

O/0555/26

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. UK00004255004
BY SHENZHEN RONGYE TRADING CO., LTD
TO REGISTER:**



IN CLASS 7

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER NO. OP600003833 BY
THYSSENKRUPP AG**

Background and pleadings

1. On 27 August 2025, Shenzhen Rongye Trading Co., Ltd (“the applicant”) applied to register in the UK the trade mark shown on the cover page of this decision (“the applicant’s mark”). The application was accepted and published for opposition purposes on 5 September 2025 and registration is sought for the following goods:

Class 7: Soldering irons, electric; Welding machines, electric; Screwdrivers, electric; Soldering apparatus, electric; Tin openers, electric; Cutting machines; Sealing machines for industrial purposes; Beaters, electric; Electric hand drills; Electric arc cutting apparatus; Electric arc welding apparatus; Juice extractors, electric; Glue guns, electric; Vacuum cleaners; Hoses for vacuum cleaners; Electric welding apparatus; Embossing machines.

2. On 10 October 2025, ThyssenKrupp AG (“the opponent”) filed a fast track opposition opposing the application in full under sections 5(1), 5(2)(a) and 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opponent relies upon the following International Registration:

tk

International Registration no. WO0000001541703 (“opponent’s mark”)

International registration date: 20 March 2020

Date designated for protection in the UK: 28 January 2021

Date protection granted in the UK: 25 November 2021

Relying on some goods, being those listed in Annex 1.

3. By virtue of relying on sections 5(1), 5(2)(a) and 5(2)(b) of the Act, the opponent’s position is that the mark covered by the application is identical or highly similar to the earlier trade mark registration and the goods covered by the application are partly identical and partly similar to the goods covered by classes 6 and 7 of the earlier registration.

4. The applicant filed a counterstatement stating “I do not agree with the viewpoint of the applicant who raised the objection”. The applicant submits that the marks differ significantly visually because of the applicant’s use of a styled font and there is a clear difference in product categories of the goods so there will be no confusion for consumers.
5. Rule 6 of the Trade Marks (Fast Track Opposition) (Amendment) Rules 2013, S.I. 2013 2235, disapplies paragraphs 1-3 of Rule 20 of the Trade Mark Rules 2008 but provides that Rule 20(4) shall continue to apply. Rule 20(4) states that:

“(4) The registrar may, at any time, give leave to either party to file evidence upon such terms as the registrar thinks fit.”
6. The opponent is represented by Forresters IP LLP. The applicant is represented by Robert Ungureanu. Neither party filed evidence. Rule 62(5) (as amended) states that arguments in fast track proceedings shall be heard orally only if (i) the Office requests it or (ii) either party to the proceedings requests it and the registrar considers that oral proceedings are necessary to deal with the case justly and at proportionate cost; otherwise, written arguments will be taken. No hearing was requested or considered necessary. The opponent filed written submissions in lieu of a hearing. This decision is taken following a careful perusal of the papers.
7. 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.

My approach

8. I will begin by considering the opposition under the section 5(1) and section 5(2)(a) grounds since they both require identity between the marks. It will only be necessary to consider the section 5(2)(b) ground if the section 5(1) and section 5(2)(a) grounds fail.

DECISION

Sections 5(1), 5(2)(a) and 5(2)(b) legislation

9. Section 5(1) of the Act reads as follows:

“(1) A trade mark shall not be registered if it is identical with an earlier trade mark and the goods or services for which the trade mark is applied for are identical with the goods or services for which the earlier trade mark is protected.”

10. Section 5(2)(a) and section 5(2)(b) of the Act is as follows:

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

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

(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. Section 5A of the Act states as follows:

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

12. 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, international trade mark (UK) or Community trade mark or international trade mark (EC) 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,

(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.”

13. Given its earlier filing date, the opponent’s mark qualifies as an earlier trade mark under the above provisions. As the opponent’s mark had not completed its registration process more than five years before the filing date of the applicant’s mark, it is not subject to proof of use pursuant to section 6A of the Act. Consequently, the opponent may rely on the goods highlighted in its notice of opposition.

