O/0427/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00004007375

IN THE NAME OF SUPERE LIMITED

FOR THE TRADE MARK:

Supere

IN CLASSES 37, 38 AND 42

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. 447404

BY LIU MEI XIANG

BACKGROUND AND PLEADINGS

1. On 26 January 2024, Supere Limited ("the applicant") applied to register the trade mark shown on the cover page of this decision, in the UK. The application was published for opposition purposes on 9 February 2024 and registration is sought for the services set out in Annex 1 to this decision.

2. On 9 May 2024, the application was opposed by Liu Mei Xiang ("the opponent") based upon sections 5(2)(b) and 5(4)(a) of the Trade Marks Act 1994 ("the Act"). Under section 5(2)(b) of the Act, the opponent relies upon the following trade mark:

Superer

UKTM no. 3608107
Filing date: 11 March 2021
Registration date: 22 July 2022
Relying on all goods for which the mark is registered, namely:

Class 9 Power cables; Electric adapter cables; Data cables; Wireless chargers; Barcode scanners; Thermal printers; Computer mouse; Keyboards; Electrical sockets; Electronic card readers; Power adapters; Electric battery chargers; Mouse pads; Remote controls for radios; Printers for use with computers; Earphones; Computer peripheral devices.

3. Under section 5(2)(b) of the Act, the opponent claims that the marks are similar, and the goods and services are similar, with the result that there is a likelihood of confusion.

4. Under section 5(4)(a) of the Act, the opponent relies upon a sign identical to the mark relied upon under section 5(2)(b) and the sign SUPERER, both of which the opponent claims to have been using throughout the UK since December 2016. The opponent claims to have used the signs in relation to the same goods as listed in paragraph 2 above. The opponent claims that use of the applicant's mark would be contrary to the law of passing off.

5. The applicant filed a counterstatement denying the grounds of opposition.[1]

6. Neither party requested a hearing, but both filed written submissions in lieu. This decision is taken following a careful consideration of the papers filed.

REPRESENTATION

7. The opponent is represented by Mathys & Squire LLP.

8. The applicant is self-represented.

EVIDENCE AND SUBMISSIONS

9. The opponent's evidence in chief took the form of his own witness statement dated 17 October 2024, which is accompanied by 6 exhibits (LMX1 to LMX6).[2]

10. The applicant filed evidence in the form of the witness statement of Danny Chaplin dated 18 December 2024, which is accompanied by 7 exhibits (DC1 to DC7). Mr Chaplin is the Managing Director of the applicant.

11. The opponent's evidence in reply took the form of his second witness statement dated 20 March 2025, which is accompanied by 6 exhibits (LMX1 to LMX6).

12. The applicant filed written submissions in lieu of a hearing dated 18 April 2025 and the opponent filed written submissions in lieu of a hearing dated 6 May 2025.[3]

[1] Although the applicant requested that the opponent provide proof of use of the earlier mark, the applicant was informed by letter dated 20 August 2024 that the use provisions of section 6A do not apply in this case.
[2] The opponent requested a one month extension to the deadline for filing its evidence in chief. The registry gave a preliminary view to grant the extension on 16 October 2024, which was not challenged.
[3] The applicant sent two emails to the Tribunal in April 2025, the first enclosing its written submissions in lieu and the second requesting a hearing. As a result, the Tribunal wrote to the applicant on 1 May 2025 requesting that it clarify whether a hearing was requested or not by 5 May 2025. No response was received and so the Tribunal confirmed on 6 May 2025 that the case would proceed on the basis that the applicant was content for a decision to be taken on the papers.

RELEVANCE OF EU LAW

13. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

DECISION

Section 5(2)(b)

14. 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."

15. Section 5A of the Act is as follows:

> "5A Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only."

16. Given its earlier filing date, the trade mark upon which the opponent relies qualifies as an earlier trade mark pursuant to section 6 of the Act. As the earlier mark had not completed its registration process more than 5 years before the filing date of the application, it is not subject to the use provisions in section 6A of the Act. Consequently, the opponent can rely upon all of the goods identified.

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

> (a) the likelihood of confusion must be appreciated globally, taking account of all relevant factors;
>
> (b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;
>
> (c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;
>
> (d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;
>
> (e) nevertheless, the overall impression conveyed to the public by a composite trade mark may, in certain circumstances, be dominated by one or more of its components;

(f) and beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

(g) a lesser degree of similarity between the goods or services may be offset by a greater degree of similarity between the marks, and vice versa;

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

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

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

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

Comparison of goods and services

18. In its evidence, the applicant refers to the differences between the parties' customers in practice.[4] For the avoidance of doubt, the assessment that I must make is based upon a notional assessment of all the ways in which the marks could be used in light of their respective specifications. The actual activities of the parties are not relevant to that assessment. With that in mind, the competing goods and services can be found in paragraph 2 and Annex 1 to this decision.

