

O/0684/26

TRADE MARKS ACT 1994

IN THE MATTER OF THE UK DESIGNATION
OF THE INTERNATIONAL REGISTRATION
NO. WO0000001838527

IN THE NAME OF
ZHONGMING (TIANJIN) ENTERPRISE MANAGEMENT CENTER
(LIMITED PARTNERSHIP)
FOR THE TRADE MARK:

TEE TEA CHA

IN CLASSES 30, 32 AND 43

AND

OPPOSITION THERETO
UNDER NO. 453706
BY TEACHA COMPANY LIMITED

BACKGROUND & PLEADINGS

1. Zhongming (Tianjin) Enterprise Management Center (Limited Partnership) (“the holder”) has sought protection in the UK for the International Registration no. WO0000001838527 (“the contested mark”) in respect of the mark¹ shown on the front page of this decision with a UK designation date of 26 November 2024. The contested mark was accepted and published in the Trade Marks Journal for opposition purposes on 21 February 2025. I note that the contested mark is subject to a disclaimer to the effect that “[r]egistration of this designation shall give no right to the exclusive use of the word ‘TEA’.” This partial opposition concerns the following goods:

Class 30: Tea; iced tea; tea-based beverages.

Class 32: Fruit-based soft drinks flavoured with tea; non-alcoholic beverages flavoured with tea.

2. On 17 April 2025, Teacha Company Limited (“the opponent”) partially opposed the contested mark on the basis of Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”)². For the purposes of these opposition proceedings, the opponent relies upon “*Tea; Tea bags; Tea-based beverages*” in Class 30 for the following UK mark:

¹ As per the World Intellectual Property Organization register, the mark is shown in a plain typeface, and there is no representation in the “image” field. For the contested mark, the official request for the extension of protection also indicates that “the applicant declares that they wish the mark to be considered as a mark in standard characters (only if word mark)”. I also note that the holder refers to its mark as being a mark of three words. Thus, the contested marks is considered to be a word only mark and will be treated as such in this decision.

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

Trade Mark no.	UK00003873538
Trade Mark	TEACHA
Filing date	1 February 2023
Date of entry in register	21 April 2023

3. Under Section 6(1) of the Act, the opponent's mark clearly qualifies as an earlier trade mark. The earlier mark had not been registered for five years or more before the designation date of the contested mark, and, as a result, it is not subject to the proof of use requirements as per Section 6A of the Act.
4. The opponent, in its notice of opposition, claims that the competing marks share the sequence "T-E-A-C-H-A" being visually similar, aurally and conceptually identical. It also asserts that the respective goods in Class 30 are identical and the Class 32 goods are similar.
5. The holder filed a counterstatement, admitting that the Class 30 contested goods are identical or similar to the opponent's, while denying any identity or similarity for Class 32 goods. The holder also denied that the marks are similar.
6. On 7 July 2025, the Registry issued a preliminary indication under Rule 19 of the Trade Marks Rules 2008 and Tribunal Practice Notice 3/2007. I confirm that the finding of the preliminary indication is not binding upon me.

Evidence Filed and Representation

7. The opponent filed evidence in these proceedings. This is in the form of a witness statement from Christopher Tan, who is the Director of the opponent. His witness statement is dated 11 October 2025 and consists of Exhibits A-D3. According to Mr Tan, the purpose of the evidence is to show use of the mark, as well as reputation and goodwill in the earlier mark. Further, I note that the witness statement also contains submissions;

however, I do not consider it too onerous a task to separate the opinions of Mr Tan from his statements of fact. Therefore, I will adopt a pragmatic approach, treating the submissions as legal arguments and/or opinions rather than factual statements, even though they are nevertheless conveyed in a witness statement accompanied by a statement of truth.

8. No hearing was requested and so this decision is taken following a careful consideration of the papers.
9. In these proceedings, the holder is represented by Murgitroyd & Company and the opponent by Valet Patent Services Limited.

DECISION

Section 5(2)(b)

10. Section 5(2)(b) of the Act states:

“A trade mark shall not be registered if because-

[...]