14. The following standard summary of the principles applicable to the assessment of the likelihood of confusion (under section 5(2) of the Act) 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 great degree of similarity between the marks, and vice versa;
- (h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;
- (i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;

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

Identity of the marks

15. It is a pre-requisite of both sections 5(1) and 5(2)(a) of the Act that the trade marks at issue are identical. In this case, the opponent's mark is a figurative representation of the two letters "TK" in a black typeface. The applicant's mark is a word only mark for the exact same two letters. The fair and notional use of a word only mark covers the use of the words within them in any standard typeface.¹ On that basis, despite the fact that the applicant's mark is a figurative one and the opponent's mark is word only, I am content to conclude that this is covered by fair and notional use of the applicant's mark. As a result, I find that the respective marks are identical. I will, therefore, proceed on this basis. The consequence of this is that the opposition may proceed in respect of both the section 5(1) and section 5(2)(a) grounds.

Comparison of goods

16. In order for the opponent to succeed under section 5(1) of the Act, the goods at issue must be considered identical. Where the goods are deemed identical, the opposition will succeed in full under the section 5(1) ground. However, section 5(2)(a) grounds only require a level of similarity. Therefore, where the goods are not identical it is still necessary for me to consider the level of similarity (if any) between the non-identical goods.

¹ Mr Philip Johnson as the Appointed Person in *Dreamersclub Ltd v KTS Group Ltd*, BL O/091/19 found that the stylised use of the mark qualified as use of the registered word-only mark DREAMS. This was because the stylisation of the word did not alter the distinctive character of the word mark. Rather, it constituted an expression of the registered word mark in normal and fair use. Whilst I note this was stated in the context of variant use and the alteration of the marks distinctive character, the principle I take from this is that the use of the stylised mark qualified as use of the word only mark.

17. The parties' goods are outlined below:

The opponent's goods	The applicant's goods
Class 6: Ores; common metals and their alloys and products made therefrom, included in this class, namely unwrought and semi-wrought common metals and their alloys and products made therefrom, in particular rods, panels, bands, sheets and plates, in particular tailored blanks, pipes and fittings therefor, tinplate and blackplate, sleepers, rails and other track parts for railbound vehicles, in particular side guide rails and glide strips for magnetic suspension trains, special and specialty profiles; building and construction materials of metal, namely timber, plank and trench sheeting, sheet piling, light sections, sheet pile crossbeams and fittings, flood sheet piling, box sheet piling, steel poles, staves, flat panel and shipbuilding profiles, flat products of stainless steel (corrosion-resistant, acid-resistant, heat-resistant), nickel-based materials, titanium and titanium alloys, magnetic materials (electrical sheets), work platforms, temporary bridges, and scaffolding and falsework and parts therefor, namely formwork, props, beams, wires and ropes, and	

wire mesh and other wire products, sheet metal goods, weld filler materials, in particular soldering wire, welding rods, and cored wires, cast, pressed, drawn or machined mouldings, in particular rings, sprockets, toothed wheels, worm wheel sets, industrial gear units, in particular extruder gears, storage and transport containers, prefabricated and collapsible transportable buildings and parts therefor, in particular container offices and workshops, houses, halls, garages, bridges, windows, doors, gates, and roof, ceiling and wall construction elements, cast parts of metal, soldering materials, namely soldering wire, rods of metal for brazing; goods of common metal not included in other classes, namely containers, construction fittings, roof panels, facade panels, springs, windows, windowsills, window frames, dies, fabrics, grilles, hooks, cramps, bearings, supports for propping up ships, running rails, nails, profiles, space trusses, rings, loops, locks, screws, silos, pins, gate and door frames, gates and doors, supporting structures, staircases, door panels, door handles, screw-connection parts, wall panels, brackets, fences and parts therefor, fittings for the aforesaid	
--	--