[4] See paragraphs 9 and 10 of the witness statement of Danny Chaplin.

19. In the judgment of the Court of Justice of the European Union ("CJEU") in *Canon*, Case C-39/97, the court stated at paragraph 23 of its judgment that:

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

20. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, for assessing similarity were:

> (a) The respective uses of the respective goods or services;
>
> (b) The respective users of the respective goods or services;
>
> (c) The physical nature of the goods or acts of service;
>
> (d) The respective trade channels through which the goods or services reach the market;
>
> (e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be, found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;
>
> (f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

21. Another factor in assessing similarity is to consider the extent to which the goods and services at issue may be regarded as "complementary", which case law describes as meaning that "… 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 the responsibility for those goods lies with the same undertaking."[5]

22. Since services are inherently less precise than specifications of goods, specifications for services should be scrutinised carefully and they should not be given a wide construction covering a vast range of activities, but confined to the substance or core of their possible meanings.[6] For the purposes of assessing similarity, it is permissible to group specified terms together where they are sufficiently comparable in essentially the same way for essentially the same reasons.[7]

23. In reaching my conclusions, I bear in mind that the submissions I have from the opponent regarding the similarity of goods and services are very limited. Unless similarity is obvious to me, if the opponent has not made any attempt to explain why such similarity would exist, I will proceed on the basis that the goods and services are dissimilar.[8]

The opponent's evidence

24. The opponent has filed evidence to support the claim that there is an overlap between its goods and the applicant's services. Exhibit LMX1 is a series of screenshots and a document which appears to be in English and a different language (it is not clear whether the English is original or a translation). This gives guidance for "upgrading power fast-charging protocol compatibility". It is far from clear to me that this proves any overlap between the applicant's services and the opponent's goods, and certainly does not demonstrate that any such overlap is common in the UK market. The opponent has filed a print out from their .com website, which references the opponent offering both goods and services and an email from a single customer requesting a firmware upgrade.[9] However, it is not clear to me that these relate to the UK market or UK customers. The opponent has filed evidence regarding the existence

5 Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM), Case T-325/06

6 See, for instance, *Avnet Incorporated v Isoact Limited* [1998] FSR 16, Jacob J (as he then was) at [19].

7 See *Separode* Trade Mark (BL O/399/10)

[8] *SMARTX,* BL O/0911/24

[9] Exhibits LMX2, LMX3 and LMX4

of smart products (where hardware and software is combined).[10] However, the opponent's specification does not cover software goods or any goods that are specifically identified as 'smart' and, in any event, the fact that physical goods may incorporate hardware and software does not assist in establishing an overlap with the applicant's services. Whilst there is some evidence of businesses offering both physical goods and technical support services in the UK, these are significant businesses with large reputations (such as Dell and Microsoft) which offer a range of goods and services. The fact that there are some limited businesses which offer these goods and services does not demonstrate that it is common for such an overlap in trade channels to exist.

Class 37

Consultancy services relating to installation of computers; Computer maintenance services; Computer installation services.

25. In its written submissions in lieu, the opponent refers to decisions of the EUIPO Opposition Division and the Board of Appeal.[11] In these cases, computer hardware was found to be similar to services related to computer hardware (such as installation, maintenance and repair services). These decisions are not binding on me. In any event, in my view, they can be distinguished from the present case. This is because the EUIPO was comparing the services in question with the term *computer hardware* at large. I agree with the EUIPO that it is common for there to be an overlap in certain types of computer hardware related maintenance, installation and repair services. However, the opponent's goods in this case are very specific types of class 9 goods (such as cables, chargers, scanners, printers and other types of peripheral devices). Whilst I accept that there may be providers of computers, for example, who also offer maintenance, repair and installation services, I do not consider that the same applies to the goods in the opponent's specification. I have no evidence before me to suggest that such an overlap exists. Consequently, I do not consider it likely that there would be any overlap in trade channels.

[10] Exhibit LMX5
[11] Case R 2935/2019-4 and Case R 538/2020-5

26. The user will plainly overlap as all of the goods and services could be used by members of the general public. The method of use, nature and purpose of the goods and services will clearly differ. I do not consider the goods and services to be complementary, because they are not important or indispensable for each other, nor would you expect the same undertaking to be responsible for both. There is no competition, given the differing purpose. Taking all of this into account, I find the goods and services to be dissimilar.

