshots from the websites of retailers such as *Manage At Home* and *Amplified Telephones.co.uk* show the opponent's goods for sale (Echolink Pro Wireless TV Listener and Echo Radiolink 2.4G Wireless TV and Personal Listener Set, for example). Mr Kozlowski informs me that the opponent's

[5] A copy of the report is enclosed at Exhibit GKB.

products do not require a prescription or referral.

15. That concludes my summary of the parties' evidence, insofar as I consider it necessary.

Proof of use

16. An earlier trade mark is defined in section 6 of the Act, the relevant parts of which state:

"(6)(1) In this Act an "earlier trade mark" means –

(a) a registered trade mark or international trade mark (UK) which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks,

(aa) a comparable trade mark (EU) or a trade mark registered pursuant to an application made under paragraph 25 of Schedule 2A which has a valid claim to seniority of an earlier registered trade mark or protected international trade mark (UK) even where the earlier trade mark has been surrendered or its registration has expired;

(ab) a comparable trade mark (IR) or a trade mark registered pursuant to an application made under paragraph 28, 29 or 33 of Schedule 2B which has a valid claim to seniority of an earlier registered trade mark or protected international trade mark (UK) even where the earlier trade mark has been surrendered or its registration has expired.

[…]

(2) References in this Act to an earlier trade mark include a trade mark in respect of which an application for registration has been made and which, if registered,

would be an earlier trade mark by virtue of subsection (1)(a) or (b), subject to its being so registered."

17. Section 6A reads as follows:

"(1) This section applies where:

(a) an application for registration of a trade mark has been published,

(b) there is an earlier trade mark of a kind falling within section 6(1)(a), (aa) or (ba) in relation to which the conditions set out in section 5(1), (2) or (3) obtain, and

(c) the registration procedure for the earlier trade mark was completed before the start of the relevant period.

(1A) In this section "the relevant period" means the period of 5 years ending with the date of the application for registration mentioned in subsection (1)(a) or (where applicable) the date of the priority claimed for that application.

(2) In opposition proceedings, the registrar shall not refuse to register the trade mark by reason of the earlier trade mark unless the use conditions are met.

(3) The use conditions are met if –

(a) within the relevant period the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or

(b) the earlier trade mark has not been so used, but there are proper reasons for non- use.

(4) For these purposes –

(a) use of a trade mark includes use in a form (the "variant form") differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor), and

(b) use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(5)-(5A) [Repealed]

(6) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services."

18. Section 100 of the Act is also relevant. It reads:

"If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it."

19. In *easyGroup Ltd v Nuclei Ltd & Ors*,[6] Arnold LJ summarised the law relating to genuine use as follows:

"105. The principles applicable to determining whether there has been genuine use of a trade mark have been considered by the CJEU in a considerable number

[6] [2023] EWCA Civ 1247

of cases, the principal decisions being Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, Case C-259/02 *La Mer Technology Inc v Laboratories Goemar SA* [2004] ECR I-1159, Case C-416/04 P *Sunrider Corp* v *Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237, Case C-442/07 *Verein Radetsky-Order v Bundervsvereinigung Kamaradschaft 'Feldmarschall Radetsky'* [2008] ECR I-9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Merken BV v Hagelkruis Beheer BV* [EU:C:2012:816], Case C-609/11 *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], Case C-141/13 *P Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089], Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434] and Joined Cases C–720/18 and C–721/18 *Ferrari SpA v DU* [EU:C:2020:854].

106. Ignoring issues which do not arise in the present case, such as use in relation to spare parts or second-hand goods and use in relation to a sub-category of goods or services, the principles may be summarised as follows:

(1) Genuine use means actual use of the trade mark by the proprietor or by a third party with authority to use the mark: *Ansul* at [35] and [37].

(2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Centrotherm* at [71]; *Leno* at [29]; *Ferrari* at [32].

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Centrotherm* at [71]; *Leno* at

[29]; *Gözze* at [37], [40]; *Ferrari* at [32].

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: *Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37]; *Verein* at [14]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle* at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23].

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial *raison d'être* of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: *Ansul* at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34]; *Leno* at [29]-[30], [56]; *Ferrari* at [33].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed

to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no *de minimis* rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72]; *Leno* at [55].

(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: *Reber* at [32]."

20. Section 6A of the Act (cited above) sets out that the relevant period for the present assessment is the five-year period prior to the filing date of the applicant's mark, being 24 May 2024. The relevant period is, therefore, 25 May 2019 to 24 May 2024 ("the relevant period").

21. Proven use of a mark which fails to establish that "the commercial exploitation of the mark is real"[7] because the use would not be "viewed as warranted in the economic sector concerned to maintain or create a share in the mark for the goods or services protected by the mark" is, therefore, not genuine use.

22. Before I move on to assess the opponent's evidence insofar as genuine use is concerned I must acknowledge that, in some exhibits, the earlier mark is presented as a device element, with figurative details. I highlight examples of this below:

[7] *Jumpman* BL O/222/16

23, As seen, the word “echo” is presented in a diagonal orientation with two ovals intertwined in the background. The word itself is not impacted by these additional shapes and the font in which it is presented is bold yet unremarkable. In the second example the letters take on a three-dimensional effect by way of a shadowing detail shown beneath. I find in both cases the marks’ distinctiveness continues to reside at least predominantly in the word ECHO and, therefore, I find these acceptable variants of the mark as registered. As for use alongside other marks, it is made clear in *Colloseum Holdings AG*[8] that this also represents acceptable use of a registered mark.

24. As for the evidence itself, it seems clear that the opponent has put its mark to use during the relevant period. Its ECHO products have generated an annual turnover in excess of £700,000 every year from 2019/20 to 2023/24. I also find the investment made in the promotion of its goods under the earlier mark to be significant. The opponent actively distributes catalogues concerning its products to a variety of recipients each year and maintains an active website, with screenshots enclosed showing a range of dates between 22 June 2003 and 11 February 2022 (although I keep in mind that the majority of the archived images pre-date the relevant period). The opponent also appears to regularly attend professional events in order to maintain a presence in the marketplace. As for sales, the opponent has provided a number of sample invoices showing sales of its “Echo” goods (with the invoices also showing the figurative ECHO device). With all this in mind, I am satisfied that the mark has been put to genuine use throughout the relevant period. I turn now to consider for which of the relied-upon goods use has been shown.