goods, included in this class; metal building materials, in particular prefabricated sandwich construction components consisting predominantly of sheet metal for industrial, hall and residential construction, ironmongery, small items of metal hardware, pipes and tubes of metal; non-electric cables and wires of common metal, transportable buildings of metal; metal building materials; scaffolding, included in this class and shuttering and parts therefor of metal for concrete; rails and railway points of metal; railway material of metal; fixtures of metal for guiding and gripping rail vehicles, being parts for railway rails.	
Class 7: Drives for machines; transmission shafts, other than for land vehicles; construction machines; mechanical apparatus and mechanical devices and equipment consisting thereof for manufacturing precursors [intermediate products] or products for the medicines and food industry, chemical industry, manures industry, plastics industry and cosmetics industry, including fittings for the aforesaid equipment; mechanical synthesis gas generators, other than gasifiers for motor vehicles; machines	Class 7: Soldering irons, electric; Welding machines, electric; Screwdrivers, electric; Soldering apparatus, electric; Tin openers, electric; Cutting machines; Sealing machines for industrial purposes; Beaters, electric; Electric hand drills; Electric arc cutting apparatus; Electric arc welding apparatus; Juice extractors, electric; Glue guns, electric; Vacuum cleaners; Hoses for vacuum cleaners; Electric welding apparatus; Embossing machines.

for the food industry, including fittings; installations consisting of machines for the chemical industry for reforming steam, including fittings; installations consisting of machines for the chemical industry for producing manures, including fittings; gas treatment machines, including fittings; compressors (machines); pressure intensifiers; fluid treatment machines, including fittings; machines for the textile industry; fittings for engine boilers; lifts, other than ski-lifts, included in this class, mechanical escalators and moving walkways, platform lifts, lifting platforms for people, machines, namely passenger bridges, moving staircases, stair lifts; parts for lifts, escalators, moving walkways, platform lifts, lifting platforms for people, passenger bridges (machines), moving staircases [escalators], stair lifts, included in this class; fluidisers, namely apparatus for fluidising bulk material using gas flows to promote flow properties, including fittings; generators for generating energy to drive machines; machines for energy production; electric generators; industrial robots (machines); machine-driven lifting devices and machines for lifting goods; machines for processing metal, wood and plastics; machines for	
--	--

fastening, extracting, processing and demolition of mineral materials, earth, rock, excavated material, used materials, ores, boulders and masonry; machine tools; drilling machines and their parts; machines for positioning, aligning and holding components; machines for producing mortar and concrete, and prefabricated parts made therefrom; machines for loading bulk material and general cargo or single goods; welding electrodes; excavators; conveying machines; machines for treating molten metals; electric and laser welding apparatus; flaming machines; gas-operated cutting blow pipes; mixers (machines); mills (machines); presses (machines); pumps (machines), including fittings; electric beaters; motors and engines and parts therefor, other than for land vehicles; turbines and parts therefor, other than for land vehicles; gear boxes and parts therefor, other than for land vehicles; gate drives; tools (parts of machines); piston rods (parts of machines); bearings (parts of machines); centrifuges (machines); railroad constructing machines; drums (parts of machines); electric starters for motors and engines; electric cold-start systems for motors and engines; ship and aeroplane engines and parts	
---	--

therefor; parts for vehicle motors and engines (except for land vehicles); machines for producing coke, including fittings.	
---	--

18. When making the comparison, all relevant factors relating to the goods in the specifications should be taken into account, as per *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc.*² where the Court of Justice of the European Union (“CJEU”) stated at paragraph 23 of its judgement:

“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.”

19. 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;

² Case C-39/97

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

20. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, the General Court (“GC”) stated that:

“29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 *Institut 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. In *YouView TV Ltd v Total Ltd*, [2012] EWHC 3158 (Ch), paragraph 12, Floyd J (as he then was) gave the following guidance on construing the words used in specifications:

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

the language unnaturally so as to produce a narrow meaning which does not cover the goods in question.”

22. In *Kurt v Hesse v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v OHIM*, Case T-325/06, 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”.

23. In *Sanco SA v OHIM*, Case T-249/11, the GC indicated that goods and services may be regarded as ‘complementary’ and therefore similar to a degree in circumstances where the nature and purpose of the respective goods and services are very different, i.e. *chicken against transport services for chickens*. The purpose of examining whether there is a complementary relationship between goods/services is to assess whether the relevant public is liable to believe that the responsibility for the goods/services lies with the same undertaking or with economically connected undertakings. As Mr Daniel Alexander Q.C. noted as the Appointed Person in *Sandra Amelia Mary Elliot v LRC Holdings Limited* BL-0-255-13:

“It may well be the case that wine glasses are almost always used with wine – and are, on any normal view, complementary in that sense – but it does not follow that wine and glassware are similar goods for trade mark purposes.”