Class 38

Telecommunications consultancy services; Consultancy services relating to telecommunications; Consulting services in the field of telecommunications.

27. These are all services which relate to consultancy in the field of telecommunications. The opponent has, again, referred to decisions of the EUIPO Board of Appeal in which certain goods in class 9 (such as telecommunications equipment, modems and network routers, within computer hardware at large) were found to be similar to telecommunications services (such as repair, installation and maintenance of telecommunications equipment, telecommunications and wireless communication services).[12] However, again, the goods in question were not on all fours with the vast majority of the class 9 goods at issue in this case. Plainly, the same reasoning does not apply to goods such as keyboards and earphones. However, I accept that there are some goods in the opponent's specification that might be supplied by telecommunications providers (such as power cables). However, the services in the applicant's specification are consultancy services related to telecommunications, not telecommunications services themselves. In my view, these are services that are likely to be provided to telecommunications businesses, not to users of telecommunication. In any event, even if the goods and services were supplied by the same businesses to the same users to some degree, there is nothing before me to suggest that the average consumer would expect the same undertaking to be responsible for both.

[12] Case R 538/2020-5 and R 0229/2020-4

28. Plainly, the nature, purpose and method of use of the goods and services will differ. For the reasons given above, I do not consider it likely that the average consumer would expect the same undertaking to be responsible for both, and the goods and services are not important or indispensable to each other. Consequently, there is no complementarity. There is no competition, given the differing purposes. In my view, the goods and services are dissimilar.

Computer telephony services; Computer communication services.

29. The opponent's specification includes the term "computer peripheral devices". This refers to goods which are peripheral to the computer itself, but which are designed to connect and be used with a computer. However, I am mindful that terms should not be given an overly broad construction and I am not convinced that computer peripheral devices would extend to cover communications equipment that can be used with multiple computers at a time, as opposed to goods which are connected with (virtually or physically) a particular computer (such as a mouse, keyboard or docking station). Indeed, the only submissions I have from the opponent in relation to this class are concerned with the consultancy services discussed above, and I have no evidence or submissions to assist me insofar as these services are concerned. There is nothing in evidence to suggest that providers of these services would also provide goods such as cables or other hardware, nor do I understand that to be the case. To my knowledge, these services either relate to the virtual connections between telephone systems and computer applications or communications that take place via a computer (such as emails or instant messaging), neither of which would involve the provision of such physical goods. In the absence of such evidence, I am not convinced that there would be an overlap in trade channels. The purpose, nature and method of use of the goods and services plainly differ. There is no complementarity, as the average consumer would not expect the same undertaking to be responsible for both, nor are the goods and services important or indispensable for each other. I accept that the user of the goods and services may overlap, but this is such a general level of overlap that I do not find it sufficient to result in similarity. In my view, the goods and services are dissimilar.

Class 42

Computer consultancy services; Computer software consultancy services; Computer and software consultancy services; Computer engineering consultancy services; Computer consulting services; Computer consultancy and advisory services; Computer software consulting services; Consultancy services in relation to computer software; Software consultancy services; Consultancy services relating to computer systems; Computer and information technology consultancy services; Advisory and consultancy services relating to computer hardware; Consultancy services relating to computer networks; Computer consultancy; Consultancy services relating to computer programming; Professional consultancy services relating to computer programming; Computer software advisory services; Consulting services relating to computer software; Consultancy services relating to computers; Computer advisory services; Software consulting services; Technical consultancy services relating to computer programming; Engineering consultancy services; Consultancy and information services relating to computer software design; Computer software consultancy; Consultancy (Computer software -); Advisory and consultancy services relating to computer and video games software; Computer technology consultancy; Advisory and consultancy services relating to the design and development of computer hardware; Advisory services relating to the use of computer software; Advisory services relating to computer software; Computer consultation services; Consultancy and information services relating to computer programming; Professional advisory services relating to computer software; Expert consultancy services in connection with computing equipment; Providing information, advice and consultancy services in the field of computer software; Advisory services relating to computer software design; Advisory services relating to the rental of computers or computer software; Consultancy and information services relating to the design, programming and maintenance of computer software; Advisory services relating to computer software used for printing; Computer security consultancy; Expert consultancy services in connection with computing networks; Advisory services relating to computer software used for publishing; Computer programming consultancy; Consultancy services relating to computing; Consultancy services relating to software used in the field of e-commerce; Advisory services relating to computer software used for graphics; Consultancy relating to computer software; Consulting services in the field of software as a service

