

O/0753/26

TRADE MARKS ACT 1994

IN THE MATTER OF REGISTRATION NUMBER UK00004127485

IN THE NAME OF PING HUANG

FOR THE TRADE MARK:

NIUXX

IN CLASS 20

AND

AN APPLICATION FOR A DECLARATION OF INVALIDITY THERETO

UNDER NUMBER 508889

BY SHENZHEN JINGYUCHEN INDUSTRY CO., LTD.

BACKGROUND AND PLEADINGS

1. Trade mark registration number 4127485, for the trade mark shown on the cover page of this decision, stands registered in the name of Ping Huang (“the Proprietor”). The Proprietor’s mark was filed on 21 November 2024 and registered on 25 April 2025 in respect of the following goods:

Class 20: *Drawer slides [furniture hardware]; Metal drawers [parts of furniture]; Drawers; Furniture frames; Drawer pulls of plastic; Dividers for drawers; Drawer dividers; Drawer handles (Non-metallic -); Non-metal drawer trims; Drawer gliders (Non-metallic -); Drawer guides (Non-metallic -); Stacking trays of plastic; Stacking boxes of plastic; Stacking trays of wood; Boxes for stacking purposes [plastic]; Stacking adaptors non-metallic fittings; Stacking trays of vulcanised fibre; Stackable furniture; Frames; Brackets (Non-metallic -) for frames.*

2. On 16 May 2025, Shenzhen Jingyuchen Industry Co., Ltd. (“the Applicant”) filed an application for a declaration of invalidity of the Proprietor’s mark in its entirety. The application is based upon section 5(2)(a),¹ under the provisions of section 47(2), of the Trade Marks Act 1994 (“the Act”).

3. Under section 5(2)(a), the Applicant relies upon the following trade mark:

UK trade mark number 3704343

Representation: NIUXX

Filing date: 30 September 2021

Registration date: 31 December 2021

Good relied upon: *Bath brushes; Birdcages; Clothes drying hangers; Clothes racks, for drying; Perches for bird cages; Cutting boards; Cutting boards for the kitchen; Bird feeders; Dish stands; Dishes; Dishware; Flower baskets; Flower pot holders; Insect traps; Laundry bins for household purposes; Laundry baskets; Lunch boxes made of*

¹ The Applicant originally pleaded section 5(4)(a) also, but the ground was struck out for failure to file evidence.

plastic; Shoe stretchers; Shower gel racks; Laundry baskets for household purposes in Class 21.

4. Given its respective dates of filing and registration, the Applicant's mark qualifies as an earlier mark under section 6(1)(a) of the Act, but was not, at the filing date of the Proprietor's mark, subject to the use provisions at sections 47 (2A) – (2F) of the Act. For the purposes of these proceedings, the Applicant may rely upon its mark for all the goods listed in the previous paragraph without proving use.

5. Under section 5(2)(a), the Applicant claims that there is a likelihood of confusion between its mark and the Proprietor's mark, on the basis that the marks are identical and the goods are similar.

6. The Proprietor filed a defence and counterstatement denying the claims.

7. The Proprietor is represented by Marcin Ociepka and the Applicant by Isabelle Bertaux of IBE Avocat.

8. Neither party filed evidence. Beyond their respective statements, neither party filed submissions. A hearing was not requested and neither party filed submissions in lieu of a hearing.

DECISION

Relevance of EU law

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

Section 5(2)(a)

Statutory provisions

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

“A trade mark shall not be registered if because –

(a) it is identical to an earlier trade mark and is to be registered for goods or services 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 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.”

12. Section 5(2)(a) has application in invalidation proceedings by virtue of section 47 of the Act, the relevant parts of which state as follows:

“47. (1) [...]

(2) Subject to subsections (2A) and (2G), the registration of a trade mark may be declared invalid on the ground –

(a) that there is an earlier trade mark in relation to which the conditions set out in section 5(1), (2) or (3) obtain, [...]

(b) [...]

unless the proprietor of that earlier trade mark or other earlier right has consented to the registration.

[...]

(5) Where the grounds of invalidity exist in respect of only some of the goods or services for which the trade mark is registered, the trade mark shall be declared invalid as regards those goods or services only.

(5A) An application for a declaration of invalidity may be filed on the basis of one or more earlier trade marks or other earlier rights provided they all belong to the same proprietor.

(6) Where the registration of a trade mark is declared invalid to any extent, the registration shall to that extent be deemed never to have been made: Provided that this shall not affect transactions past and closed.”

Relevant law

13. 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 marks

14. Under section 5(2)(a), it is self-evident that the Applicant's mark and the Proprietor's mark are identical, both solely comprising the text 'NIUXX' in word-only format.

Comparison of goods

15. It is settled case law that I must make my comparison of the goods on the basis of all relevant factors. These include the nature of the goods, their purpose, their users and method of use, the trade channels through which they reach the market, and whether they are in competition with each other or are complementary: see *Canon*, paragraph 23, and *British Sugar Plc v James Robertson & Sons Limited (TREAT Trade Mark)* [1996] RPC 281. As the General Court said in *Boston Scientific Ltd v OHIM*,² goods are complementary when:

“...there is 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.”