25. In *Merck KGaA v Merck Sharp & Dohme Corp & Ors*,[9] Kitchin LJ (as he then was) set out the approach to be followed when considering partial revocation of a trade mark or assessing which goods and services may be relied on under section 5(2). He said:

> “245. First, it is necessary to identify the goods or services in relation to which the mark has been used during the relevant period.

[8] *Colloseum Holdings AG v Levi Strauss & Co.,* Case C-12/12
[9] [2017] EWCA Civ 1834

246. Secondly, the goods or services for which the mark is registered must be considered. If the mark is registered for a category of goods or services which is sufficiently broad that it is possible to identify within it a number of subcategories capable of being viewed independently, use of the mark in relation to one or more of the subcategories will not constitute use of the mark in relation to all of the other subcategories.

247. Thirdly, it is not possible for a proprietor to use the mark in relation to all possible variations of a product or service. So care must be taken to ensure this exercise does not result in the proprietor being stripped of protection for goods or services which, though not the same as those for which use has been proved, are not in essence different from them and cannot be distinguished from them other than in an arbitrary way.

248. Fourthly, these issues are to be considered having regard to the perception of the average consumer and the purpose and intended use of the products or services in issue. Ultimately it is the task of the tribunal to arrive at a fair specification of goods or services having regard to the use which has been made of the mark.

249. This approach does strike an appropriate balance. It gives effect to the clear intention of the EU legislature that marks must actually be used or, if not used, be subject to revocation. […] It is also fair to proprietors for it does not require a proprietor to prove that he has used his mark in relation to all possible variations of the goods or services covered by its registration but only those which are sufficiently distinct to constitute coherent categories or subcategories. I am also satisfied that it gives appropriate protection to the legitimate interest of a proprietor in being able in the future to extend his range of goods or services within the scope of the terms describing the goods or services for which its mark is registered."

26. This approach was approved by the Supreme Court in *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1)*[10], subject to the proviso that it must be seen in light of more recent guidance by the CJEU that that the essential criterion to apply for the purposes of identifying a coherent subcategory of goods or services capable of being viewed independently is their purpose and intended use.[11]

27. In *easyGroup Limited v Easy Live (Services) Limited & Ors*,[12] Arnold LJ gave further consideration to the approach to identifying independent subcategories:

> "82. As the Court of Justice made clear in *ACTC* and *Ferrari*, the essential criteria which must be applied in determining whether a category of goods or services can be divided into independent subcategories are purpose and intended use. It is not sufficient that different goods may be aimed at different publics or sold in different shops or that different goods or services belong to different market segments. These criteria are easier to apply to goods than to services, in particular because it is easier to distinguish between the purpose and the intended use of goods than it is to distinguish between the purpose and the intended use of services. In the case of services, it seems to me that the logic of the Court of Justice's approach means that one should consider the intended mode of use of the services in question."

28. For convenience, the goods for which use has been claimed are as follows:

Apparatus for the acoustic and inductive amplification of sound; amplification equipment and ancillary equipment for use in enhancing the performance of hearing aids; apparatus and instruments for use in conjunction with hearing aids; amplifiers; induction loop amplifiers; inductive neckloops, inductive loop pads; acoustic amplifiers; microphones; headphones; power supply; batteries; cables and leads for use with the

[10] [2024] UKSC 36
[11] See, for example, *Ferrari SpA v DU* (Joined Cases C-720/18 and C-721/18) EU:C:2020:854; [2021] Bus LR 106, at paragraphs 36-53).
[12] [2025] EWCA Civ 946

aforesaid goods; parts and fittings for all the aforesaid goods; all for use in conjunction with apparatus for the hearing impaired or by the hearing impaired.

29. The contents of the catalogues[13] shown in evidence categorise the opponent's goods into Personal Listeners, Wireless TV Listeners [& Reviews], Room Loop Systems, Speech Amplifiers [& Reviews], Portable Systems, Alerting Devices and Accessories.

30. The first three of the opponent's terms are fairly broad in nature but, to my mind, signify a fair description of the opponent's goods at large, particularly in light of the guidance referred to above. Goods shown in evidence such as the opponent's Echo MiniTechT or its Personal Listeners are clearly pieces of equipment or apparatus which aim to amplify sound or acoustics for the benefit of the user. Descriptions also show that the goods are designed to be used alongside hearing aids or other apparatus to enhance their capability or function. The MiniTechT, for example, is described as "a portable personal listener which gives excellent amplification in meetings, out and about or television listening at home." Its MiniTech Pro offers "superb amplification at the touch of a button". I find these are terms on which the opponent may rely.

31. I reach much the same conclusion in respect of the opponent's *amplifiers* and *acoustic amplifiers*. Goods such as those described above clearly serve to amplify sound and/or acoustics. The opponent also offers an "EchoVoice" device which is described as a speech amplifier. These terms may be retained.

32. Moving to the opponent's *induction loop amplifers, inductive neckloops* and *inductive loop pads*, the evidence shows that the opponent offers apparatus which creates an induction loop system *(Echo Megaloop* or *Megaloop Pro*, for example). It also offers a MiniTechT Neckloop accessory. I find such examples are sufficient to demonstrate use of the aforementioned goods.

[13] 2019, 2024/25

33. As for *microphones* and *headphones*, it is clear from the opponent's catalogue that it offers both *underchin headsets* and *bone conduction headphones*, as well as microphones which are both incorporated into a number of its products and offered independently (including, for example, "*the stubby microphone*"). The opponent may rely on these terms.

34. As for the remaining ancillary goods, these are all caught by the limitation set out in the opponent's specification [all for use in conjunction with apparatus for the hearing impaired or by the hearing impaired] and all are intended for use alongside products such as those discussed above, serving the same overarching purpose. I also note, for example, a listing for a "*bed shaker & power supply*" in the opponent's catalogue. I am satisfied that use made of the earlier mark will extend to these goods. The opponent may therefore rely upon all goods it has indicated for the purpose of the present proceedings.

Preliminary Matters

35. I intend to briefly address some points raised by the applicant throughout the course of the proceedings. To begin with, Mr Khan has referred to third party use of the term "Echo". In his submissions in lieu, for example, he submits that:

> "The marketplace already contains multiple trademarks incorporating "Echo", such as Amazon Echo and Echo Show, which coexist without issue."