[SaaS]; Professional consultancy relating to computer software; Consultation services relating to computer software; Consultancy and information services in the field of computer system integration; Architecture consultancy services; Consultancy relating to computer systems; Professional advisory services relating to computer hardware; Advisory services relating to computer systems design; Advisory services relating to computer hardware; Consultancy services for designing information systems; Consultancy in the field of computer software; Consultancy and information services relating to computer system integration; Advisory services relating to computer hardware design; Environmental consultancy services; Technical advisory services relating to computer programs; Advisory services relating to computer programming; Technical advice and consultancy services in the field of telecommunications; Consultancy and information services relating to software rental; Professional consultancy relating to computer security; Advisory and information services relating to computer software; Technological advisory services relating to computer programs; Computer software consulting; Computer program advisory services.

30. These are all consultancy or advisory services. The opponent relies upon a decision of this Tribunal in which computer hardware was found to be similar to design and development of computer hardware.[13] That case can be distinguished from the present circumstances because all of the above terms are consultancy/advisory services, rather than design or development services themselves, and the opponent does not have the term computer hardware at large in its specification. The opponent also relies upon a decision of the EUIPO Board of Appeal which found computer peripherals, amongst other things, to be similar to a number of terms in class 42.[14] That decision is not binding on me. In any event, given the number of terms being considered together, it is not clear to me whether the Board of Appeal were saying that all of the class 9 terms were similar to all of the class 42 services listed, or were simply saying that there was some point of overlap between particular class 9 goods and particular class 42 services (the latter seems, in my view, more likely given the reasoning).

[13] BL O/200/20
[14] Case R 1787/2012-2

31. In any event, for the reasons given above, I do not consider that there is an overlap in trade channels between these services and the very narrow and specific terms which appear in the opponent's specification, nor do I have any evidence to suggest such an overlap. In my view, consultancy and advisory services are one step further removed than design/development services themselves and many of the terms in the applicant's specification relate to software (rather than hardware) for which the opponent has no protection. In my view, there is no basis for finding an overlap in trade channels, even in relation to hardware related services. Plainly, the method of use, nature and purpose of the goods and services differ. There is no competition, given the differing purposes. The average consumer would not expect the same undertaking to be responsible for the goods and services, nor would they consider them important or indispensable for each other. Consequently, there is no complementarity. The user may overlap, but I do not consider that alone to be sufficient for a finding of similarity. I find the goods and services to be dissimilar.

Research and consultancy services relating to computer software.

32. To the extent that this term relates to consultancy services, the same applies as discussed above. However, even in relation to the research services, given that the opponent's specification does not cover software at all, I see no basis for finding any overlap in trade channels. Plainly, there is no overlap in method of use, nature or purpose. There is no complementarity, as I do not consider the goods and services to be important or indispensable for each other, nor do I consider that the same undertaking would be perceived as responsible for both. There is no competition, given the differing purposes. Whilst there may be an overlap in user, that is not sufficient on its own for a finding of similarity. I consider the goods and services to be dissimilar.

Computer services; Computer analysis services; Computer diagnostic services.

33. Whilst these services are, or could include, support services, I have no evidence that demonstrates that it is common for such services to include the supply of the opponent's goods. Consequently, I can see no basis for finding an overlap in trade channels, nor would there be an overlap in method of use, nature or purpose. Even if there was a common supply chain, the average consumer would not expect the same

undertaking to be responsible for both. In light of this, there would be no complementarity. There is also no competition, given the differing purpose. Whilst there may be an overlap in user, I do not consider the overlaps to be sufficient for a finding of similarity. I consider the goods and services to be dissimilar.

Research and consultancy services relating to computer hardware; Computer research services.

34. To the extent that these terms relate to consultancy, I have addressed this above and find them to be dissimilar to the opponent's goods. The research aspect of these terms concerns investigation into a particular topic (in this case hardware and/or computers) in order to develop knowledge, establish facts or discover new information). Whilst businesses that sell the opponent's goods may carry out some research as part of product development, there is no evidence before me to suggest that they do so commercially. I see no basis for finding an overlap in trade channels. Plainly, there is no overlap in nature, method of use or purpose. There is no competition, given the differing purposes, and no complementarity, as the average consumer would not expect the same undertaking to be responsible for both. Even if an overlap in user could be established, that would not be enough on its own for a finding of similarity. The goods and services are dissimilar.

Computer design services; Design services for computers.