24. Whilst on the other hand:

“.....it is neither necessary nor sufficient for a finding of similarity that the goods in question must be used together or that they are sold together.”

25. I bear in mind that it is permissible to group goods together for the purposes of assessment: *Separode Trade Mark*.³

26. Pursuant to section 60A of the Act, I am mindful of the fact that the goods may not be automatically found to be dissimilar simply because they fall in different classes under the Nice Classification.

27. In its notice of opposition and statement of grounds, the opponent's position is that the applicant's goods are partly identical and partly similar to the goods covered by classes 6 and 7 of the opponent's mark. The opponent provides examples of what goods it considers to be identical or similar in both its notice of opposition/statement of grounds and its written submissions in lieu. I note that the opponent has provided some different comparisons for the same goods in their notice of opposition/statement of grounds to their written submissions in lieu. I do not intend to repeat these examples here but can confirm I have taken them into consideration.

28. The applicant filed a counterstatement stating "*the majority of the goods associated with the trademark applied for by the trademark applicant are hand-operated maintenance tools that are small in size and consume little power, whereas the trademark goods applied for by the opposition applicant are large-scale, high-power consumption, automated industrial equipment. There is a clear difference in product categories, so there will be no confusion for the consumers*".

Beater, electric.

29. The above goods are self-evidently identical to the opponent's "electric beaters".

Tin openers, electric; Juice extractor, electric; Cutting machines; Sealing machines for industrial purposes.

30. These are all goods that may be used in the food industry to open tins, extract juice, cut food or seal food in packaging. I consider these goods are identical under

³ BL O-399-10 (AP)

the principle outlined in *Meric* with the opponent's "machines for the food industry, including fittings".

Glue guns, electric; Embossing machines.

31. These are goods that can be used in the textile industry to glue fabric together and to create designs on fabric. Given this, I consider that these goods are identical under the principle outlined in *Meric* with the opponent's "machines for the textile industry".

Electric welding apparatus; Electric arc welding apparatus; Electric arc cutting apparatus; Welding machines, electric.

32. These goods are forms of electric welding apparatus and consequently are identical under the principle outlined in *Meric* with "electric and laser welding apparatus".

Soldering irons, electric; Soldering apparatus, electric.

33. These goods are all types of electric soldering apparatus. The closest comparable term in the opponent's specification is "electric and laser welding apparatus". The purpose of both goods overlap as they are products used to join two or more metals together, however soldering uses a filler to join the metals whereas welding fuses the metals themselves at high temperatures. The users overlap as both will be used by members of the public or individuals in industry who wish to join two or more metals together. Trade channels will overlap as it is likely that retailers who sell electric soldering irons and electric soldering apparatus also sell electric and laser welding apparatus. There is no complementarity. There may be an element of competition, as a consumer who wishes to join two or more metals together may purchase an electric soldering iron/soldering apparatus or electric and laser welding apparatus. Consequently, I consider these goods to be similar to a medium degree.

Electric hand drills

34. These goods are identical under the principle outlined in *Meric* with the opponent's "drilling machines and their parts".

Screwdrivers, electric.

35. These goods are electric tools used to turn screws via a rotational force. The closest comparable opponent's term is "drilling machines and their parts". A drilling machine is a tool (which can be electric) that is used to create holes and/or turn screws into different materials via a rotational force. Different drill heads (which are parts of the drilling machine) perform different functions, such as a drill head (which creates a hole in the requisite material) or a screwdriver head (which turns screws via a rotational force into or out of the desired material). The purpose overlaps as both goods can turn screws via a rotational force. The users overlap as both goods will be used by members of the public or users in the construction / DIY industry who wish to insert/remove screws into or from materials. The respective goods may be sold via the same retailer premises (or their online equivalents) such as hardware stores or DIY outlets. Additionally, the goods are often produced by the same brands. The nature of the goods overlap as they are both hand-held power tools used to turn screws via a rotational force. Additionally, the method of use overlaps. There may be an element of competition, as a consumer who wishes to insert screws into a material could choose an electric screwdriver or a drilling machine (with the drill making the hole (if necessary) first). I do not consider the goods to be complementary as I do not consider that one is indispensable for the other. Overall, I consider the goods to be similar to a medium degree.