In his counterstatement, Mr Khan also referred to a third party using "Echo" in respect of toys. The evidence on this point is not persuasive, with much relating to unrelated markets, and nonetheless does not establish that there are other registered trade marks incorporating the word "Echo". Even if it had, the existence of any other registered marks would not have any bearing on whether there is a likelihood of confusion between the marks at issue. There is no evidence to show that such marks are in use and/or that

consumers have become accustomed to differentiating between them.[14]

36. Further, Mr Khan contends that:

> "The Opponent has not provided any substantive evidence of harm caused by "EchoEdge". Our separate markets, branding, and technological distinctions support the peaceful coexistence of both trademarks."

In this regard, whilst Mr Khan's comments are noted, the applicant has not provided any meaningful evidence of use. In any event, I must clarify that the absence of actual confusion will not have any bearing on whether there exists a *likelihood* of confusion. Whilst evidence of actual confusion may be persuasive where it exists, the *absence* of confusion in the marketplace is rarely significant.[15] This is because the absence of such may be down to the earlier mark having only been used to a limited extent, in relation to only some of the goods for which it is registered, for example, or in such a way that there has been no possibility of one being mistaken for the other.[16] The provisions of the Act are not merely a reflection of what may be happening in the market. Even where there is no confusion in practice, it remains possible for there to be a finding of a likelihood of confusion.[17]

DECISION

Section 5(2)(b)

37. Section 5(2)(b) of the Act reads as follows:

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

[14] *Zero Industry Srl v OHIM*, Case T-400/06
[15] *The European Limited v The Economist Newspaper Ltd* [1998] FSR 283
[16] *Roger Maier and Another v ASOS*, [2015] EWCA Civ 220
[17] *Compass Publishing BV v Compass Logistics Ltd* ([2004] RPC 41

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

38. 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:*[18]

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

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may, in certain circumstances, be dominated by one or more of its components;

(f) and beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite possible that in

[18] [2025] UKSC 25

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

39. The competing goods are laid out at paragraphs 1 and 3 to this decision.

40. Whilst I acknowledge that the parties' goods are proper to different classes, this does not preclude a finding of similarity between the respective goods.[19] I keep in mind, however, that I am entitled to treat the class number as relevant to the interpretation of the scope of the specification in the case of ambiguity, for example.[20] In this regard, I note that Class 9 "includes mainly apparatus and instruments for scientific or research purposes, audiovisual and information technology equipment, as well as safety and life-

[19] See Section 60A of the Act
[20] *Altecnic Ltd's Trade Mark Application* [2002] RPC 34 (COA)

saving equipment" whilst Class 10 "includes mainly surgical, medical, dental and veterinary apparatus, instruments and articles generally used for the diagnosis, treatment or improvement of function or condition of persons and animals."[21]

41. In light of some of the applicant's comments, I also keep in mind that, when assessing a likelihood of confusion, it is necessary to consider the potential for conflict between the applied for mark and the earlier trade mark in light of all relevant circumstances. Differences between parties' current offerings are irrelevant to the assessment I am required to make, except to the extent that those differences are apparent from the lists of goods or services they have tendered for the purpose of registration. Furthermore, consideration of a likelihood of confusion is prospective and should not be restricted to the current marketing or trading patterns of the parties.[22] I am required to make an assessment of the likelihood of confusion notionally and objectively, on the basis of the respective specifications (and marks) as they appear before me.

42. Throughout my comparison of the goods, I will consider factors including their nature, intended purpose, method of use, user, trade channels and whether they are in competition or are complementary.[23]

43. As for when goods can be considered identical, in *Gérard Meric v Office for Harmonisation in the Internal Market,*[24] 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 fur Lernsysteme v OHIM- Educational Services (ELS)* [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark."

[21] See the respective Explanatory Notes
[22] *Oakley v OHIM*, Case T-116/06
[23] *Canon*, Case C-39/97; *Treat*, [1996] R.P.C. 281
[24] Case T- 133/05

44. In *Kurt Hesse v OHIM*,[25] the Court of Justice of the European Union ("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 Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*[26], the GC stated that "complementary" means:

> "...there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking".

45. I keep in mind throughout the effect of the opponent's limitation, though I do not intend to reproduce it in every scenario.

46. In accordance with *Meric*, I consider the applicant's *acoustic amplifiers [hearing aids] for partially deaf persons* to be encompassed by the opponent's *amplifiers* and/or *acoustic amplifiers*. Whilst this would ordinarily result in a finding of identicality, if there is a distinction to be made between the respective goods on the basis of the differing class headings and/or medical status, I find there is at least a high degree of similarity. The goods' purpose will be much the same, they will be selected by the same consumer and there is likely to be some coincidence in the goods' physical characteristics. The goods may occupy competitive positions and it would not seem unreasonable, to my mind, for the consumer to expect a single undertaking to offer both goods.

Hearing aids; Hearing aids for the deaf; Hearing apparatus for the deaf; Hearing protectors; Electronic hearing aids; Analog hearing aids; Electrical hearing aids; Digital hearing aids; Electric hearing aids; Hearing aids for the deaf [acoustic aids]; Programmable hearing aids; Ear adaptors for hearing aids; Electrically operated hearing aids; Hearing protection devices

[25] Case C-50/15 P
[26] Case T-325/06

47. The opponent relies upon terms such as *apparatus for the acoustic and inductive amplification of sound* and *apparatus and instruments for use in conjunction with hearing aids*. As above, if the broader terms relied upon by the opponent are not to be deemed encompassing of the applicant's goods, I nonetheless find there to be a high degree of similarity. The goods share an overarching purpose, broadly to aid the user's hearing or enhance acoustics. The goods will likely be accessed by the same consumer and utilise the same trade channels. Whilst I acknowledge that each user's requirement will naturally vary, the consumer (whether an end user or by proxy) may find the goods competitive, to the extent that they will look to determine which product may best address the user's need. Whilst not necessarily indispensable, it seems to me that the goods may feasibly originate from a shared or related undertaking, and that this would likely be the understanding of the average consumer.