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

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

11. Section 5A states:

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

12. The following standard summary of the principles applicable to the assessment of the likelihood of confusion was approved by the Supreme Court in *Iconix Luxembourg Holdings SARL v Dream 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

13. Section 60A of the Act provides:

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

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

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

(2) In subsection (1), the “Nice Classification” means the system of classification under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the

Registration of Marks of 15 June 1957, which was last amended on 28 September 1975.”

14. When making the comparison, all relevant factors relating to the goods in the specifications should be taken into account. In *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, the Court of Justice of the European Union (“CJEU”) stated that:

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

15. Guidance on this issue was also given by Jacob J (as he then was) in *British Sugar Plc v James Robertson & Sons Limited* (“*Treat*”) [1996] RPC 281. At [296], he identified the following relevant factors:

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

16. In *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^[3] 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.”

17. The competing goods to be compared are shown in the following table:

Earlier Goods	Contested Goods
Class 30: Tea; Tea bags; Tea-based beverages.	Class 30: Tea; iced tea; tea-based beverages. Class 32: Fruit-based soft drinks flavoured with tea; non-alcoholic beverages flavoured with tea.

18. The holder has admitted that the competing goods in Class 30 are identical or similar. That said, I will need to assess the identity or degree of similarity between the competing goods. As to goods in Class 32, the holder states that:

³ Court of Justice of the European Union; henceforth, “CJEU”.

“Tea refers to a product that is prepared by pouring hot water over dried leaves, often sold in a loose-leaf form or bagged. In contrast, “Fruit-based soft drinks flavoured with tea; non-alcoholic beverages flavoured with tea” as covered within the Application, are ready to drink beverages that contain tea as a flavouring, but this ingredient does not form part of the core product. Moreover, such goods are manufactured in entirely different ways and have a different method of use. The Contested Goods in Class 30 are also not in competition with the Class 30 Goods of the Registration, insofar as fruit juices are not considered a substitute for tea products; fruit juices are served cold provide the consumer with light refreshment, which is in contrast to tea. Such goods are also not found within close proximity in retail settings, removing any scope for confusion.” (sic)

19. For the purpose of considering the issue of similarity of goods, it is permissible to consider groups of terms collectively where they are sufficiently comparable to be assessed in essentially the same way for the same reasons.⁴
20. The contested goods “*Tea; Tea-based beverages*” in Class 30 are self-evidently identical. In terms of the contested goods “*iced tea*”, I consider that the earlier term “*Tea*” is a broad term that would encompass the contested goods. Therefore, the competing goods are identical in accordance with the *Meric* principle.
21. I consider that the contested goods in Class 32 are similar to the opponent’s “*tea-based beverages*” goods. They will overlap in users, as the goods will all be consumed by members of the general public and are all intended for the purpose of quenching thirst. This is particularly the case bearing in mind that the contested goods are tea-flavoured drinks. At this point, I note that the holder did not provide any evidence to support its

⁴ *Separode Trade Mark* BL O-399-10 and *BVBA Management, Training en Consultancy v BeneluxMerkenbureau* [2007] ETMR 35 at paragraphs 30 to 38.

claims that tea is not a core ingredient in tea-flavoured drinks or to explain how they are manufactured. In the absence of evidence and based on the ordinary and natural meaning of the terms, the competing goods will be served in liquid form, often in the ready-to-drink variety, sharing the same nature and method of use. Further, I consider that the competing goods could often be sold alongside each other in the same retail outlets. Thus, the goods will be available through the same trade channels. There will be a degree of competition between the goods, as someone looking to purchase a beverage may choose either the contested goods or the earlier goods. I consider the goods to be similar to a high degree.

Average Consumer and the Purchasing Act

22. 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. 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 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."

23. The goods at issue will be purchased and consumed by the general public. These are inexpensive goods purchased through primarily visual means, most often selected from traditional bricks and mortar establishments or their online equivalents. In physical stores, the goods will be displayed on shelves where they will be self-selected by the consumer. When the purchase takes place online, the goods will be selected after viewing an image on a webpage. Whilst the average consumer will predominantly purchase them following a visual inspection, I do not discount aural recommendations. Given the low cost of the goods, the level of care and attention paid when purchasing them will be no more than medium.

