

O/0760/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00004134323

IN THE NAME

HUIXIA LI

TO REGISTER THE FOLLOWING SERIES OF TWO
TRADE MARKS:

Mark 1

Mimo Style

Mark 2

MIMO STYLE

IN CLASS 28

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. OP000453220

BY ROBINSON CLUB GMBH

BACKGROUND AND PLEADINGS

1. On 08 December 2024, HUIXIA LI (“the Applicant”) applied to register the series of two trade marks shown on the cover page of this decision in the UK. The application was accepted and published in the Trade Marks Journal on 20 December 2024 in respect of the following goods:

Class 28: Boxing Machine for fitness purposes; Smart Music Boxing Machine for fitness purposes; Boxing Training Equipment; Wall Mounted Boxing Equipment for fitness purposes; Boxing gloves; Punching balls for boxing; Punching bags for boxing; Punching balls [for boxing practice]; Boxing rings; Rowing machines for fitness purposes.

2. On 20 March 2025, Robinson Club GmbH (“the Opponent”) opposed the application under section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opposition is aimed at all of the Applicant’s goods contained within the application.
3. The Opponent relies upon the following International Registration (the Opponent’s mark):

MyMo

International Registration designating the UK no. WO0000001816079

UK designation date: 14 March 2024

International Registration date: 14 March 2024

Priority date: 14 September 2023 ¹

Protection conferred date: 02 January 2025

Relying upon some of the goods and services for which its mark is protected, namely:

¹ This is claimed from the German Patent and Trade Mark Office under filing no. 30 2023 115 254

Class 28: Games; playthings; gymnastic and sporting articles; video game machines; portable games with liquid crystal displays; apparatus for games.

Class 42: Basic and advanced training as well as education information; entertainment; physical education services; training and fitness club services; sport camp services; providing sports facilities; organisation of sports competitions; organisation of cultural and sporting events; arranging of cultural and sporting events; reservation services for sporting and cultural events; game services provided on-line; virtual physical fitness training services.

4. By virtue of its earlier filing date, the above International Registration constitutes an earlier mark within the meaning of section 6 of the Act. However, as it had not been protected for five years or more at the filing date of the contested application, it is not subject to the use requirements specified within section 6A of the Act.
5. The Opponent submits that the respective marks are visually, phonetically and conceptually closely similar, and that the goods are identical to, closely similar to, or are associated with those goods applied for.
6. The Applicant filed a counterstatement denying that the marks and the goods and services are similar.
7. The Opponent is represented by Sonder & Clay, and the Applicant is represented by Lily Li. Neither party filed evidence, nor did they request a hearing. Only the Opponent filed written submissions in lieu of a hearing. I make this decision having taken full account of all the papers, referring to them as necessary.

RELEVANCE OF EU LAW

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

DECISION

Section 5(2)(b): legislation and case law

9. The opposition is based upon section 5(2)(b) of the Act which reads as follows:

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

[...]

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

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

10. 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.”

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

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

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

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

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

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

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

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

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

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

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

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

Comparison of goods and services

12. 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 1979.”

13. For the purposes of considering the issue of similarity of goods and services, it is permissible to consider groups of terms collectively where they are sufficiently comparable to be assessed in essentially the same way and for the same reasons (see *L G Chem. Ltd v Evonik Degussa GmbH*, BL O/399/10, a decision of the Appointed Person, Geoffrey Hobbs QC (as he then was).

14. In *Gérard Meric v OHIM*, 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 für 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.”

15. The goods and services to be compared are:

Opponent’s goods and services	Applicant’s goods
Class 28: Games; playthings; gymnastic and sporting articles; video game machines; portable games with liquid crystal displays; apparatus for games.	Class 28: Boxing Machine for fitness purposes; Smart Music Boxing Machine for fitness purposes; Boxing Training Equipment; Wall Mounted Boxing Equipment for fitness purposes; Boxing gloves; Punching balls for boxing; Punching bags for boxing; Punching balls [for boxing practice]; Boxing rings; Rowing machines for fitness purposes.