48. In summary, I find all goods applied for are at least highly similar to the goods relied upon by the opponent.

Comparison of marks

49. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a 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 marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in *Bimbo SA v OHIM*,[27] that:

> "...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

[27] Case C-591/12P

confusion."

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

51. The competing trade marks are laid out for ease in the table below:

Opponent's mark	Applicant's mark
ECHO	EchoEdge

52. The opponent's mark comprises a single four-letter word (ECHO). The mark's overall impression therefore resides solely in the word itself.

53. The applicant's mark comprises a single word of eight letters, though it will likely be perceived as a combination of two ordinary words, "Echo" and "Edge". Generally speaking, I find each word will play a roughly equal role in terms of the mark's overall impression.

54. Visually, the marks coincide in the sequence E-C-H-O. Little hangs on the variation in casing as protection of a word mark would naturally allow for its presentation in a variety of typefaces and letter casings. The marks' coinciding element "ECHO" represents the only letters in the opponent's mark and the first four (of eight) in the applicant's mark. The remaining word "Edge" has no counterpart in the earlier mark. Whilst I keep in mind that it is the beginnings of marks which generally have the greatest

impact on consumers,[28] the applicant's mark comprises twice as many letters as the opponent's mark. I find the marks are visually similar to a medium degree.

55. Aurally, the opponent's mark is likely to be articulated in two syllables, loosely ECK-OH. In the applicant's mark, ECK-OH precedes a further syllable, "EDGE", which will be awarded its ordinary articulation. Having regard again to the significance of the beginnings of marks, I find the marks' aural similarity is of at least a medium degree.

56. The marks' conceptual impression must be judged from the perspective of the average consumer. Turning first to the opponent's mark, the definition of the word "ECHO" will be easily retrieved by the consumer meaning, for the most part, a repetition of a sound. In the applicant's mark, this word is paired with a second dictionary word, "EDGE", which will also have a readily retrievable definition of, broadly, the outermost limit of a surface or area. To my mind, the words do not create a unitary meaning and will therefore be awarded their respective, independent definitions, which are taken no further by the words' combination. All things considered, I find the marks are conceptually similar to a medium degree.

57. I have noted the applicant's comments concerning the "Edge" element of its mark, specifically that it is intended to "transform the sign into a unique identifier that encapsulates our commitment to innovation and cutting-edge audio enhancement solutions." Whilst I do not take the view that this signal will be readily perceived by the average consumer, I will keep the applicant's submission in mind and return to it later in my decision.

Average consumer and the purchasing act

58. 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

[28] *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer*.[29]

59. The average consumer of the goods at issue in the present proceedings is likely to comprise both professional bodies such as medical providers and not-for-profit organisations, as well as members of the general public. The goods are, for the most part, likely to be selected from a catalogue or journal (or an online equivalent). That said, I do not discount the relevance of the marks' aural impression as advice or recommendations may be offered in such terms. The consumer is likely to be alive to the capability of the goods, as well as their quality and compatibility. Whilst the degree of attention may fluctuate amongst the goods to a certain extent, given that the goods are generally intended to aid the hearing of the end consumer, and given the significance of the impact this could have on the goods' user, I find the attention of the consumer will at least be of a fairly high degree.

Distinctive character of the earlier trade mark

60. *Lloyd Schuhfabrik Meyer,* 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

[29] *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97

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)."

61. 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 descriptive or allusive qualities. The distinctive character of a mark can be enhanced by virtue of the use that has been made of it.

62. Earlier in my decision I found that the average consumer is likely to readily identify the definition of the opponent's mark, in general terms meaning a repetition of a sound. When considered in the context of the relied-upon goods, the mark does not play a descriptive role necessarily but rather creates an allusive connotation insofar as the goods can be said to impact or enhance "sounds" or audio, broadly speaking. I find the mark inherently distinctive to between a fairly low and medium degree.

63. I turn now to consider whether the evidence shows that the distinctiveness of the earlier marks has been enhanced through use. When considering enhanced distinctiveness, it is the perception of the UK consumer at the relevant date, that being the filing date of the applicant's mark, that is key. In the present case the relevant date is therefore 24 May 2024.

64. The opponent's evidence shows a consistent presence in the relevant market, documented by way of invoices and an online history, for example. The opponent actively distributes promotional material amongst a range of recipients and has maintained lines of engagement with professional bodies over at least a ten-year period.

Whilst I accept that I have not been provided any information concerning attendees, it also promotes its goods by way of participation at relevant events such as conferences or workshops, taking place nationwide. Whilst the opponent's claim to enjoying "a roughly 30% market share" are not substantiated to any meaningful degree, I find its turnover figures are significant, particularly in light of the general unit prices shown in the sample of invoices Mr Kozlowski has provided. In a demographic that is likely to be narrower than the public at large, I also consider the numbers of visits to the opponent's website between the years 2020 and 2024 is significant. Weighing all factors, I am satisfied that the distinctiveness of the opponent's mark has been enhanced to at least a medium (but not a high) degree in respect of all goods relied upon.

Likelihood of confusion

65. In determining whether there is a likelihood of confusion, 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 respective trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa. As I mentioned above, it is also necessary for me to keep in mind the distinctive character of the opponent's trade mark, as the more distinctive it is, the greater the likelihood of confusion. Conversely, the less distinctive it is, the lower the likelihood of confusion.

66. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one trade mark for the other, while indirect confusion is where the average consumer realises the trade marks are not the same but puts the similarity that exists between the trade marks and the respective goods and/or services down to the responsible undertakings being the same or related.

67. I take note of the comments made by Mr Iain Purvis Q.C., as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*,[30] where he explained that:

[30] Case BL O/375/10

"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)".

68. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors*,[31] Arnold LJ

[31] [2021] EWCA Civ 1207

approved Mr Purvis's formulation but added:

> "13. As James Mellor QC sitting as the Appointed Person pointed out in *Cheeky Italian Ltd v Sutaria* (O/219/16) at [16] 'a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion'. Mr Mellor went on to say that, if there is no likelihood of direct confusion, 'one needs a reasonably special set of circumstances for a finding of a likelihood of indirect confusion'. I would prefer to say that there must be a proper basis for concluding that there is a likelihood of indirect confusion given that there is no likelihood of direct confusion."