Comparison of Trade Marks

24. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in

mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in 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.”

25. It would be wrong, therefore, to artificially dissect the trade marks, 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.

26. The marks to be compared are:

Earlier Mark	Contested Mark
TEACHA	TEE TEA CHA

Overall Impression

27. The earlier mark “TEACHA” is a word mark. Registration of a word mark protects the word itself.⁵ As I will come to discuss later in the conceptual comparison, a significant proportion of consumers will perceive the mark as a misspelling of the word ‘teacher’, while another, separate, significant proportion of consumers will see it as a conjoined word consisting of the descriptive prefix “TEA-” and the suffix “-CHA”. For the former section of consumers, I find that the overall impression of the mark lies in the word

⁵ See *LA Superquímica v EUIPO*, T-24/17, para 39; and *Bentley Motors Limited v Bentley 1962 Limited*, BL O/158/17, paragraph 16.

itself. For the latter section of consumers, the suffix element “-CHA” will have a greater impact on the overall impression, with the descriptive prefix “TEA-”, whilst having less of an impact, still making a contribution.

28. The contested mark consists of the words “TEE TEA CHA”, which, in my view, do not form a cohesive unit. In addition, I note that the word “TEA” has been disclaimed. However, following the judgment of the CJEU in *Patent- och registreringsverket v Mats Hansson*, C-705/17, such a disclaimer has no effect on the assessment of a likelihood of confusion. In addition, Tribunal Practice Notice (TPN) 1/2020 states that:

“The element(s) of a trade mark that is (are) subject to a disclaimer will be taken into account in the assessment of a likelihood of confusion with (or other damage from) a later mark, even where the disclaimed element is the only point of similarity with the later mark.”

For reasons outlined later in this decision, the words “TEE” and “TEA” will have descriptive qualities of the goods. Thus, the word “CHA” will play a greater role in the overall impression, and the words “TEE” and “TEA”, whilst not negligible, will play a lesser role.

Visual comparison

29. Visually, the earlier word mark, “TEACHA”, consists of six letters, whereas the contested mark, “TEE TEA CHA”, is a three-word mark which is nine letters long. Whilst I acknowledge that, as a rule of thumb, the beginnings of marks tend to have more impact than the ends,⁶ this is not always decisive.⁷ The entirety of the earlier mark is included in the contested mark, albeit separated by a space (“TEA CHA”), which is itself a point of visual difference. The marks also differ in the presence/absence of the word element “TEE”, which is three letters long. Considering all factors,

⁶ See *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02.

⁷ See *CureVac GmbH v OHIM*, T-80/08.

including the overall impression of the marks, I find that the marks are visually similar to between a medium and high degree.

Aural Comparison

30. The contested mark consists of three syllables, which will be pronounced as “TEE-TEE-CHAH”. For both sections of consumers, the earlier mark will be verbalised as “TEE-CHAH”. Thus, the competing marks open with the identical “TEE” sound and close with the identical “CHAH” sound. Nevertheless, the competing marks differ in the articulation of the additional syllable “TEE” in the contested mark. Taking everything into account, including the overall impressions of the marks, I find that there is a high degree of aural similarity for both sections of consumers.

Conceptual Comparison

31. For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer. This is highlighted in numerous judgments of the General Court and the CJEU including *Ruiz Picasso v OHIM* [2006] ECR I-643; [2006] E.T.M.R 29. The assessment must, therefore, be made from the point of view of the average consumer.
32. The parties disagree on the conceptual meaning of the competing marks. On the one hand, the opponent in its statement of grounds claimed that:

“Conceptually, the marks are identical. Both marks evoke “tea”, with “CHA” being a well-known transliteration of “tea” in several Asian languages. “TEE TEA CHA” simply foregrounds “tea” twice, reinforcing the same conceptual idea as “TEACHA”.”

In addition, Mr Tan in his witness statement put forward the following:

“5.3 While the term “TEE” denotes “tea” in some European languages, the use of “TEE TEA CHA” on identical goods (tea and

tea-based beverages) would likely lead consumers to believe the products originate from the same undertaking.

