

BL O/0813/23

TRADE MARKS ACT 1994

**IN THE MATTER OF
TRADE MARK APPLICATION NO. 3863434
BY GADGET CENTRE (U.K) LTD**

TO REGISTER THE TRADE MARKS:

**Gadget Centre (U.K) Ltd
Gadget Centre UK Ltd**

IN CLASSES 9 AND 37

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 600002822
BY USAMA&SAEED LTD**

Background and pleadings

1. On 30 December 2022, Gadget Centre (U.K) Ltd (“the applicant”) filed trade mark application number 3863434 (“the contested mark”) for the marks (series of two), shown on the cover page of this decision. The application was accepted and published in the Trade Marks Journal for opposition purposes on 20 January 2023, in respect of goods and services in Classes 9 and 37.¹

2. On 24 March 2023, usama&saeed ltd (“the opponent”) filed a Fast Track opposition. The opposition is brought under Section 5(1), 5(2)(a) and (b) of the Trade Marks Act 1994 (“the Act”) and is directed against all the goods and services in the application.

3. The opponent relies upon its United Kingdom trade mark number 3521432, ‘Gadget Centre’. The earlier mark was filed on 11 August 2020, and became registered on 27 November 2020, in respect of goods in Class 9. For the purpose of these proceedings, the opponent relies upon all the goods for which the mark is registered.²

4. In its notice of opposition, the opponent claims that the respective marks are similar if not identical, and that the respective goods and services are also similar if not identical. The applicant filed a counterstatement in which it denies that the respective marks and the goods and services are sufficiently similar for a finding of a likelihood of confusion.

5. Given the respective filing dates, the opponent’s mark is an earlier mark, in accordance with section 6 of the Act. However, as it had not been registered for five years or more at the filing date of the application, it is not subject to the proof of use requirements specified within section 6A of the Act. As a consequence, the opponent may rely upon all of the goods for which the earlier mark is registered without having to establish genuine use.

¹ See goods and services comparison.

² See goods and services comparison.

6. Rules 20(1)-(3) of the Trade Marks Rules (the provisions which provide for the filing of evidence) do not apply in fast track oppositions but Rule 20(4) does. It reads:

“The registrar may, at any time, give leave to either party to file evidence upon such terms as the registrar thinks fit.”

7. The effect of the above is to require parties to seek leave in order to file evidence in fast track oppositions. No leave was sought in respect of these proceedings.

8. Rule 62(5) (as amended) states that arguments in fast track proceedings shall be heard orally only if (i) the Office requests it or (ii) either party to the proceedings requests it and the Registrar considers that oral proceedings are necessary to deal with the case justly and at proportionate cost. Otherwise, written arguments will be taken. A hearing was neither requested nor considered necessary.

9. The opponent is represented by Ugo Muoma, whereas the applicant represents itself. Only the applicant chose to file written submissions in lieu of a hearing. This decision is taken following a careful review of the papers before me, keeping all submissions in mind.

10. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Act relied upon in these proceedings are derived from an EU Directive. That is why this decision continues to refer to EU trade mark case law.

PRELIMINARY ISSUES

- Grounds relied upon by the opponent

11. The opponent initially filed a form TM7F relying upon sections 5(1) and 5(2)(a) of the Trade marks Act but was informed by the Tribunal that it is a requirement of these grounds that the respective marks be identical and, as the marks at issue

were not identical, an amended TM7F form should be filed relying on a different ground. The opponent subsequently filed an amended TM7F, though this time relying on sections 5(1), 5(2)(a) and (b). Accordingly, as the marks at issue are clearly not identical, either *prima facie* or in accordance with the guidance laid out in *Sadas*,³ I will proceed on the basis of section 5(2)(b) only.

12. The applicant has raised points in its submissions which I intend to address before going any further into the merits of this opposition. This is because, it is necessary to explain why, as a matter of law, these points will have no bearing on the outcome of this opposition.

- Goods and services comparison, target market and use of the earlier right

13. In its counterstatement, the applicant states the following:

- its products and services are extremely niche and are only available via a few companies in the UK.
- the opponent does not have any genuine intent to use its trade mark but instead aims to benefit from its ownership by preventing others from registering a similar mark.