69. In *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another*,[32] Arnold J (as he then was) considered the impact of the CJEU's judgment in *Bimbo*,[33] on the court's earlier judgment in *Medion v Thomson*. The judge said:

> "18. The judgment in *Bimbo* confirms that the principle established in *Medion v Thomson* is not confined to the situation where the composite trade mark for which registration is sought contains an element which is identical to an earlier trade mark, but extends to the situation where the composite mark contains an element which is similar to the earlier mark. More importantly for present purposes, it also confirms three other points.
>
> 19. The first is that the assessment of likelihood of confusion must be made by considering and comparing the respective marks — visually, aurally and conceptually — as a whole. In *Medion v Thomson* and subsequent case law, the Court of Justice has recognised that there are situations in which the average consumer, while perceiving a composite mark as a whole, will also perceive that it consists of two (or more) signs one (or more) of which has a distinctive significance which is independent of the significance of the whole, and thus may be confused as a result of the identity or similarity of that sign to the earlier mark.

[32] [2015] EWHC 1271 (Ch)
[33] Case C-591/12P

20. The second point is that this principle can only apply in circumstances where the average consumer would perceive the relevant part of the composite mark to have distinctive significance independently of the whole. It does not apply where the average consumer would perceive the composite mark as a unit having a different meaning to the meanings of the separate components. That includes the situation where the meaning of one of the components is qualified by another component, as with a surname and a first name (e.g. BECKER and BARBARA BECKER).

21. The third point is that, even where an element of the composite mark which is identical or similar to the earlier trade mark has an independent distinctive role, it does not automatically follow that there is a likelihood of confusion. It remains necessary for the competent authority to carry out a global assessment taking into account all relevant factors."

70. To make the assessment, I must adopt the global approach advocated by the case law whilst taking account of my earlier conclusions. I also bear in mind that the average consumer rarely has the chance to make direct comparisons between trade marks and, instead, must rely upon the imperfect picture of them retained in its mind.

71. Throughout the course of my decision I have found the respective marks visually similar to a medium degree and aurally similar to at least a medium degree. I have found the marks' conceptual similarity to be of a medium degree. The parties' goods are at least highly similar. The average consumer of the relevant goods will comprise both members of the general public and professional organisations or bodies such as healthcare providers or charities. The marks' visual impression is likely to carry the greatest weight in the selection process, though the relevance of the marks' aural impression cannot be overlooked. The average consumer is likely to apply at least a fairly high degree of attention to its selection. I have found the earlier mark inherently distinctive to between a fairly low and medium degree, though its distinctiveness has been enhanced to at least a medium degree on account of the use the opponent has

made of it.

72. I will begin by considering a likelihood of direct confusion. To my mind, notwithstanding the marks' identical ECHO element (and where this element is situated in the applicant's mark), there are sufficient differences between the marks to enable the consumer to readily identify that the marks are not the same. There is a second word (conjoined) in the applicant's mark, which has no counterpart in the earlier mark. Notwithstanding the high degree of similarity between the parties' goods, particularly given the degree of attention the consumer is likely to apply when approaching its purchase, this distinction is highly unlikely to be overlooked. I dismiss a likelihood of direct confusion.

73. I turn now to consider a likelihood of indirect confusion. In doing so, I have kept in mind the examples set out *L. A. Sugar*, though these are by no means exhaustive. In my view, given that *Echo* and *Edge*, in the applicant's mark, do not combine to form a unitary meaning, the mark's "Echo" element retains an independent distinctive role. Particularly given the closeness between the parties' goods and the distinctiveness enjoyed by the earlier mark comprised solely of "ECHO", to my mind, the effect of this in the marketplace will give rise to a likelihood of confusion on the part of the average consumer. Notwithstanding Echo's limited inherent distinctiveness, I find its role in the later mark will lead the consumer to conclude that the marks originate from a shared or related undertaking. In other words, I find a likelihood of indirect confusion. For completeness, whilst it does not marry up with my primary finding, if I had found the *Edge* element in the later mark would be viewed as an indication that the associated goods are a nod toward a "commitment to innovation and cutting-edge audio enhancement solutions", as the applicant has suggested, my finding would remain the same. In such circumstances, I find it likely that the consumer would perceive "EchoEdge" as a sub-brand which focuses on new technologies, for example.

Conclusion

74. The opponent's claim under section 5(2)(b) succeeds in its entirety.

Section 5(3)

75. Section 5(3) of the Act states:

> "5(3) A trade mark which –
>
> is identical with or similar to an earlier trade mark, shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom (or, in the case of a European Union trade mark or international trade mark (EC), in the European Union) and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or repute of the earlier trade mark."

76. The relevant case law can be found in the following judgments of the CJEU: Case C-375/97, *General Motors,* Case 252/07, *Intel,* Case C-408/01, *Adidas-Salomon,* Case C-487/07, *L'Oreal v Bellure,* Case C-323/09, *Marks and Spencer v Interflora,* Case C383/12P, *Environmental Manufacturing LLP v OHIM.* The law appears to be as follows:

(a) The reputation of a trade mark must be established in relation to the relevant section of the public as regards the goods or services for which the mark is registered; *General Motors*, paragraph 24.

(b) The trade mark for which protection is sought must be known by a significant part of that relevant public; *General Motors*, paragraph 26.

(c) It is necessary for the public when confronted with the later mark to make a link with the earlier reputed mark, which is the case where the public calls the earlier mark to mind; *Adidas Salomon*, paragraph 29 and *Intel*, paragraph 63.

(d) Whether such a link exists must be assessed globally taking account of all relevant factors, including the degree of similarity between the respective marks and between the goods/services, the extent of the overlap between the relevant consumers for those goods/services, and the strength of the earlier mark's reputation and distinctiveness; *Intel*, paragraph 42

(e) Where a link is established, the owner of the earlier mark must also establish the existence of one or more of the types of injury set out in the section, or there is a serious likelihood that such an injury will occur in the future; *Intel*, paragraph 68; whether this is the case must also be assessed globally, taking account of all relevant factors; *Intel*, paragraph 79.

(f) Detriment to the distinctive character of the earlier mark occurs when the mark's ability to identify the goods/services for which it is registered is weakened as a result of the use of the later mark, and requires evidence of a change in the economic behaviour of the average consumer of the goods/services for which the earlier mark is registered, or a serious risk that this will happen in future; *Intel*, paragraphs 76 and 77 and *Environmental Manufacturing*, paragraph 34.