5.4 I note the Applicant's assertion that the marks differ conceptually. In practice, consumers encountering both marks in retail or online settings are unlikely to dissect the meaning; rather, they will recall the overall impression of "TEA-CHA."

33. On the other hand, the holder argued in its counterstatement that:

"12. Conceptually, the mark of the Registration evokes a informal version of the word "teacher". Whereas the mark of the Application evokes the concept of tea-related goods and services." (sic)

34. The word elements in the contested mark "TEE TEA CHA" do not combine to create a unit. This is because the average consumer will be unable to clearly extract a unified concept from the mark as a whole. Whilst the opponent filed evidence to support its claim that the meaning of the words "TEE" and "CHA" will be interpreted as the word tea in other languages,⁸ I am not satisfied that it shows that the meaning of these foreign words is known by a significant proportion of the relevant public in the UK. That said, I find that a significant proportion of UK consumers would likely regard the term "TEE" as a homophone and a deliberate misspelling of the well-known word "TEA", and the word "CHA" as an unfamiliar word of a foreign language or as an invented term. The word "TEE", which, in my view, is a fairly unoriginal homophone and misspelling of "TEA", and the easily identifiable word "TEA" itself will possess descriptive qualities and will be seen as a reference to the nature or characteristic of the goods.

⁸ I note that the articles in the evidence do not appear to be UK-oriented or dated within the relevant date. In addition, Exhibit D2 consists of an undated printout of a Wikipedia entry detailing the etymology of "tea". It is important to note that this platform allows entries to be updated by the public, which makes it inherently unreliable, as it can be edited by any user at any time, and the content may be unverified.

35. The holder claimed that the earlier mark, “TEACHA”, will be seen as a misspelling of the word ‘teacher’. While I accept that a significant proportion of consumers may perceive the earlier mark this way, I also consider that there is another, separate, significant proportion of consumers, who will likely break down the earlier mark into verbal elements which suggest a concrete meaning or resemble words known to them.⁹ Given the context of the goods, this latter group of consumers will recognise the well-known and ordinary prefix “TEA-” within the mark, interpreting it as being descriptive of the goods at hand. However, the suffix “-CHA” may be seen as a foreign or invented term, for the same reasons discussed in the preceding paragraph.
36. With regard to the section of consumers who will understand the earlier mark as a misspelling of the word ‘teacher’, I find that the competing marks are conceptually dissimilar. Concerning the section of consumers who will perceive the prefix “TEA-” in the earlier mark, I find that the competing marks share some conceptual similarity based on the common concept of the “TEA” element, but this is somewhat limited given the descriptive nature of the word.

Distinctive Character of the Earlier Trade Mark

37. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97, paragraphs 22 and 23, the CJEU stated that:

“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

⁹ See *Usinor SA v OHIM*, Case T-189/05.

Windsurfing Chiemsee v Huber and Attenberger [1999] ECR I-0000, paragraph 49).

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)."

38. Registered trade marks possess varying degrees of inherent distinctive character from the very low, because they are suggestive of, or allude to, 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 filed evidence of use, and thus, I am required to consider whether the opponent's mark enjoys an enhanced distinctive character. Before doing so, I will consider the inherent position.
39. For those consumers who will conceptualise the earlier mark as a misspelling of the ordinary word 'teacher', the mark will have no allusive or descriptive qualities of the goods. On balance, I do not consider the misspelling to be remarkable. Thus, I find that, for these consumers, the earlier mark will be inherently distinctive to a medium degree.
40. For those who will perceive "TEACHA" as consisting of the elements "TEA-" and "-CHA", the prefix "TEA-" will impart descriptive qualities of the goods, and the suffix "-CHA" will be seen as a foreign/invented term, which will be highly distinctive. Overall, I find that the mark as a whole is not

endowed with a particularly high level of distinctive character, but rather it will have a medium degree of inherent distinctive character.