14. Differences between the goods and services currently provided by the parties, such as particular characteristics of the goods, are irrelevant, except to the extent that those differences are apparent from each party's specification. Furthermore, since the opponent's earlier mark is not subject to proof of use, it is entitled to protection in relation to all the goods for which it is registered. It is the goods relied upon by the opponent and the goods and services applied for by the applicant that I will be comparing later in this decision. The assessment I must make between the goods is a notional and objective assessment, rather than a subjective one.

³ S.A. *Société LTJ Diffusion v. Sadas Vertbaudet SA*, Case C-291/00

15. Furthermore, marketing strategies, including the targeting of specific consumers, are temporary and may change over time.⁴ As such, it is not appropriate to take that factor into account in my assessment. However, I will make an assessment, later in this decision, as to who the average consumer could be for the goods and services at issue.

DECISION

Section 5(2)(b)

16. Sections 5(2)(b) and 5A of the Act read 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.

[...]

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.”

17. I am guided by the following principles which are gleaned from the decisions of the Court of Justice of the European Union (“CJEU”) in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro- Goldwyn-Mayer Inc*, Case C-39/97,

⁴ *Devinlec Développement Innovation Leclerc SA v OHIM*, Case C-171/06P

Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V. Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P:

(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 be dominated by one or more of its components;

(f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

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

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

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

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

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

Comparison of goods and services

18. 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.”

19. In comparing the respective specifications, all relevant factors should be considered, as per *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc.* where the CJEU stated at paragraph 23 of its judgment:

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

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

“82 ... there is a close connection between [the goods], 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...”.

21. Additionally, the criteria identified in *British Sugar Plc v James Robertson & Sons Limited (“Treat”)* [1996] R.P.C. 281 for assessing similarity between goods and services also include an assessment of the channels of trade of the respective goods or services.

22. For the purposes of considering the issue of similarity of goods or 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 *Separode Trade Mark* (BL O/399/10), Mr Geoffrey Hobbs QC (as he then was), sitting as the Appointed Person, and *BVBA Management, Training en Consultancy v. Benelux-Merkenbureau* [2007] ETMR 35 at paragraphs 30 to 38).

23. The competing goods and services are as follows:

Opponent's goods	Applicant's goods and services
<p>Class 9 AC/DC converters; AC/DC inverters; AC/DC power supplies; Accumulators [batteries]; Accumulators, electric; Adapter plugs; Adapters for connecting telephones to hearing aids; Adapters for connection between media devices; Adapters for use with telephones; Adapters for wireless network access; Advertising boards [mechanical or luminous]; Advertising display signs [mechanical or luminous]; Advertising signboards [luminous]; Advertising signboards [mechanical]; Alarm installations; Alarm monitoring systems; Alarm panels; Alarm systems; Audio- and video-receivers; Audio cable; Audio cable connectors; Audio cables; Audio players; Audio speakers; Audio speakers for home; Backup drives for computers; Bags adapted for laptops; Bags for cameras; Barcode scanners; Batteries; Batteries, electric; Batteries for electronic cigarettes; Batteries for mobile phones; Batteries for phones; Battery cases; Battery charge devices; Battery chargers; Battery chargers for laptop computers; Battery chargers for mobile phones; Battery chargers for tablet computers; Battery chargers for use with telephones; Cables and wires; Cables (Coaxial -); Cables, electric; Cables (Fibre [fiber Am.] optic -); Calculators; Camera mounts; Camera stands; Camera tripods; Cameras for vehicles; Car charger; Card readers; Carrying cases for mobile computers; Carrying cases for mobile phones; Carrying cases for mobile telephones; Cases adapted for mobile phones; Cases adapted for netbook computers; Cases adapted for</p>	<p>Class 9 Computers and computer hardware; Computer software; Computer hardware; Computer diskettes; Computer peripherals; Computer keyboards; Computer systems; Computer monitors; Computer screens; Computer mouse; Computer mouses; Computer motherboards; Computer disks; Monitors [computer hardware]; Computer operating software; Laptop computers; Computer touchscreens; Computer keypads; Computer cabling; Computer mousepads; Wireless computer peripherals; Computer memory hardware; Computer chips; Microchips [computer hardware]; Computer cables; Computer networking hardware; Computer apparatus; Computer chipsets.</p> <p>Class 37 Maintenance and repair of computers; Repair or maintenance of computers; Repair of damaged computers; Maintenance and repair of telephones; Repair and maintenance of smartphones; Repair of computers; Telephone repair; Computer installation and repair.</p>