Vacuum cleaners.

36. These goods are machines that clean areas and objects by sucking up dust and dirt. Vacuum cleaners can be used independently or attached to tools such as electric saws or sanders to collect dust caused by sawing or sanding various materials. The closest comparable opponent's term is "tools (parts of machines)". The purpose overlaps as both goods involve cleaning via suction. The nature of

the goods overlap as they are both machines or parts of machines that clean via suction. The users overlap being members of the general public or members of the relevant trade or business. The trade channels overlap as both goods could be sold in the same retail premises or online equivalent. Consequently, I find the goods to be similar to a medium degree.

Hoses for vacuum cleaners.

37. Without any submissions from the parties as to the similarity of the above applicant's goods, it is my understanding that "hoses for vacuum cleaners" are a component part of a specific machine being a vacuum cleaner. The closest comparable opponent's term is "tools (parts of machines)". As the opponent's term is broad it encompasses the applicant's above goods. Consequently, I find the goods to be identical under the principle outline in *Meric*.

38. If my above finding is incorrect, I find the goods to be similar to a medium degree. The purpose overlaps as both goods enable cleaning via suction as part of a machine. I consider hoses for vacuum cleaners to be a part of a vacuum cleaner and therefore part of a machine. The users overlap being members of the general public or members of the relevant trade or business. The trade channels overlap as both goods could be sold in the same retail premises or online equivalent. There is no competition or complementarity. Consequently, as stated above, I find the goods to be similar to a medium degree.

The average consumer and the nature of the purchasing act

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

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

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

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

41. I have no submissions from either party regarding who they determine the average consumer for the goods to be. I consider the average consumer to be members of the public and members of the relevant trade and businesses. The price and frequency of purchase will vary greatly. Some goods, such as screwdrivers, electric, are likely to be fairly inexpensive compared to industrial robots (machines). I do not consider that any of the goods will be purchased fairly frequently. There are goods which are more specialist in nature that would be considerably more expensive and purchased even more infrequently (such as industrial robots (machines)). It therefore follows that the level of attention will also vary. For the goods that are more likely to be purchased by the general public (such as electric screwdrivers and electric glue guns), I consider that a medium degree of attention will be paid. For those goods, where a trade or business are more likely to be the purchaser (such as machines for the textile industry and machines for the food industry, including fittings), as these goods are more expensive, I consider the consumer to pay a high degree of attention.

42. I consider the goods are likely to be purchased from specialist suppliers, retail premises, a website or following perusal of advertisements or catalogues. Consequently, visual considerations are likely to dominate the purchasing process. However, I do not discount that there will also be an aural component to the purchase as advice may be sought from sales assistants or the consumer may obtain word of mouth recommendations.

Distinctive character of the opponent's mark

43. 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 I-0000, paragraph 49).

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51)."

44. 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 or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The opponent has not pleaded that its mark has obtained an enhanced level of distinctiveness. Therefore, I have only the inherent position to consider.

45. In *Kunze Folien GmbH v Kartell UK Limited*,⁴ Mr Iain Purvis KC sitting as the Appointed Person, referred with approval to the decision of *Alfa-Beta Vassilopoulos AE v Agro de Bazan*,⁵ in which the Board of Appeal stated as follows:

"As to the distinctive character of the letter combination 'AB' in the earlier marks and of the contested mark, [...] it should be noted that letters or letter combinations of two or three letters are inherently weak, given the limited number of letters in the alphabet, the great number of meanings that acronyms and abbreviations may have and the fact that consumers frequently encounter

⁴ BL O/085/14, paragraph 29

⁵ Case R 82/2011-4 of the Board of Appeal of OHIM (now the EUIPO), paragraph 16

abbreviations and letter combinations of all kinds in everyday life and business as generic abbreviations but not as marks.”