Enhanced Distinctiveness

41. I now turn to consider whether the distinctiveness of the earlier mark has been enhanced through use.
42. I find the evidence insufficient to demonstrate that the mark has acquired an enhanced degree of distinctive character through use in the UK for the relevant goods. I have no information about its annual turnover, market share, or overall advertising expenditure in the tea beverage sector, the size of which is likely to be very significant. Additionally, the invoices included in Exhibits C1-C9, which are dated before the relevant date, show that they were issued to different London addresses, with the opponent's address being in Hong Kong and the unit price and total amount listed as £0.00. Thus, I do not consider that this is sufficient to ascertain the use of the mark and its extent in the UK. Further, I note that the opponent's Facebook account has only 1K followers, which I do not consider significant. Lastly, beyond the Facebook posts, there is no evidence of promotional material indicating any extensive media coverage or intensive advertising or promotional activities in the UK. Consequently, the evidence is not sufficient to establish that the distinctiveness of the earlier mark has been enhanced through use.

Likelihood of Confusion

43. In assessing the likelihood of confusion, I must adopt the global approach set out in the case law to which I have already referred above in this decision. Such a global assessment is not a mechanical exercise. I must also have regard to the interdependency principle, that 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.¹⁰ It is essential to keep in

¹⁰ See *Canon Kabushiki Kaisha*, paragraph 17.

mind the distinctive character of the opponent's trade mark since the more distinctive the trade mark, the greater the likelihood of confusion. I must also keep in mind that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon imperfect recollection.¹¹

44. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other. Indirect confusion is where the consumer notices the differences between the marks but concludes that the later mark is another brand of the owner of the earlier mark or a related undertaking.
45. In *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, Iain Purvis Q.C. (as he then was), sitting as the Appointed Person, explained that:

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

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

¹¹ See *Lloyd Schuhfabrik Meyer*, paragraph 27.

(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)."

These examples are not exhaustive. Rather, they were intended to be illustrative of the general approach.¹²

46. In *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17, James Mellor QC (as he then was), sitting as the Appointed Person, stressed that a finding of indirect confusion should not be made merely because the two marks share a common element. In this connection, he pointed out that it is not sufficient that a mark merely calls to mind another mark. This is mere association not indirect confusion.
47. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ referred to the comments of James Mellor QC (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at [16] that "*a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion*". Arnold LJ agreed, pointing out that there

¹² See *Liverpool Gin Distillery and others v Sazerac Brands, LLC and others* [2021] EWCA Civ 1207.

must be a “*proper basis*” for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

48. In *Bristol Global Co Ltd v EUIPO*, T-194/14, the General Court held that there was a likelihood of confusion between AEROSTONE (slightly stylised) and STONE if both marks were used by different undertakings in relation to identical goods (land vehicles and automobile tyres). This was despite the fact that the beginnings of the marks were different. The common element – STONE – was sufficient to create the necessary degree of similarity between the marks as wholes for the opposition before the EUIPO to succeed.

49. Earlier in this decision I have concluded that:

- the goods are identical and similar to a high degree;
- the average consumer of the goods will be a member of the general public; and the selection process is predominantly visual, without discounting aural considerations. The level of attention paid for the goods will be no more than medium;
- the competing marks are visually similar to between a medium and high degree, and aurally similar to a high degree (for both sections of consumers). For a significant proportion of consumers, the marks will be conceptually dissimilar, and for another, separate, significant proportion of consumers there is some conceptual similarity, but this is somewhat limited given the descriptive nature of the word;
- the earlier mark will be inherently distinctive to a medium degree for both sections of consumers, and its distinctiveness has not been enhanced through use.