Class 41: Basic and advanced training as well as education information; entertainment; physical education services; training and fitness club services; sport camp services; providing sports facilities; organisation of sports competitions; organisation of cultural and sporting events; arranging of cultural and sporting events; reservation services for sporting and cultural events; game services provided on-line; virtual physical fitness training services	
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16. The Opponent submits that the goods covered by the Application are identical, or at least highly similar, to the goods protected by the earlier Registration. In particular, the Registration's specification of "sporting articles" is said to encompass all of the Applicant's goods, while terms such as "games", "playthings", "gymnastic articles", and "apparatus for games" are argued to be either inclusive of or very closely similar to those goods. The Opponent further contends that the Registration's coverage of "video game machines", "portable games with liquid crystal displays", and "apparatus for games" is identical or highly similar to the Applicant's fitness and boxing-related equipment, including boxing machines, smart music boxing machines, boxing training equipment, and wall-mounted boxing equipment.
17. In addition, the Opponent submits that the sporting and cultural services covered by the Registration in class 41 are closely connected to the Applicant's goods. It argues that the goods applied for would necessarily be used in the context of, or in conjunction with, such services, resulting in a high degree of similarity between the respective goods and services. Overall, the Opponent maintains that the Applicant's goods are either identical or highly similar to the goods and services protected by the earlier Registration.

18. I have no specific submissions from the Applicant on the similarity of the respective goods and services. The Applicant in its counterstatement simply denies that the respective goods and services are similar.

Boxing Machine for fitness purposes; Smart Music Boxing Machine for fitness purposes; Boxing Training Equipment; Wall Mounted Boxing Equipment for fitness purposes; Boxing gloves; Punching balls for boxing; Punching bags for boxing; Punching balls [for boxing practice]; Boxing rings.

19. The Applicant's goods are all forms of equipment designed for use in boxing and boxing training. The Opponent submits that these goods fall within the scope of the broad term "sporting articles" covered by its earlier registration, and I agree. In my view, the term "sporting articles" encompasses the equipment and apparatus used in connection with sporting activities and is sufficiently broad to include the boxing-related goods specified by the Applicant. Accordingly, applying the principles set out in *Meric*, the Applicant's goods are considered identical to the Opponent's "sporting articles".

Rowing machines for fitness purposes.

20. For broadly the same reasons as those set out above, I consider the Opponent's term "Sporting articles" to be sufficiently broad to encompass the Applicant's "Rowing machines for fitness purposes". Rowing machines are equipment used in sporting and fitness activities and, as such, fall within the ordinary meaning of "Sporting articles". Therefore, again bearing in mind the principles established in *Meric*, the Applicant's goods are considered identical to the Opponent's "Sporting articles".

The average consumer and the nature of the purchasing act

21. 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 (see *Lloyd Schuhfabrik Meyer*, Case C-342/97).

22. 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 Opponent submits that the Applicant's goods are broadly categorised as sporting apparatus and equipment. It states that the average consumer will therefore be either members of the general public with an interest in sport and fitness or professional sports users. The goods are said to be purchased through both general retail channels and specialist suppliers, including online retailers. While the purchasing process is likely to be predominantly visual, the Opponent contends that aural considerations will also play a role, as consumers may seek advice from sales staff or other specialists before making a purchase. The Opponent further submits that the cost of the goods will range from average to above average, depending on the nature of the equipment concerned. Taking these factors into account, it argues that the average consumer will exercise at least a medium degree of attention during the purchasing process.
24. I agree that the average consumer is likely to be either a member of the general public or a professional operating within the sports and fitness sector, especially those with an interest in boxing, either purchasing the goods for their own use or for use by clients or customers. This is particularly so in relation to goods such as "boxing rings" and "boxing machines for fitness purposes". The goods are likely to be purchased from sports retailers, general retail outlets, or their online equivalents, making the purchasing process predominantly visual in nature. However, I do not discount an aural component, particularly where consumers seek advice from sales staff or rely upon recommendations from others. While the majority of the goods are likely to be purchased with an average degree of attention, an above average (but not outright high) level of care may be exercised in relation to more specialist or expensive items.