46. As set out above, the opponent’s mark is a word only mark that consists of two letters “tk”. The letters have no immediate conceptual meaning. The letters could be the initials of abbreviated words but I have no submissions to suggest this. Furthermore, I have no submissions or evidence before me to suggest that the letters “tk” are descriptive or allusive in relation to the goods at issue. I consider that consumers will consider the opponent’s mark to consist of a two-character alphabetical sequence “tk”. I remind myself that a registered trade mark must be assumed to have at least some distinctive character⁶ and the opponent’s mark is neither allusive nor descriptive of the opponent’s goods. Consequently, I consider the inherent distinctive character of the opponent’s mark to be low.

Conclusions on sections 5(1) and 5(2)(a)

47. In respect of section 5(1) the marks are identical. I found that some of the goods in class 7 of the respective marks are also identical. The opposition succeeds under section 5(1) in relation to those goods where I found identity.

Likelihood of confusion

48. Turning to section 5(2)(a), 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 the marks and the goods 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 respective trade marks may be offset by a greater degree of similarity between the respective goods and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the opponent’s mark, the average

⁶ *Formula One Licensing BV v OHIM*, Case C-196/11P, paragraphs 41 - 44.

consumer for the goods and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that they have retained in their mind.

49. I have found the marks to be identical and I have found the respective goods to range from being identical to similar to a medium degree. The average consumers are members of the general public as well as members of the relevant trade and businesses who will select the goods via primarily visual means (though I do not discount an aural component) after having paid either a medium or high degree during the purchasing process depending on the type of goods at issue. I have found the opponent's mark to possess a low degree of inherent distinctive character.

50. Taking all of the above factors into account, I consider that consumers will be unable to accurately recall or remember the marks from one another. I consider this to be the case based on the fact that the marks at issue are identical. As such, regardless of the level of similarity between the goods at issue, the consumer will be unable to differentiate between the marks with any degree of accuracy and will directly mistake one for another. Consequently, despite the opponent's mark possessing a low level of inherent distinctive character, given the identity of the marks I find that there exists a likelihood of direct confusion in respect of all of the goods that I found to be similar. As a result of the above, the opponent's opposition succeeds under section 5(2)(a) of the Act.

51. If I am incorrect in finding the marks identical, for example, the applicant's mark is too stylised, I will now consider whether there is a likelihood of confusion in respect of section 5(2)(b) of the Act. I have previously compared the marks and goods above. If I am wrong in my finding that the marks are identical, I consider them to be highly similar. Notwithstanding the higher level of attention the average consumer will pay when selecting some of the goods and the lower degree of inherent distinctive character of the opponent's mark, I consider there to be a likelihood of direct confusion in respect of all of the goods I have found to be similar. This is because the marks are highly similar with very little to distinguish between

them and the average consumer would be confused as to the origin of the goods. As a result, taking all factors into consideration, the opponent's opposition succeeds under section 5(2)(b) of the Act.

CONCLUSION

52. The opposition succeeds in full and, subject to any successful appeal of my decision, the applicant's mark is refused registration for all goods for which protection was sought.

COSTS

53. As the opponent has been successful in opposing the applicant's mark, they are entitled to a contribution towards their costs, based upon the scale published in Tribunal Practice Notice 1/2023 which governs costs in Fast Track proceedings issued after 1 February 2023. In the circumstances, I award the opponent the sum of £550 as a contribution towards the costs of proceedings. The sum is calculated as follows:

Filing a notice of opposition and considering the applicant's counterstatement:	£250
Filing written submissions:	£200
Official fee:	£100
Total	£550

54. I therefore order Shenzhen Rongye Trading Co., Ltd to pay ThyssenKrupp AG the sum of £550. 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 30th day of June 2026