35. This term relates to the design of computers. The opponent's specification does not include computers. I can see no reason to find that there would be an overlap in trade channels between the opponent's goods and the applicant's design services, nor do I have any evidence to suggest such an overlap. The purpose, method of use and nature plainly differ. There is no competition, given the differing purpose, and no complementarity, as the goods and services are not important or indispensable for each other, nor would the average consumer consider that they originate from the same undertaking. Whilst there may be an overlap in user, this is not sufficient on its own for a finding of similarity. I find the goods and services to be dissimilar.

Services for the leasing of computer software; Services for the design of computer software; Computer software design services; Services for designing computer software; Services for maintenance of computer software; Computer software maintenance services; Development services in the field of computer software and advisory services relating thereto; Computer software rental services; Design services for computer programs; Services for the writing of computer software; Computer programming services; Computer software programming services; Design services relating to computer software; Services for the design of computer systems; Software engineering services; Computer software technical support services; Support and maintenance services for computer software; Advice and development services relating to computer software.

36. These services relate to computer software. The opponent's specification does not cover computer software. I can see no reason for concluding that there is an overlap in trade channels with the opponent's goods, nor is there an overlap in nature, purpose or method of use. The opponent has not filed any evidence that suggests any such overlap is common. There is no competition, given the differing purpose, nor is there complementarity, as one is not important or indispensable for the other and the average consumer would not expect the same undertaking to be responsible for both. Any overlap in user is not sufficient to result in similarity. I find the goods and services to be dissimilar.

Design services relating to computer hardware and to computer programmes; Computer design and programming services.

37. These services relate to design of both computers and programmes (which I understand to be software). As such, I make the same findings as set out in paragraphs 35 and 36 above. The goods and services are dissimilar.

Computer project management services.

38. This concerns the management of projects relating to computer systems, software and hardware. Whilst the opponent's goods may be used as part of the implementation of the project being managed, I see no basis for finding that the goods and services

would be provided through the same trade channels, nor do I have any evidence to support such a finding. The nature, method of use and purpose of the goods and services clearly differ. There is no competition, given the differing purposes. There is no complementarity because the average consumer would not expect the same undertaking to be responsible for both. Even if there is an overlap in user, this is not sufficient on its own for a finding of similarity. The goods and services are dissimilar.

Computer network services; Computer integration services.

39. The first of these is a broad term which covers services relating to computer networks (such as maintenance, management, design and integration). The second term covers, specifically, the integration aspect. There is no evidence to suggest that the opponent's goods would be sold through the same trade channels as these services, nor do I consider it likely. The method of use, purpose and nature of the goods and services differ. There will be no competition, given the different purposes, and no complementarity as the average consumer would not expect the same undertaking to be responsible for both. To the extent that there is an overlap in user, that will not be sufficient on its own for a finding of similarity. I find the goods and services to be dissimilar.

Computer graphics services.

40. This is a broad term which I understand to cover a wide range of services relating to graphics content (such as creation and modification of images). I can see no basis for finding an overlap in trade channels with the opponent's goods, nor do I have any evidence to support such a finding. Plainly, the goods and services will differ in nature, method of use and purpose. There is no competition, given the differing purposes. There is no complementarity, as whilst the opponent's goods (such as a mouse or printer) might be used in creating graphics, the average consumer would not expect the same undertaking to be responsible for both. The users will overlap but that is not sufficient on its own for a finding of similarity. I find the goods and services to be dissimilar.

Computer rental services.

41. This service involves the temporary provision of computers. The opponent's specification does not include computers themselves. I can see no basis for finding an overlap in trade channels with the opponent's goods, nor do I have any evidence to support such a finding. The method of use, nature and purpose of the goods and services would be dissimilar. Whilst there may be competition between computers and computer rental services, the same does not apply to the specific goods in the opponent's specification as they are not alternatives for each other in the same way. There is no complementarity, as the average consumer would not expect the same undertaking to be responsible for both, nor are they important or indispensable for each other. I find the goods and services to be dissimilar.

Conclusion

42. As some degree of similarity between the goods and services is required for a finding of likelihood of confusion under section 5(2)(b), my primary finding is that the opposition under this ground fails in its entirety due to the dissimilarity of the parties' goods and services. However, in the event that I am wrong in that finding, and there is a low degree of similarity between the goods and services (which, in my view, is the opponent's best possible case) I will proceed with the assessment of likelihood of confusion on that basis.