Comparison of trade marks

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

by reference to the overall impressions created by the trade marks, bearing in mind their distinctive and dominant components. The Court of Justice of the European Union (“CJEU”) stated at paragraph 34 of its judgement 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”.

26. 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 trade marks and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the trade marks.
27. The trade marks to be compared are as follows:

The Opponent's mark	The Applicant's mark
MyMo	Mark 1 Mimo Style
	Mark 2 MIMO STYLE

28. The Opponent submits that the marks are highly similar both aurally and visually. It argues that the first word of the Applicant's mark constitutes its

dominant and distinctive element and is pronounced identically to the earlier mark. While the Applicant's mark contains an additional second word, the Opponent contends that this element is secondary in the overall pronunciation and does not materially affect the similarity between the marks. It further submits that consumers tend to pay greater attention to the beginnings of signs, increasing the significance of the shared initial element.

29. Visually, the Opponent maintains that the dominant element of the Applicant's mark closely resembles the earlier mark, sharing the same length and overall structure, with only a minor difference in one letter. Although the additional word in the Applicant's mark creates some visual difference, the Opponent argues that it is of lesser importance and that consumers will focus primarily on the common and distinctive first element.
30. Conceptually, the Opponent submits that neither the earlier mark nor the dominant element of the Applicant's mark has any clear meaning, both being invented words. While the additional word in the Applicant's mark has a recognised meaning, the Opponent contends that it would be perceived merely as a secondary, sub brand of the main brand. As a result, it argues that a conceptual comparison is not possible between the signs.

Overall Impression

31. Firstly, I note that the application contains a series of two marks with one mark presented in all upper case, and the other with the first letter of each word capitalised. For the purposes of the comparison, I will refer to both marks as the "Applicant's mark" as the stylistic changes do not alter the distinctive character of the Applicant's mark. The comparison equally applies to each of the Applicant's marks.
32. The Opponent's mark consists solely of the conjoined term "MyMo", with no stylisation or figurative elements. Although presented as a single word, the use of capital letters at the beginning of the elements "My" and "Mo" creates a degree of visual separation, meaning that some consumers are likely to perceive the mark as comprising those two elements despite the absence of a

space. While I recognise that consumers normally perceive a trade mark as a whole and do not analyse its individual components, it is nevertheless established that they may break a sign down into verbal elements that have a meaning for them.² Other consumers are likely to perceive “MyMo” simply as a single invented term. In either case, neither element is sufficiently independent to dominate the overall impression, which resides in the mark “MyMo” as a whole.

33. The Applicant’s mark consists of the words “Mimo Style”, with no other elements contributing to its overall impression. In my view, the invented word “Mimo” is the dominant element of the Applicant’s mark, whereas the word “Style”, being less distinctive, plays a secondary role in the overall impression. Whilst I appreciate that for some consumers the two words will hang together i.e., referring to something in the style of “Mimo” (whatever that may be), the “Mimo” element still retains an independent distinctive role in the mark.
34. I also note that both marks are word marks. It is well established that differences in capitalisation are usually of limited significance, since a word mark protects the word itself rather than any particular presentation in upper or lower-case lettering. Nevertheless, as confirmed in *Migros-Genossenschafts-Bund v EUIPO* (Case T-189/16), the manner in which a word is presented may, in certain circumstances, influence how consumers perceive the sign. In the present case, the capitalisation in “MyMo” is likely to prompt a proportion of consumers to perceive the sign as consisting of the two elements “My” and “Mo”, rather than as a single uninterrupted word. Accordingly, the capitalisation in the Opponent’s mark does contribute to its overall impression.