<p>notebook computers; Cases adapted for tablet computers; Cases for smartphones; Cases for tablet computers; Cell phone cases; Cell phone covers; Cell phones; Cellular phones; Cellular telephone cases; Cellular telephones; Coaxial cables; Computer cables; Computer keyboards; Computer memories; Computer mouse; Computer mouse pads; Computer mousepads; Computer printer; Computer printers; Cooling pads for wireless computers; Data cables; Ear buds; Ear phones; Earbuds; Earphones; Ethernet adapter; Ethernet adapters; Ethernet cables; Extension leads; Extension leads [electric]; External computer hard drives; External hard drives; External memories for cellphones; Hard disk drives; Hard disks; Hard drives; Keyboards; Keyboards for mobile phones; Keyboards for smartphones; Keyboards for tablets; Keypads; Laptop bags; Laptop carrying cases; Laptop cases; Laptop computers; Laptop covers; Laptop sleeves; Laptops [computers]; LCD [liquid crystal display]; LCD panels; Leather cases for cellular phones; Leather cases for mobile phones; Leather cases for smartphones; Leather cases for tablet computers; Memory card readers; Memory cards; Memory cards for cameras; Memory sticks; Memory storage devices; Mobile phone covers; Mobile phone speakers; Mobile phones; Mobile telephone batteries; Mobile telephone cases; Mobile telephone covers; Mobile telephones; Mouse pads; Mousepads; MP3 players; MP4 players.</p>	
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Class 9 of the contested application

Computers

24. The above contested goods include as a broad term, *laptop computers* contained in the opponent's goods and therefore these goods are considered identical in line with the principle set out in *Meric*.

Laptop computers; Computer keyboards; Computer mouse; Computer mouses; Computer mousepads; Computer keypads; Computer cabling; Computer cables

25. The above contested goods all have direct equivalents in the opponent's specification and are therefore clearly identical due to their identical or near-identical wording.

Computer apparatus

26. The above term is a very broad collective term encompassing any equipment used in connection with the function of a computer, such as, computer hardware components e.g. mouse, keyboard and monitor, etc. Therefore, the contested *computer apparatus* includes as a broad term, *computer keyboards*, *computer mouse*, *external computer hard drives* and *computer printers* contained in the opponent's goods. Accordingly, these goods are considered identical in line with the principle set out in *Meric*.

Computer peripherals; Wireless computer peripherals

27. The above broad terms relate to devices that can be easily removed from, or connected to a computer, and include, amongst other things, *computer mouses* and *computer keyboards* contained in the opponent's goods. Accordingly, the competing goods are identical based on the *Meric* principle.

Computer memory hardware

28. The above broad term relates to devices that can be used to store information, such as data, in a computer, for example, a hard disk drive. Accordingly, the contested term overlaps with *memory storage devices* contained in the opponent's goods and therefore these goods are considered identical in line with the principle set out in *Meric*.

Computer diskettes; Computer disks

29. The above contested terms are types of computer data storage devices. As broad terms I find that they encompass *hard disks* contained in the opponent's goods. Therefore, these goods are identical in line with the principle set out in *Meric*.

Computer software; Computer operating software

30. The above contested *software* goods are used to operate computers and execute specific tasks and as such, play an important role in the function of computers. Consequently, I find that the above contested goods and the opponent's *laptop computers* are dependent on one another for their operation. I therefore find them to be complementary. Furthermore, I am of the view that the goods can coincide in end users and producers. However, I acknowledge that the method of use and nature of the goods at issue are different, and that the places that the respective goods are purchased will sometimes differ on the basis that *computers* being tangible goods can be purchased in physical stores, whereas *software* being intangible goods will likely be purchased by downloading online. Accordingly, I find that the competing goods are similar to a medium degree.