16. The parties' specifications are listed in the table below.

The Applicant's specification	The Proprietor's specification
Class 21: <i>Bath brushes; Birdcages; Clothes drying hangers; Clothes racks, for drying; Perches for bird cages; Cutting boards; Cutting boards for the</i>	Class 20: <i>Drawer slides [furniture hardware]; Metal drawers [parts of furniture]; Drawers; Furniture frames; Drawer pulls of plastic; Dividers for</i>

² Case T-325/06.

<i>kitchen; Bird feeders; Dish stands; Dishes; Dishware; Flower baskets; Flower pot holders; Insect traps; Laundry bins for household purposes; Laundry baskets; Lunch boxes made of plastic; Shoe stretchers; Shower gel racks; Laundry baskets for household purposes.</i>	<i>drawers; Drawer dividers; Drawer handles (Non-metallic -); Non-metal drawer trims; Drawer gliders (Non-metallic -); Drawer guides (Non-metallic -); Stacking trays of plastic; Stacking boxes of plastic; Stacking trays of wood; Boxes for stacking purposes [plastic]; Stacking adaptors non-metallic fittings; Stacking trays of vulcanised fibre; Stackable furniture; Frames; Brackets (Non-metallic -) for frames.</i>
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17. In its statement of grounds, the Applicant claimed similarity between the goods but made no submissions on the degree of similarity, or in which goods that similarity lies. Absent any steer from the Applicant, I will consider the entirety of the Applicant's terms and determine where any similarity lies, finding dissimilarity where there is no immediately obvious overlap in the relevant factors.³

18. The Proprietor contests the claimed similarity between the goods, and addresses, in detail, each of the factors relevant to my assessment: I have borne these mind in coming to the following conclusions.

Drawer slides [furniture hardware]; Metal drawers [parts of furniture]; Drawers; Drawer pulls of plastic; Dividers for drawers; Drawer dividers; Drawer handles (Non-metallic -); Non-metal drawer trims; Drawer gliders (Non-metallic -); Drawer guides (Non-metallic -).

19. These goods of the Proprietor can broadly be described as drawers and parts, fittings and accessories for drawers. In my view, the following terms in the Applicant's specification offer its best case for a finding of similarity: *Clothes drying hangers; Clothes racks, for drying; Laundry bins for household purposes; Laundry baskets;*

³ In line with the comments of Mr Iain Purvis KC, sitting as the Appointed Person, in the *SmartX* case, BL O/0911/24 at paragraph 28.

Laundry baskets for household purposes. Beyond a very broad overlap in purpose with all of the goods potentially assisting with the storage of clothing/laundry, I see no meaningful overlap in any of the relevant factors. The user will only overlap to the extent that a member of the general public uses both groups of goods in the household. The core purpose of the goods differs: the Applicant's goods are household apparatus or containers used either for drying clothes or for temporarily storing or transporting dirty or clean laundry, whereas the Proprietor's goods are furniture items or accessories used for the long-term storage of a range of items. The goods are not in competition and are not complementary. Whilst these goods may be available to purchase in homeware stores or their online equivalents, they will be found in different locations in physical premises and under different categories online. Overall, I find no meaningful similarity between any of these goods. For the avoidance of doubt, there are no other terms in the Applicant's specification that, when considering the relevant factors, would be any closer to the above goods of the Proprietor.

Furniture frames; Stackable furniture; Frames; Brackets (Non-metallic -) for frames.

20. I consider that the same assessment in the previous paragraph applies equally here given that these goods are furniture items or parts/fittings for furniture. The same terms in the Applicant's specification offer its best case (*Clothes drying hangers; Clothes racks, for drying; Laundry bins for household purposes; Laundry baskets; Laundry baskets for household purposes*) but beyond a very broad overlap in purpose where the goods may assist with the storage of clothes/laundry, there is no overlap in any of the relevant factors. These goods are dissimilar.

Stacking boxes of plastic; Boxes for stacking purposes [plastic].

21. These goods are boxes – i.e. containers with a flat base and sides, and usually with a lid – made of plastic and designed and manufactured in a way that they can be arranged one on top of another easily. The purpose of stacking boxes is predominantly storage and organisation. I will compare these to the Applicant's *lunch boxes made of plastic*. There is an overlap in the physical nature, purpose and method of use: all being boxes made of plastic for the purpose of storage and used by removing and replacing the lid to access the contents. The Applicant's goods will be used in the

kitchen and the Proprietor's goods most likely elsewhere in the home and so the goods are not in competition and will be found in different aisles in retail stores and under different categories online. There is, therefore, no overlap in trade channels, nor are the goods complementary. However, the fact they may be used to store different items does not preclude a finding of similarity. On the basis of a similar nature, purpose and method of use, I find these goods similar to a low to medium degree.