Visual Comparison

35. The Opponent’s mark consists of the four-letter word “MyMo”, while the Applicant’s mark consists of the two words “Mimo Style”. The Opponent’s mark and the first word of the Applicant’s mark each comprise four letters, three of

² *Usinor SA v OHIM*, Case T-189/05

which appear in the same positions. The only difference between these elements is that the Opponent's mark contains the letter "y" in the second position, whereas the Applicant's mark contains the letter "i". In addition, the Applicant's mark includes the word "Style", which provides an additional point of visual distinction, though not a distinctive one. Taking these similarities and differences into account and bearing in mind the overall impressions of the marks, I consider them to be visually similar to a medium degree.

Aural Comparison

36. Aurally, the Opponent's mark is likely to be pronounced as "My-Moh". I accept the Opponent's submission that some consumers will pronounce the first word of the Applicant's mark, "Mimo", in the same way. In addition, some consumers will articulate the word "Style" in the usual manner, while others will not, given its descriptive and non-distinctive nature. For those consumers who do not articulate the word "Style", the marks will be aurally identical. Where "Style" is pronounced, the marks will be aurally similar to a medium degree.
37. However, in my view, it is more likely that a significant proportion of consumers will pronounce "Mimo" as "Me-Moh". For those consumers, the marks will share a medium degree of aural similarity where "Style" is not articulated. Where the word "Style" is pronounced, the differences in both the pronunciation of "Mimo" and the inclusion of the additional word will result in the marks being aurally similar to between a low and medium degree.

Conceptual Comparison

38. Conceptually, some consumers are likely to perceive "MyMo" as an invented word with no immediately identifiable meaning. However, as stated above, there will be a proportion of consumers that may dissect the mark into the elements "My" and "Mo", understanding "My" as a possessive pronoun and perceiving "Mo" as either an invented term or a personal name. Even for those consumers, the combination "MyMo" does not convey a clear or established concept and is unlikely to communicate any clear message to consumers.

39. Similarly, the first word of the Applicant's mark is again likely to be perceived as an invented word, or a word in a foreign language with no immediately discernible meaning. The word "Style" in the Applicant's mark will be perceived in line with its ordinary definition i.e., a particular shape or design of something. The inclusion of this additional word element is a point of conceptual difference, although not a distinctive one as it is considered non-distinctive, if not descriptive, in relation to the goods concerned. Consequently, the marks are considered to be conceptually neutral.

Distinctive character of the earlier trade marks

40. The distinctive character of a trade mark can be appraised only, first, by reference to the goods and services in respect of which registration is sought and, secondly, by reference to the way it is perceived by the relevant public – *Rewe Zentral AG v OHIM (LITE)* [2002] ETMR 91. In *Lloyd Schuhfabrik*, 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).”

41. 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 and services, 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. However, as the Opponent has not filed any evidence of use of its mark, I only have the inherent position to consider.
42. The Opponent submits that its registration is an invented word with no clear meaning and would be perceived as such by the average consumer. Consequently, it contends that its mark possesses a high level of distinctive character.
43. The Opponent’s mark consists solely of the word “MyMo”, presented without stylisation or figurative elements. Whilst some consumers may perceive the mark as comprising the elements “My” and “Mo”, any distinctive character resides in the mark as a whole or in the combination of those elements. Even if “My” is understood as a possessive pronoun, the element “Mo” does not convey any clear or direct concept in relation to the goods. Consequently, the mark as a whole is inherently distinctive to a high degree.

Likelihood of confusion

44. 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 and services down to the responsible undertakings being the same or related.
45. 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 factors are interdependent, and, for instance, a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa. It is necessary for me to keep in mind the distinctive character of the earlier mark, the average consumer for the goods and services, and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he has retained in his mind.