Computer systems

31. Generally speaking, a *computer system* is a collection of software and hardware which all works together. As such, some of the opponent's goods may be used as part of that system, such as *laptop computers*. Therefore, these goods are identical in line with the principle set out in *Meric*.

Computer screens

32. A computer screen or display screen is an essential built-in component of the opponent's *laptop computers*, on the basis that the screen allows the user to interact with the computer. As such, the goods at issue are likely to be produced by the same undertaking and target the same end user via the same distribution channels. Furthermore, as the opponent's *laptop computers* are dependent on the contested *computer screens* to function, I find that the goods are complementary. Therefore, these goods are similar to a medium degree.

Computer monitors; Monitors [computer hardware]

33. The above goods are computer peripheral output devices which when connected to a computer, display signals sent by the computer in a visual format, enabling users to interact with the computer. Therefore, broadly speaking, computer peripherals are devices that connect to computers but are not part of the core computer architecture. Whilst I note that the above goods are not contained in the opponent's goods, I bear in mind that the opponent's goods do contain a computer peripheral output device, namely a *computer printer*. As such, I find that the mentioned competing goods share a degree of similarity on the basis that they are all computer peripheral devices that connect to computers in order to function. Whilst I acknowledge that the physical nature and purpose of the competing goods differ, and that they are neither in competition nor complementary, I recognise that these goods are likely to be found in the same area of a retail store and will share the same user, who may well purchase the competing goods at the same time for their computer set-up, for example. Therefore, I find that the competing goods are similar to a low degree.

Computer touchscreens

34. Generally speaking, a touch screen is a computer display screen that is sensitive to human touch, allowing users to interact with the computer by touching pictures or words on the screen. Computers that incorporate touch screens include,

smartphones, information kiosks, computers, including laptops and tablets, etc. Although the above contested goods are not contained in the opponent's goods, I bear in mind that the opponent's goods contain *laptop computers* which can incorporate computer touch screens. Accordingly, I find that the above contested goods share a degree of similarity with the opponent's *laptop computers*, on the basis that the contested goods may be an essential component in the opponent's goods and are dependent on the applicant's goods to function effectively. Whilst the nature and uses of the goods differ, the producers, users and distribution channels may overlap. Furthermore, since the touch screens may be required for the operation of the opponent's *laptop computers*, I find the competing goods to be complementary. Overall, I find these goods to be similar to a low degree.

Computer motherboards; Computer chips; Microchips [computer hardware]; Computer chipsets

35. A *computer motherboard* is the main printed circuit board inside a computer that connects the different parts of a computer together, enabling it to function; *Computer chips/microchips* are a set of electronic circuits; *Chipsets* are chips that extend the interfaces between all of the components of a motherboard. Whilst I acknowledge that these goods are not contained in the opponent's list of goods, I bear in mind that they will be included as an essential component in the opponent's *laptop computers* and *mobile phones*. As such, whilst the nature, uses and users of the goods may differ, I find that the goods share a degree of similarity, on the basis that they can coincide in producers and distribution channels. Furthermore, as they are an essential component in the opponent's goods, they will therefore be dependent on the applicant's goods to function. Accordingly, I find the competing goods to be complementary. Overall, I find these goods to be similar to a low degree.

Class 37 of the contested application

Maintenance and repair of computers; Repair or maintenance of computers; Repair of damaged computers; Repair of computers; Computer installation and repair

36. The applicant is providing a service involving the maintenance, installation and repair of computers. I bear in mind that *laptop computers* are included in the opponent's list of goods. Accordingly, I am of the view that the respective users, and trade channels of the competing goods and services are likely to overlap. There is also likely to be a complementary relationship between the applicant's services and the opponent's *laptop computers*. Therefore, I find that the goods and services at issue are similar to a low degree.