N Barratt

For the Registrar

Annex 1 – the opponent's goods

Class 6: Ores; common metals and their alloys and products made therefrom, included in this class, namely unwrought and semi-wrought common metals and their alloys and products made therefrom, in particular rods, panels, bands, sheets and plates, in particular tailored blanks, pipes and fittings therefor, tinplate and blackplate, sleepers, rails and other track parts for railbound vehicles, in particular side guide rails and glide strips for magnetic suspension trains, special and specialty profiles; building and construction materials of metal, namely timber, plank and trench sheeting, sheet piling, light sections, sheet pile crossbeams and fittings, flood sheet piling, box sheet piling, steel poles, staves, flat panel and shipbuilding profiles, flat products of stainless steel (corrosion-resistant, acid-resistant, heat-resistant), nickel-based materials, titanium and titanium alloys, magnetic materials (electrical sheets), work platforms, temporary bridges, and scaffolding and falsework and parts therefor, namely formwork, props, beams, wires and ropes, and wire mesh and other wire products, sheet metal goods, weld filler materials, in particular soldering wire, welding rods, and cored wires, cast, pressed, drawn or machined mouldings, in particular rings, sprockets, toothed wheels, worm wheel sets, industrial gear units, in particular extruder gears, storage and transport containers, prefabricated and collapsible transportable buildings and parts therefor, in particular container offices and workshops, houses, halls, garages, bridges, windows, doors, gates, and roof, ceiling and wall construction elements, cast parts of metal, soldering materials, namely soldering wire, rods of metal for brazing; goods of common metal not included in other classes, namely containers, construction fittings, roof panels, facade panels, springs, windows, windowsills, window frames, dies, fabrics, grilles, hooks, cramps, bearings, supports for propping up ships, running rails, nails, profiles, space trusses, rings, loops, locks, screws, silos, pins, gate and door frames, gates and doors, supporting structures, staircases, door panels, door handles, screw-connection parts, wall panels, brackets, fences and parts therefor, fittings for the aforesaid goods, included in this class; metal building materials, in

particular prefabricated sandwich construction components consisting predominantly of sheet metal for industrial, hall and residential construction, ironmongery, small items of metal hardware, pipes and tubes of metal; non-electric cables and wires of common metal, transportable buildings of metal; metal building materials; scaffolding, included in this class and shuttering and parts thereof of metal for concrete; rails and railway points of metal; railway material of metal; fixtures of metal for guiding and gripping rail vehicles, being parts for railway rails.

Class 7: Drives for machines; transmission shafts, other than for land vehicles; construction machines; mechanical apparatus and mechanical devices and equipment consisting thereof for manufacturing precursors [intermediate products] or products for the medicines and food industry, chemical industry, manures industry, plastics industry and cosmetics industry, including fittings for the aforesaid equipment; mechanical synthesis gas generators, other than gasifiers for motor vehicles; machines for the food industry, including fittings; installations consisting of machines for the chemical industry for reforming steam, including fittings; installations consisting of machines for the chemical industry for producing manures, including fittings; gas treatment machines, including fittings; compressors (machines); pressure intensifiers; fluid treatment machines, including fittings; machines for the textile industry; fittings for engine boilers; lifts, other than ski-lifts, included in this class, mechanical escalators and moving walkways, platform lifts, lifting platforms for people, machines, namely passenger bridges, moving staircases, stair lifts; parts for lifts, escalators, moving walkways, platform lifts, lifting platforms for people, passenger bridges (machines), moving staircases [escalators], stair lifts, included in this class; fluidisers, namely apparatus for fluidising bulk material using gas flows to promote flow properties, including fittings; generators for generating energy to drive machines; machines for energy production; electric generators; industrial robots (machines); machine-driven lifting devices and machines for lifting goods; machines for processing metal, wood and plastics; machines for fastening, extracting, processing and demolition of mineral materials, earth, rock, excavated material, used materials, ores, boulders and masonry; machine tools; drilling machines and their parts; machines for positioning, aligning and holding components; machines for producing mortar and concrete, and prefabricated parts made therefrom; machines for loading bulk material and general cargo or single goods; welding electrodes; excavators; conveying machines;

machines for treating molten metals; electric and laser welding apparatus; flaming machines; gas-operated cutting blow pipes; mixers (machines); mills (machines); presses (machines); pumps (machines), including fittings; electric beaters; motors and engines and parts therefor, other than for land vehicles; turbines and parts therefor, other than for land vehicles; gear boxes and parts therefor, other than for land vehicles; gate drives; tools (parts of machines); piston rods (parts of machines); bearings (parts of machines); centrifuges (machines); railroad constructing machines; drums (parts of machines); electric starters for motors and engines; electric cold-start systems for motors and engines; ship and aeroplane engines and parts therefor; parts for vehicle motors and engines (except for land vehicles); machines for producing coke, including fittings.