The average consumer and the nature of the purchasing act

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

44. In *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc & Anor*, [2025] UKSC 25, the Supreme Court approved the comments of Arnold LJ in *Lidl Great Britain*

Ltd & Anor v Tesco Stores Ltd & Anor (Rev1) [2024] EWCA Civ 262, where he pointed out that:

> (a) Consumers who are ill-informed or careless, or consumers with specialised knowledge or who are excessively careful are excluded from consideration;
>
> (b) The average consumer provides a standard which enables the courts to strike a balance between the competing interests involved, such as trade mark owners, their competitors and consumers;
>
> (c) The average consumer is neither a single hypothetical person nor a mathematical average; assessment from the perspective of the average consumer does not involve a statistical test. There is no single meaning rule and if, having regard to the perceptions and expectations of the average consumer, the court considers that a significant proportion of the relevant public is likely to be confused, a finding of infringement may properly be made;
>
> (d) Assessment from the perspective of the average consumer is intended to facilitate adjudication of trade mark disputes by providing an objective criterion, by promoting consistency of assessment and by and enabling courts and tribunals to determine such issues so far as possible without the need for evidence;
>
> (e) The average consumer's level of attention varies according to the category of goods or services in question; and
>
> (f) the average consumer rarely has the opportunity to make direct comparisons between trade marks (or between trade marks and signs) and must instead rely upon the imperfect picture of the trade mark they have kept in their mind.

45. The average consumer for the goods and services will include both members of the general public and business users. The average consumer will consider factors such as reliability and technical compatibility for the goods, and factors such as customer service standards, qualifications and experience for the services. The cost

of purchase will vary significantly, but is likely to range from low (for goods such as cables) to high (for some bespoke technical services). In my view, the average consumer will pay at least a medium degree of attention during the purchasing process, but the level of attention paid will be higher than medium where a business consumer is involved and/or the services are particularly technical/costly.

46. The goods and services are likely to be purchased following perusal of signage at physical premises or online. Consequently, visual considerations will dominate the purchasing process. However, I do not discount an aural component to the purchase given that advice may be sought from retail assistants or word-of-mouth recommendations may be made.

Comparison of trade marks

47. It is clear from *Sabel* that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the trade marks must be assessed by reference to the overall impression created by the trade marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, 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 confusion."

48. 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.

49. In its evidence, the applicant refers to the differing marketing strategies for the parties' marks.[15] However, I must make my assessment based upon the marks as they appear on the Register, not the way that they are used in practice. With that in mind, the respective trade marks are shown below:

Opponent's mark	Applicant's mark
	Supere

50. The opponent's mark consists of the word SUPERER, in a slightly stylised title case font. The overall impression is dominated by the word itself, with the stylisation playing a lesser role. The applicant's mark consists of the word SUPERE in title case. There are no other elements to contribute to the overall impression, which resides in the word itself.

51. Visually, the applicant's mark is reproduced as the first part of the opponent's mark. There is an additional letter R at the end of the opponent's mark, which is a point of visual difference. The applicant's mark is a word only mark which could be used in any font. I bear in mind that the beginnings of marks tend to make more of an impact than the ends, and so the additional letter appearing at the end of the mark has less of an impact. The marks are visually highly similar.[16]

52. Aurally, the opponent's mark is likely to be articulated as the word SUPER, with an additional ERR sound at the end. The applicant's mark is likely to be articulated as SUPER (with the additional E being silent) or SUPER-EEE. In either case, the marks are aurally similar to between a medium and high degree.

53. Conceptually, the marks are both invented words. In my view, the average consumer will either attribute no meaning to them or may view them both as invented

[15] See paragraphs 11 and 12 of the witness statement of Danny Chaplin.
[16] *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

words based upon the dictionary word SUPER. Consequently, I find them to be either conceptually neutral or conceptually highly similar.

Distinctive character of the earlier mark

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

> "22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR 1-2779, paragraph 49).
>
> 23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51)."

55. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctive character of a mark can be enhanced by virtue of the use that has been made of it.

56. The opponent's mark consists of an invented word SUPERER, in a slightly stylised font. As noted above, I find that a significant proportion of average consumers will attribute no meaning to it and therefore find it to be highly distinctive. A significant proportion of average consumers will perceive it as being based on the word SUPER and, therefore, to have laudatory qualities, making it distinctive to no more than an average (or medium) degree. I do not consider that the stylisation increases the distinctiveness to any material degree.