(g) The more unique the earlier mark appears, the greater the likelihood that the use of a later identical or similar mark will be detrimental to its distinctive character; *Intel*, paragraph 74.

(h) Detriment to the reputation of the earlier mark is caused when goods or services for which the later mark is used may be perceived by the public in such a way that the power of attraction of the earlier mark is reduced, and occurs particularly where the goods or services offered under the later mark have a characteristic or quality which is liable to have a negative impact of the earlier mark; *L'Oreal v Bellure NV*, paragraph 40.

(i) The advantage arising from the use by a third party of a sign similar to a mark

with a reputation is an unfair advantage where it seeks to ride on the coat-tails of the senior mark in order to benefit from the power of attraction, the reputation and the prestige of that mark and to exploit, without paying any financial compensation, the marketing effort expended by the holder of the mark in order to create and maintain the mark's image. This covers, in particular, cases where, by reason of a transfer of the image of the mark or of the characteristics which it projects to the goods identified by the identical or similar sign, there is clear exploitation on the coat-tails of the mark with a reputation (*Marks and Spencer v Interflora*, paragraph 74 and the court's answer to question 1 in *L'Oreal v Bellure*).

77. The conditions of section 5(3) are cumulative. Firstly, the opponent must show that the marks are similar. Secondly, the opponent must show that its mark has achieved a level of knowledge/reputation amongst a significant part of the public throughout the relevant territory. Thirdly, it must be established that the level of reputation and the similarities between the parties' marks will cause the public to make a link between them. Finally, assuming the first three conditions have been met, section 5(3) requires that one or more of the types of damage will occur. It is unnecessary for the purposes of section 5(3) that the goods or services be similar, although the relative distance between them is one of the factors which must be assessed in deciding whether the public will make a link between the marks.

Similarity of the marks

78. I have already found the marks to be similar for the reasons set out above.

Reputation

79. In *General Motors,*[34] the CJEU held that:

[34] Case C-375/97

"25. It cannot be inferred from either the letter or the spirit of Article 5(2) of the Directive that the trade mark must be known by a given percentage of the public so defined.

26. The degree of knowledge required must be considered to be reached when the earlier mark is known by a significant part of the public concerned by the products or services covered by that trade mark.

27. In examining whether this condition is fulfilled, the national court must take into consideration all the relevant facts of the case, in particular the market share held by the trade mark, the intensity, geographical extent and duration of its use, and the size of the investment made by the undertaking in promoting it.

28. Territorially, the condition is fulfilled when, in the terms of Article 5(2) of the Directive, the trade mark has a reputation 'in the Member State'. In the absence of any definition of the Community provision in this respect, a trade mark cannot be required to have a reputation 'throughout' the territory of the Member State. It is sufficient for it to exist in a substantial part of it."

80. I have already summarised the opponent's evidence and considered its weight for the purpose of establishing enhanced distinctiveness. Whilst enhanced distinctiveness and reputation are different, the factors relevant to both assessments are the same. For the same reasons given above, I consider that the opponent had a reasonable reputation in the UK at the relevant date in respect of the goods relied upon.

Link

81. As noted above, my assessment of whether the public will make the required mental 'link' between the marks must take account of all relevant factors. The factors identified in *Intel* are:

The degree of similarity between the conflicting marks

The marks are share a medium degree of visual and conceptual similarity and at least a medium degree of aural similarity.

The nature of the goods or services for which the conflicting marks are registered, or proposed to be registered, including the degree of closeness or dissimilarity between those goods or services, and the relevant section of the public.

I have found the parties' goods considered above to be at least highly similar. However, for the purpose of its claim under section 5(3), the opponent extends its objection to *mobility aids*, for which application is sought. Whilst I accept that both sets of goods, broadly speaking, seek to enhance the user's experience or quality of living to some extent, the goods' uses are nonetheless distinct; one addressing a hearing difficulty and the other confined to matters of movement. Any coincidence in the goods' respective users is likely to be at a fairly high level only; the respective goods will target users with different needs. The goods are not physically similar in nature and, to my knowledge, do not typically reach the market via the same trade channels. The goods are not competitive and are not indispensable. I have nothing before me to suggest that the consumer would expect the goods to be offered by a single or related undertaking. All things considered, whilst I have kept in mind that both parties' goods could, broadly speaking, be described as personal aids, I find these goods are dissimilar.

I apply the same findings in relation to the relevant public and purchasing process as set out above.

The strength of the earlier mark's reputation.

The earlier mark enjoys a reasonable reputation in the goods for which its mark is registered.

The degree of the earlier mark's distinctive character, whether inherent or acquired through use

As set out previously, I find the opponent's mark to hold between a fairly low and medium degree of inherent distinctive character. I am satisfied, however, that the mark's distinctiveness has been enhanced to at least a medium degree in respect of the relied upon goods.

Whether there is a likelihood of confusion

Earlier in my decision I found a likelihood of indirect confusion between the parties' marks in respect of the goods opposed under s.5(2)(b). As for the applicant's *mobility aids*, given that I find these goods dissimilar to those relied upon, it follows that there would be no likelihood of confusion in respect of these goods.[35]

82. In respect of the goods which I have found to be at least highly similar, in light of the opponent's reputation in the market (which I have found to be at a reasonable level) and the independent role "Echo" plays in the applicant's mark, I find that the relevant public would make a link between the parties' marks.

83. As for the opponent's *mobility aids*, whilst I accept that under the present ground there is no requirement for the respective goods to be similar, I take the view that, notwithstanding the level of reputation enjoyed by the opponent, in light of the distance between the goods, the relevant public would not be minded to make a link between the parties' marks. Even if there were, it would be merely fleeting, such that it could not give rise to any unfair advantage or damage.

Damage

84. I must now consider whether any of the possible damage which has been pleaded will arise (in respect of those goods where I have found the relevant public will make a link between the marks).

[35] See, for example, *eSure Insurance v Direct Line Insurance,* [2008] ETMR 77 CA

Unfair advantage

85. In its submissions in lieu, the opponent writes as follows in respect of unfair advantage:

> "…if the Applicant is allowed to use and register the trade mark applied for, it will take unfair advantage of the distinctive character of the Opponent's earlier trade mark, as such use and registration will benefit from the commercial attraction of the Opponent's mark which is widely known in the market, thus misappropriating the attractive powers and advertising value of the Opponent's earlier trade mark."