50. At this point, I remind myself that I found that there were two sections of consumers. In respect of a likelihood of confusion, I am guided by the case of *Comic Enterprises Ltd v Twentieth Century Fox Film Corporation* [2016] EWCA Civ 41, wherein Kitchen LJ concluded that if a significant proportion of the relevant public is likely to be confused such as to warrant the intervention of the court, then it may properly find infringement. While this case was an infringement case, the principles apply equally to oppositions under Section 5(2) of the Act. As a result, I will focus my assessment of a likelihood of confusion on the significant proportion of consumers who will understand the earlier mark to consist of the prefix “TEA-” and the suffix “-CHA”. It follows that if there is a likelihood of confusion amongst this significant proportion of consumers, it is sufficient for the opposition against the application for protection of the contested mark to succeed; if not, then I will return to the other section of consumers.
51. Taking all of the above into account, I find that there is a likelihood of direct confusion for identical goods. I remind myself that the words in the contested mark do not form a cohesive unit. Whilst I acknowledge that the marks differ in the term “TEE”, which is found at the beginning of the contested mark, it will have descriptive qualities for the reasons outlined earlier in this decision. I note that similar beginnings are not always important or decisive,¹³ and similarity of elements at the end of marks may also be sufficient to reach a likelihood of confusion.¹⁴ With this in mind and based on the fact that the selection process will be predominantly a visual one, the marks share the elements “TEA CHA”/ “TEACHA”, differing by the space between those word elements in the contested mark. In light of this, it is my view that a significant proportion of consumers will retain in their mind that the shared elements appear in the marks in the same order, ending with the more distinctive element “CHA”.¹⁵ This is because the average consumer is unlikely to see the marks side-by-side and will

¹³ See *CureVac*.

¹⁴ See *Bristol Global*.

¹⁵ See *Kurt Geiger v A-List Corporate Limited*, BL O/075/13.

therefore be reliant on the imperfect picture of them they have kept in their mind. Thus, the word “TEE” and the space between the words may not be sufficient to prevent the average consumer from either misremembering or mistakenly recalling one mark for the other. This is so, as the “TEE” element plays a lesser role in the overall impression of the contested mark, and its addition does not introduce a distinct concept, beyond the descriptive concept of ‘tea’ shared by the marks, to enable consumers to differentiate between them. Also, the principle of interdependence sets out that a lesser degree of similarity between the parties’ respective trade marks can be offset by a greater degree of similarity between the respective goods, and I find that to apply here. Consequently, taking into account the principles of interdependence and imperfect recollection, I find that there is a likelihood of direct confusion. For completeness, even where aural considerations play a greater role in the purchasing process, the high aural similarity between the marks will produce the same result.

52. Considering indirect confusion, in the alternative, I bear in mind that there should be a proper basis for a finding of a likelihood of indirect confusion.¹⁶ In the case where the average consumer will identify the differences between the competing marks, they will also recognise the presence of the common “TEA CHA”/“TEACHA” elements in the competing marks, sharing not only the “TEA” element (being descriptive of the goods and a common weak concept) but also the more distinctive “CHA” element. Given that the words in the contested mark are unconnected and do not form a cohesive whole, the “TEE” element will be seen as the addition of a weakly distinctive element to the whole, having descriptive qualities of the goods. Bearing in mind my assessment of the overall impression, I find that at least a significant proportion of average consumers, when coming across the respective marks, will interpret them as a brand variation, sub-brand or brand extension originating from the same or economically linked undertakings due to the common use of those elements. For example, the contested mark may be perceived as a variant for a new line/range of

¹⁶ See *Liverpool Gin Distillery* above.

goods, such as ready-to-drink beverages, in Classes 30 and 32. On that basis, the differences may be noticed but are insufficient to create the impression on the consumer that the products originate from different undertakings. Therefore, I find that the average consumer would assume a commercial association between the parties, believing that the respective identical goods come from the same or economically linked undertakings.

53. For completeness, based on the principle of interdependence, the above findings extend to the goods that I found to be similar to a high degree.

OUTCOME

54. The opposition has been successful. Therefore, subject to any successful appeal, protection will be refused for goods in Classes 30 and 32.
55. The unopposed services in Class 43 will proceed to protection.

COSTS

56. The opponent has been successful and is entitled to a contribution towards its costs. Awards of costs are governed by Annex A of Tribunal Practice Notice (TPN) 1/2023. I award costs as follows:

Official fee	£100
Preparing a statement and considering the counterstatement	£250
Preparing and filing evidence	£400¹⁷
Total	£750

57. I, therefore, order Zhongming (Tianjin) Enterprise Management Center (Limited Partnership) to pay to Teacha Company Limited the sum of £750. The above sum should be paid within twenty-one days of the expiry of the

¹⁷ Reduced to reflect the relevance/significance of the evidence in the proceedings.

appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 31st day of July 2026

Dr Stylianos Alexandridis

For the Registrar,

The Comptroller General