57. The opponent gives evidence that the earlier mark has been used in the UK since December 2016. The opponent has provided undated print outs from Amazon UK which show the mark (in word only form, not stylised) in use in relation to chargers.[17] There are evidence of over 2,800 UK customer reviews, although it is not clear to me how many of these are from prior to the relevant date. There are also undated photographs which show the mark in use on products.[18] The opponent gives evidence that more than 400,000 units were manufactured for sale in the UK between 2016 and 2023. These sales generated more than £5million in revenue during that period.[19] I note that business to business sales have increased in recent years.[20] To support this, the opponent has provided invoices relating to the sale of goods such as USB SD card readers, wireless mouse, corded mouse, cables and chargers. These are addressed to customers located in the UK (including Northern Ireland, Milton Keynes, Scotland, Surrey, Gloucestershire, London and Wales).[21] In 2021, the opponent spent over £120,000 in advertising via Amazon UK.[22] However, in total, the opponent states that approximately £900,000 has been spent between 2016 and 2023 on advertising the earlier mark in the UK.

58. The opponent's use has been fairly longstanding and there is a good geographical spread of use within the UK. However, whilst the revenue and advertising spend look fairly high in their totality, it is important to bear in mind that this relates to a period of eight years (from December 2016 to December 2023). I have no market share figures

[17] Exhibit LMX1 to the opponent's first witness statement.
[18] Exhibit LMX2 to the opponent's first witness statement.
[19] Paragraph 13 of the opponent's first witness statement.
[20] Paragraph 17 of the opponent's second witness statement.
[21] Exhibit LMX3 to the opponent's first witness statement.
[22] Exhibit LMX4 to the opponent's first witness statement.

for the opponent. However, when looking at the revenue across an eight-year period, this is likely to represent a very small market share in what is undoubtedly a significant market. This is particularly relevant given that there is a range of goods being sold under the mark, and no breakdown has been provided by product. Taking all of this into account, I do not find that the distinctiveness of the earlier mark has been enhanced through use to any material degree.

Likelihood of confusion

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

60. I have found as follows:

a. I will proceed on the basis that the goods and services are similar to a low degree, as that represents the opponent's best case.

b. The average consumer for the goods and services will include members of the general public or business users who pay a medium or higher than medium level of attention during the purchasing process.

c. The purchasing process is predominantly visual, although I do not discount an aural component.

d. The marks are visually similar to a high degree and aurally similar to between a medium and high degree. The marks are either conceptually neutral or conceptually highly similar, depending upon how they are interpreted by the average consumer.

e. The earlier mark is inherently distinctive to a high degree or to no more than an average (medium) degree, depending on how they are perceived by the average consumer.

61. The applicant relies on the fact that the opponent has not filed any evidence of actual confusion. However, absence of evidence of actual confusion is rarely significant.[23]

62. For both sets of average consumers, I find that the similarity of the marks will be offset by the distance between the goods and services, even when accounting for the interdependency principle. Given the distance between the goods and services, I consider it unlikely that the marks will be directly confused. Even accounting for imperfect recollection and the high distinctiveness of the earlier mark for some consumers, I consider the distance between the respective goods and services to simply be too great for confusion to arise. This is particularly the case where the average consumer is paying at least a medium degree of attention during the purchasing process. There is no likelihood of direct confusion.

63. I will now consider whether there is a likelihood of indirect confusion. In *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, Mr Iain Purvis Q.C., as the Appointed Person, explained that:

> "16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are

[23] *The European Limited v The Economist Newspaper Ltd* [1998] FSR 283

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

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

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

(b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as 'LITE', 'EXPRESS', 'WORLDWIDE', 'MINI' etc.).

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

64. Given the distance between the goods and services, I find that the average consumer is more likely to put the similarities between the marks down to coincidence rather than a shared or economically connected undertaking. In my view, even accounting for circumstances in which the earlier mark is highly distinctive and/or the

marks are conceptually highly similar, these factors in favour of the opponent are outweighed by the distance between the goods and services (which are similar to a low degree, at best). Consequently, I do not consider there to be a likelihood of indirect confusion.

65. The opposition based upon section 5(2)(b) of the Act is dismissed.

Section 5(4)(a)

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

> "5(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."

67. Subsection (4A) of section 5 of the Act states:

> "(4A) The condition mentioned in subsection (4)(a) is that the rights to the unregistered trade mark or other sign were acquired prior to the date of application for registration of the trade mark or date of the priority claimed for that application."

68. I can deal with this ground relatively swiftly. I have summarised the opponent's evidence of use above. Whilst I am satisfied that it is sufficient to establish a modest

(but protectable) degree of goodwill for at least some of the goods relied upon (indeed, this appears to be admitted by the applicant in paragraph 13 of the witness statement of Danny Chaplin), it is for a narrower subset of goods than those considered under the section 5(2)(b) ground of opposition. Whilst the test for misrepresentation is different from that for likelihood of confusion in that it entails "deception of a substantial number of members of the public" rather than "confusion of the average consumer", it has been acknowledged that they are unlikely to produce different outcomes in practice.[24] I find that to be the case here in relation to both signs relied upon by the opponent. In my view, the opponent's modest degree of goodwill, combined with the distance between the goods and services, would be sufficient to offset the similarity of the mark/signs. As such, no misrepresentation or damage would occur.