86. I have already found that there is a likelihood of indirect confusion. To the extent that the relevant public believe that the goods of the applicant are the goods of the opponent (or an economically linked undertaking), there will plainly be unfair advantage. The evidence shows that the opponent has invested significantly in the promotion of its earlier mark, not simply in monetary terms but in the consistent promotional efforts it has undertaken. It therefore seems clear that there is potential for the applicant to gain an unfair commercial advantage insofar as it would benefit from that investment, without having to invest in its own marketing activities.

87. As I have found there to be unfair advantage, I do not need to consider the other pleaded heads of damage.

Conclusion

88. In respect of all but *mobility aids*, the opponent's claim under section 5(3) has succeeded.

Section 5(4)(a)

Legislation and case law

89. Section 5(4)(a) of the Act states as follows:

> "(4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented-
>
> (a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, where the condition in subsection (4A) is met,
>
> (aa) […]
>
> (b) […]
>
> A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of an "earlier right" in relation to the trade mark."

90. In *Discount Outlet v Feel Good UK*, Her Honour Judge Melissa Clarke[36], sitting as a deputy Judge of the High Court, conveniently summarised the essential requirements of the law of passing off as follows:

> "55. The elements necessary to reach a finding of passing off are the 'classical trinity' of that tort as described by Lord Oliver in the *Jif Lemon* case (*Reckitt & Colman Product v Borden* [1990] 1 WLR 491 HL, [1990] RPC 341, HL), namely goodwill or reputation; misrepresentation leading to deception or a likelihood of deception; and damage resulting from the misrepresentation. The burden is on the Claimants to satisfy me of all three limbs.
>
> 56. In relation to deception, the court must assess whether "a substantial number" of the Claimants' customers or potential customers are deceived, but it is not

[36] [2017] EWHC 1400 IPEC

necessary to show that all or even most of them are deceived (per *Interflora Inc v Marks and Spencer Plc* [2012] EWCA Civ 1501, [2013] FSR 21)."

91. Whilst some evidence has been filed by Mr Khan, none of it shows that he has used his mark prior to its application date. As such, the relevant date for assessing this ground is that date, namely 24 May 2024.[37]

Goodwill

92. In *Inland Revenue Commissioners v Muller & Co's Margarine Ltd*,[38] goodwill was described in the following terms:

"What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation and connection of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a new business at its first start."

93. The opponent claims to have acquired goodwill in the following goods:

Apparatus for the acoustic and inductive amplification of sound; amplification equipment and ancillary equipment for use in enhancing the performance of hearing aids; apparatus and instruments for use in conjunction with hearing aids; amplifiers; induction loop amplifiers; inductive neckloops, inductive loop pads; acoustic amplifiers; microphones; headphones; wireless home alert systems; wireless home alert systems utilizing vibrating pager receivers; sound sensors with built-in wireless transmitters; smoke alarms with built-in wireless transmitters; door bell buttons with built-in wireless transmitters; telephone relays with built-in wireless transmitters; vibrating pagers with built-in wireless receivers; power supply units; batteries; cables and leads for use with the aforesaid goods; parts and fittings for all the aforesaid goods; all for use in conjunction with apparatus for the hearing impaired or for use by the hearing impaired.

[37] *Advanced Perimeter Systems Limited v Multisys Computers Limited*, BL O/410/11, paragraph 43
[38] [1901] AC 217 (HOL)

94. I take note that the above signifies a greater number of terms than that relied upon for the purpose of the opponent's pleading under sections 5(2)(b) and 5(3). However, I will begin my consideration of the present ground on the basis of the terms I have already addressed (I have found, for example an enhanced distinctiveness and reputation in respect of at least, for example, a*pparatus for the acoustic and inductive amplification of sound* and *apparatus and instruments for use in conjunction with hearing aids*; *all for use in conjunction with apparatus for the hearing impaired or for use by the hearing impaired)*. I will return to consider the additional goods only if it appears necessary.

95. I rely on the same findings for goodwill as I have above in respect of enhanced distinctiveness and reputation above. I also note that the invoices show an example of repeat custom. It follows that the evidence also demonstrates that, as at the relevant date, the trading activities of the opponent were at a significant enough level for it to have obtained a reasonable level of goodwill in the goods for which it has established genuine use. I am satisfied that the goodwill vests in the opponent insofar as customers would perceive it as being responsible for the relevant goods[39] and, further, I am satisfied that the sign relied upon was distinctive of that goodwill at the relevant date.

Misrepresentation and damage

96. In *Neutrogena Corporation and Another v Golden Limited and Another*,[40] Morritt LJ stated that:

> "There is no dispute as to what the correct legal principle is. As stated by Lord Oliver of Aylmerton in *Reckitt & Colman Products Ltd. v. Borden Inc*. [1990] R.P.C. 341 at page 407 the question on the issue of deception or confusion is
>
> "is it, on a balance of probabilities, likely that, if the appellants are not restrained

[39] *MedGen Inc v Passion for Life* [2001] FSR 30
[40] [1996] RPC 473

as they have been, a substantial number of members of the public will be misled into purchasing the defendants' [product] in the belief that it is the respondents' [product]"

The same proposition is stated in Halsbury's Laws of England 4th Edition Vol.48 para 148. The necessity for a substantial number is brought out also in *Saville Perfumery Ltd. v. June Perfect Ltd.* (1941) 58 R.P.C. 147 at page 175; and *Re Smith Hayden's Application* (1945) 63 R.P.C. 97 at page 101."

97. And later in the same judgment:

"[…] for my part, I think that references, in this context, to "more than de minimis" and "above a trivial level" are best avoided notwithstanding this court's reference to the former in *University of London v. American University of London* (unreported 12 November 1993). It seems to me that such expressions are open to misinterpretation for they do not necessarily connote the opposite of substantial and their use may be thought to reverse the proper emphasis and concentrate on the quantitative to the exclusion of the qualitative aspect of confusion."