46. Throughout the course of this decision, I have determined that:

- The Respective goods in class 28 are identical.
- The average consumer of the respective goods can be the general public or a professional operating within the sports and fitness sector, especially those with an interest in boxing. The purchasing process is mainly visual but aural considerations may play a part. The level of attention paid during the purchasing process is, for the most part, average, but may be above average depending on the goods concerned.
- The marks at issue are visually similar to a medium degree. Aurally, they range from being identical to similar to between a low and medium degree, depending on how the word “Mimo” is pronounced and whether the word “Style” in the Applicant’s mark is articulated. Conceptually, neither mark conveys a clear meaning and, as such, the marks are conceptually neutral.
- The level of inherent distinctive character of the Opponent’s marks is considered high.

47. Although I accept that the first word of the Applicant’s mark shares three of the four letters of the Opponent’s mark in the same positions, the capitalisation of the letters “M” and “M” in the Opponent’s mark contributes to a different overall

impression and reduces the degree of visual similarity between the signs. I also remind myself that I have found the purchasing process to be primarily visual in nature, and therefore consumers are likely to notice both the inclusion of the letter “y” in the Opponent’s mark and the visual separation created by the capitalisation. Accordingly, this plays a greater role in the global assessment of the likelihood of confusion.³ Notwithstanding this, I also consider that a significant proportion of consumers will pronounce the Applicant’s mark as “Me-Moh”, resulting in no more than a medium degree of aural similarity between the marks. This, coupled with the conceptual neutrality of the comparison, serves to further reduce the likelihood of confusion. Consequently, I am satisfied that consumers would be capable of distinguishing between the marks, even if the element “MIMO” retains an independent distinctive role within the Applicant’s mark. Taking all relevant factors into account, I find that the differences between the competing marks are sufficient to enable consumers paying at least an average degree of attention to differentiate between them, notwithstanding the principles of imperfect recollection and interdependency. As a result, I find that there is no likelihood of direct confusion, even where the goods are identical.

48. That leaves indirect confusion to be considered. In *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, Mr Iain Purvis QC, (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

³ *New Look Limited v OHIM*, joined cases T-117/03 to T-119/03 and T-171/03

something along the following lines: “The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark.”

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

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

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

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

49. These three categories are not exhaustive; rather, they were intended to be illustrative of the general approach, as has been confirmed by the Court of Appeal in *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors*. I recognise that a finding of indirect confusion should not be made merely because the competing marks share a common element. In this connection, it is not sufficient that a mark merely calls to mind another mark: this is mere association not indirect confusion.

50. Furthermore, in *Liverpool Gin* Arnold LJ referred to the comments of James Mellor Q.C. (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 must be a “proper basis” for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

51. Consumers, having recognised the differences between the marks, would not then assume that they are economically linked undertakings. I do not consider it logical that an undertaking would replace a letter of its mark so as to change it completely; the replacement of the letter ‘y’ with the letter “i” in this case. Whilst I appreciate that the *L.A. Sugar* categories (referred to above) are not exhaustive, I do not see any other plausible basis on which to conclude that consumers would see the competing marks as deriving from economically linked undertakings. Consequently, and bearing in mind the comments of Arnold LJ and Mr Mellor Q.C (as he then was) in the preceding paragraph, I do not consider there to be a likelihood of indirect confusion.

Conclusion

52. The opposition under Section 5(2)(b) of the Act has failed in full. Subject to any successful appeal, the application will proceed to registration.

Costs

53. As the Applicant has been successful, it is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice (“TPN”) 1/2023.⁴ In the circumstances, I award the Applicant the sum of **£250**. The sum is calculated as follows:

Considering the notice of opposition and	
preparing the counterstatement	£250

⁴ As the proceedings were commenced after 01 February 2023

Total:

£250

54. I therefore order **Robinson Club GmbH** to pay **HUIXIA LI** the sum of **£250**.
The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 20th day of August 2026

Oliver Rose'Meyer

For the Registrar