Stacking trays of plastic; Stacking trays of wood; Stacking trays of vulcanised fibre

22. Similar to the stacking boxes compared in the previous paragraph, these goods are shallow containers made of various materials that can be arranged one on top of another. Again, the purpose of stacking trays is predominantly storage and organisation. However, these goods are a step further removed from *lunch boxes made of plastic* than the Applicant's various stacking boxes. I consider the overlapping factors in the previous comparison do not overlap here. Even when made from plastic, stacking trays have a different physical nature and method of use to lunch boxes: trays are much shallower containers and invariably do not feature a lid; this means that what is stored in them and how they are used differs. The remaining factors differ for the reasons discussed in relation to stacking boxes. I find no meaningful similarity between these goods. I do not consider there to be any closer terms in the Applicant's specification.

Stacking adaptors non-metallic fittings.

23. It is not immediately clear what these goods are, and I have no submissions from the parties. I will proceed on the basis that they are fittings for stacking furniture. There is no obvious similarity with any of the Applicant's goods. If I apply a similar reasoning as in my paragraph 20 in relation to parts/fitting of furniture, there is no overlap in any of the relevant factors with any of the Applicant's goods and so I find no similarity.

24. In accordance with *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA, if there is no similarity between goods, there is no likelihood of confusion to be considered under section 5(2). Consequently, the 5(2)(a) ground of invalidation has failed in relation to the following goods:

Class 20: *Drawer slides [furniture hardware]; Metal drawers [parts of furniture]; Drawers; Furniture frames; Drawer pulls of plastic; Dividers for drawers; Drawer dividers; Drawer handles (Non-metallic -); Non-metal drawer trims; Drawer gliders (Non-metallic -); Drawer guides (Non-metallic -); Stacking trays of plastic; Stacking trays of wood; Stacking adaptors non-metallic fittings; Stacking trays of vulcanised fibre; Stackable furniture; Frames; Brackets (Non-metallic -) for frames.*

25. I will continue to assess the likelihood of confusion in relation to the following goods only:

Class 20: *Stacking boxes of plastic; Boxes for stacking purposes [plastic].*

The average consumer and the purchasing act

26. 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 in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97.

27. In *Iconix* (cited above) the Supreme Court approved the comments of Arnold LJ in *Lidl Great Britain Ltd & Anor v Tesco Stores Ltd & Anor (Rev1)* 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.

28. The average consumer of the goods at issue (broadly speaking, plastic lunch boxes and plastic stacking boxes) will be a member of the general public, who will consider factors such as capacity and durability. The goods are not expensive and will be purchased reasonably frequently. I find it likely that a low to medium degree of attention will be paid during the purchase.

29. The goods are likely to be self-selected from the shelves of a retail/homeware outlet or their online or catalogue equivalents. Visual considerations are, therefore, likely to dominate the selection process, though I do not entirely discount an aural component in the event of advice from retail assistants.

Distinctive character of the Applicant's mark

30. In *Lloyd Schuhfabrik Meyer* the Court of Justice of the European Union 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).”

31. 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 distinctiveness of a mark can be enhanced by virtue of the use that has been made of it.

32. The Applicant filed no evidence of use of its mark and so I have only the inherent position to consider. “NIUXX” will be seen as an invented word or a combination of

letters with no meaning; it therefore has no allusive qualities, and I consider it to be inherently distinctive to a high degree.

Likelihood of confusion

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

34. I have found the marks to be identical. I have found the Applicant's mark to have a high degree of inherent distinctive character. I have identified the average consumer to be a member of the general public who, paying a low to medium degree of attention, selects the goods predominantly by visual means, though I have not discounted an aural element to the purchase. I have found the goods to be similar to a low to medium degree.

35. Given the identity between the competing marks, it is my view that the average consumer will be directly confused, even for goods that are similar to a low to medium degree due to the interdependency principle. There is a likelihood of direct confusion.

Conclusion

36. The application for a declaration of invalidity has succeeded in relation to the following goods, for which the Proprietor's mark will be declared invalid:

Class 20: Stacking boxes of plastic; Boxes for stacking purposes [plastic].

37. The application failed in relation to the following goods, for which the Proprietor's mark remains registered:

Class 20: Drawer slides [furniture hardware]; Metal drawers [parts of furniture]; Drawers; Furniture frames; Drawer pulls of plastic; Dividers for drawers; Drawer dividers; Drawer handles (Non-metallic -); Non-metal drawer trims; Drawer gliders (Non-metallic -); Drawer guides (Non-metallic -); Stacking trays of plastic; Stacking trays of wood; Stacking adaptors non-metallic fittings; Stacking trays of vulcanised fibre; Stackable furniture; Frames; Brackets (Non-metallic -) for frames.

COSTS

38. Whilst the Applicant was successful in relation to two terms of the Proprietor's specification, the Proprietor successfully defended the remainder of its terms. Each party has achieved a roughly equal measure of success. As such, I order each party to bear its own costs.

Dated this 19th day of August 2026

MRS E FISHER

For the Registrar