98. In *Lumos Skincare Limited v Sweet Squared Limited and others*,[41] Lloyd LJ commented on the paragraph above as follows:

"64. One point which emerges clearly from what was said in that case, both by Jacob J and by the Court of Appeal, is that the "substantial number" of people who have been or would be misled by the Defendant's use of the mark, if the Claimant is to succeed, is not to be assessed in absolute numbers, nor is it applied to the public in general. It is a substantial number of the Claimant's actual or potential customers. If those customers, actual or potential, are small in number, because of the nature or extent of the Claimant's business, then the substantial number will also be proportionately small."

[41] [2013] EWCA Civ 590

99. Halsbury’s Laws of England Vol. 97A (2021 reissue) provides further guidance with regard to establishing the likelihood of deception. In paragraph 636 it is noted (with footnotes omitted) that:

> “Establishing a likelihood of deception generally requires the presence of two factual elements:
>
> (1) that a name, mark or other distinctive indicium used by the claimant has acquired a reputation among a relevant class of persons; and
>
> (2) that members of that class will mistakenly infer from the defendant's use of a name, mark or other indicium which is the same or sufficiently similar that the defendant's goods or business are from the same source or are connected.
>
> While it is helpful to think of these two factual elements as two successive hurdles which the claimant must surmount, consideration of these two aspects cannot be completely separated from each other.
>
> The question whether deception is likely is one for the court, which will have regard to:
>
> (a) the nature and extent of the reputation relied upon,
>
> (b) the closeness or otherwise of the respective fields of activity in which the claimant and the defendant carry on business;
>
> (c) the similarity of the mark, name etc used by the defendant to that of the claimant;
>
> (d) the manner in which the defendant makes use of the name, mark etc complained of and collateral factors; and

(e) the manner in which the particular trade is carried on, the class of persons who it is alleged is likely to be deceived and all other surrounding circumstances.

In assessing whether deception is likely, the court attaches importance to the question whether the defendant can be shown to have acted with a fraudulent intent, although a fraudulent intent is not a necessary part of the cause of action".

100. In *Marks and Spencer PLC v Interflora*,[42] Lewison LJ cast doubt on whether the test for misrepresentation for passing off purposes came to the same thing as the test for a likelihood of confusion under trade mark law. He pointed out that it is sufficient for passing off purposes that "a substantial number" of the relevant public are deceived, which might not mean that the average consumer is confused. However, considering the Court of Appeal's later judgment in *Comic Enterprises Ltd v Twentieth Century Fox Film Corporation*,[43] it seems doubtful whether the difference between the legal tests will (all other factors being equal) produce different outcomes.[44] This is because they are both normative tests intended to exclude the particularly careless or careful, rather than quantitative assessments.

101. I have already found that there is a likelihood of confusion between the parties' respective trade marks. In light of my earlier findings, particularly the effect of the addition of "Edge" in the applicant's mark and how "Echo" retains an independent significance, in regard to the goods I have found to be similar I find that a substantial number of members of the relevant public will be deceived into believing that the goods provided under the applicant's mark and the opponent's earlier sign are offered by the same or an economically linked undertaking. In such circumstances, I consider that damage though diversion of sales is entirely foreseeable.

[42] [2012] EWCA (Civ) 1501
[43] [2016] EWCA Civ 41
[44] Although this was an infringement case, the principles are equally applicable to section 5(2) of the Act: *Soulcycle Inc v Matalan Ltd* [2017] EWHC 496 (Ch).

102. That leaves *mobility aids* to be considered. Even though the evidence is sufficient to support a finding of a reasonable level of goodwill in the opponent's sign, the issue here is the distinct nature of the parties' fields of activity. I say this having acknowledged that, whilst the goods coincide to the extent that they could be described as 'personal aids', this is in fairly broad terms. While I appreciate that passing off can be found in instances where the parties operate in different fields of activity, where there is no or only a tenuous degree of overlap between the parties' respective fields, the burden of proving misrepresentation and resulting damage is a heavy one.[45] On this point, I refer to the case of *Stringfellow v. McCain Foods (G.B.) Ltd*.[46] wherein Slade L.J. said (at page 535) that the further removed from one another the respective fields of activity are, the less likely it is that a member of the public could be reasonably confused insofar as they think that one business was connected to the other. In the present case, whilst I appreciate that the opponent's use is significant, the degree of goodwill in the relied-upon goods is offset by the distinct nature of the parties' goods and fields of activity. I do not consider that the evidence is sufficient to discharge the burden referred to by Millet L.J in *Harrods*. As such, I find that this ground offers nothing further to the opponent beyond its section 5(3) ground. For completeness, even if I were to have found goodwill in the additional terms relied upon under this ground, the disparity between the goods would still be such that it would not offer the opponent any greater prospect.

Conclusion

103. The opposition under section 5(4)(a) succeeds, with the exception of *mobility aids*.

CONCLUSION

104. With the exception of the applied-for *mobility aids*, the opposition has succeeded in its entirety. Subject to any successful appeal against my decision, the application will be refused in respect of the following goods:

[45] See the comments of Millet L.J. in the case of *Harrods Limited v Harrodian School Limited* [1996] RPC 697
[46] [1984] R.P.C. 501

Hearing aids; Hearing aids for the deaf; Hearing apparatus for the deaf; Hearing protectors; Electronic hearing aids; Analog hearing aids; Electrical hearing aids; Digital hearing aids; Electric hearing aids; Hearing aids for the deaf [acoustic aids]; Programmable hearing aids; Ear adaptors for hearing aids; Acoustic amplifiers [hearing aids] for partially deaf persons; Electrically operated hearing aids; Hearing protection devices (class 10)

105. The application may proceed to registration in respect of:

Mobility aids (class 10)

COSTS

106. A greater degree of success goes to the opponent, who is therefore entitled to a contribution towards its costs. Awards of costs are governed by Annex A of Tribunal Practice Notice ("TPN") 2/2023. In accordance with that TPN, and having kept in mind that the opposition under sections 5(3) and 5(4)(a) was not entirely successful, I award the opponent costs as follows:

Preparing a Notice of Opposition:	£300
Official fee:	£200
Considering the applicant's counterstatement and preparing evidence and preparing evidence in reply:	£900
Filing written submissions in lieu of a hearing:	£300
Total:	**£1700**

107. I hereby order yasir khan to pay Hearing Products International Limited the sum of

£1700. The above 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 29th day of April 2026

Laura Stephens
For the Registrar