69. The opposition based upon section 5(4)(a) of the Act is dismissed.

CONCLUSION

70. The opposition is unsuccessful and, subject to any appeal, the application may proceed to registration.

COSTS

71. The applicant has been successful and would, therefore, ordinarily be entitled to a contribution towards the costs of the proceedings. However, as the applicant is self-represented, it was sent a costs proforma to complete and was asked to return it to the Tribunal by 6 May 2025 if it wished to make a request for an award of costs. The Tribunal's letter stated:

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

[24] *Marks and Spencer PLC v Interflora* [2012] EWCA (Civ) 1501

72. No costs proforma was filed. Consequently, as the applicant did not incur any official fees, I make no order as to costs.

Dated this 19th day of May 2026

S WILSON
For the Registrar

ANNEX 1

Class 37

Consultancy services relating to installation of computers; Computer maintenance services; Computer installation services.

Class 38

Telecommunications consultancy services; Computer telephony services; Consultancy services relating to telecommunications; Computer communication services; Consulting services in the field of telecommunications.

Class 42

Computer consultancy services; Computer software consultancy services; Computer and software consultancy services; Computer engineering consultancy services; Computer consulting services; Computer consultancy and advisory services; Computer software consulting services; Consultancy services in relation to computer software; Software consultancy services; Consultancy services relating to computer systems; Computer and information technology consultancy services; Advisory and consultancy services relating to computer hardware; Consultancy services relating to computer networks; Computer consultancy; Research and consultancy services relating to computer software; Consultancy services relating to computer programming; Computer services; Professional consultancy services relating to computer programming; Computer software advisory services; Consulting services relating to computer software; Research and consultancy services relating to computer hardware; Consultancy services relating to computers; Computer advisory services; Software consulting services; Technical consultancy services relating to computer programming; Engineering consultancy services; Consultancy and information services relating to computer software design; Computer software consultancy; Consultancy (Computer software -); Computer research services; Advisory and consultancy services relating to computer and video games software; Computer technology consultancy; Advisory and consultancy services relating to the design and development of computer hardware; Advisory services relating to the use of computer software; Advisory services relating to computer software; Computer consultation services; Consultancy and information services relating to computer programming;

Computer design services; Professional advisory services relating to computer software; Expert consultancy services in connection with computing equipment; Providing information, advice and consultancy services in the field of computer software; Advisory services relating to computer software design; Advisory services relating to the rental of computers or computer software; Consultancy and information services relating to the design, programming and maintenance of computer software; Services for the leasing of computer software; Advisory services relating to computer software used for printing; Computer analysis services; Services for the design of computer software; Computer software design services; Computer security consultancy; Expert consultancy services in connection with computing networks; Advisory services relating to computer software used for publishing; Computer programming consultancy; Consultancy services relating to computing; Services for designing computer software; Consultancy services relating to software used in the field of e-commerce; Advisory services relating to computer software used for graphics; Consultancy relating to computer software; Services for maintenance of computer software; Computer software maintenance services; Development services in the field of computer software and advisory services relating thereto; Computer project management services; Consulting services in the field of software as a service [SaaS]; Professional consultancy relating to computer software; Consultation services relating to computer software; Consultancy and information services in the field of computer system integration; Architecture consultancy services; Consultancy relating to computer systems; Computer program advisory services; Professional advisory services relating to computer hardware; Computer software rental services; Advisory services relating to computer systems design; Design services for computer programs; Services for the writing of computer software; Computer network services; Advisory services relating to computer hardware; Consultancy services for designing information systems; Computer integration services; Computer programming services; Computer software programming services; Design services relating to computer software; Consultancy in the field of computer software; Consultancy and information services relating to computer system integration; Advisory services relating to computer hardware design; Environmental consultancy services; Services for the design of computer systems; Technical advisory services relating to computer programs; Advisory services relating to computer programming; Technical advice and consultancy services in the field of telecommunications; Consultancy and information

services relating to software rental; Design services relating to computer hardware and to computer programmes; Software engineering services; Professional consultancy relating to computer security; Advisory and information services relating to computer software; Computer diagnostic services; Design services for computers; Technological advisory services relating to computer programs; Computer software technical support services; Computer graphics services; Support and maintenance services for computer software; Computer rental services; Advice and development services relating to computer software; Computer software consulting; Computer design and programming services.