37. The same conclusion also applies to the applicant's remaining services, namely, maintenance and repair of telephones; and repair and maintenance of smartphones; telephone repair, and the opponent's *cell phones, cellular phones, cellular telephones, mobile phones, and mobile telephones*. Therefore, I find that the aforesaid goods and services are similar to a low degree.

The average consumer and the nature of the purchasing act

38. 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).

39. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. (as he then was) described the average consumer in these terms:

“60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The words “average” denotes that the person is typical. The term “average” does not denote some form of numerical mean, mode or median.”

40. The average consumer of the goods and services at issue is likely to include members of the general public as well as a more specialised commercial customer or business. The goods and services will mainly be available via retailers, being both general retailers and more specialist ones, and their online equivalents. As the goods in Class 9 are most likely to be the subject of self-selection from traditional retail outlets on the high street, catalogues and websites, visual considerations are likely to dominate the selection process. Visual considerations will also dominate the selection of the associated services in Class 37. However, I do not discount an aural component playing a part given that orders may be placed by telephone or that word-of-mouth recommendations and advice may be received from sales assistants. Whilst my own experience tells me that the cost of the goods and services can vary widely, the need for the consumer to ensure they choose the correct specification of computer, or even relatively inexpensive goods such as computer keyboards and mice, is likely to result in at least a medium level of attention being paid to their selection by both the average consumer as well as a more specialised commercial customer. A similar level of attention will also be paid to the selection of a trader specialising in the maintenance, installation and repair of such goods.

Comparison of the marks

41. It is clear from *Sabel BV v. Puma AG* 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 them, bearing in mind their distinctive and dominant components. The CJEU stated in *Bimbo SA v OHIM*, that:

“34. [...] 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.”

42. It would be wrong, therefore, to artificially dissect the trade marks, although it is necessary to take into account their distinctive and dominant components 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.

43. The trade marks to be compared are as follows:

Opponent's mark	Applicant's mark (series of 2)
Gadget Centre	Gadget Centre (U.K) Ltd Gadget Centre UK Ltd

44. With regard to the similarity of the applicant's marks, in its statement of grounds the opponent states the following:

“The registered trademark and the opposed [sic] application both have the primary description of Gadget Centre and the addition of the words Ltd and UK are not distinct but are generic descriptions of a registered limited liability company and the country where the company is located.”

45. With regard to the similarity of the marks, in its written submissions,⁵ the applicant states the following:

“We believe that this opposition has no holding. If I registered “Gadget Centre London Ltd” or “Gadget Centre South West Ltd” or "Gadget Centre International Ltd", there would be no issues. Plus, my trade mark also has Ltd at the end, which clearly refers to a specific legal entity (a limited company), while the opposition's is simply “Gadget Centre” which could refer to all sorts

⁵ Written submissions in lieu.

entities (community initiative, movement, group, vision, idea, product name, design idea, concept, political or social campaign, etc).”

Overall impression

46. The opponent’s word mark comprises the words ‘Gadget Centre’ presented in standard upper and lower sentence case with no stylisation or figurative elements. There are no other elements that contribute to the overall impression of the mark which lies in the words themselves.

47. The applicant’s word marks comprise the words ‘Gadget Centre (U.K) Ltd’ and ‘Gadget Centre UK Ltd’ presented in standard upper and lower sentence case with no stylisation or figurative elements. The ‘(U.K) / UK’ element indicates geographic location, and ‘Ltd’ indicates that the applicant’s undertaking is a limited company. Therefore, the overall impression of the mark is dominated by the words ‘Gadget Centre’ which appear as the first two words within the mark.

Visual comparison

48. Visually, the marks coincide insofar as they identically share the same two words, ‘Gadget Centre’. This similarity appears at the beginning of the respective marks, being where consumers tend to focus⁶ as this position is generally considered to have more impact due to consumers in the UK reading from left to right. Accordingly, this is the element that will be read first in the applicant’s marks and is the only element of the opponent’s mark.

49. The competing marks are visually different in that the applicant’s marks contain the additional elements ‘(U.K Ltd)’ and ‘UK Ltd’. These differences appear at the end of the marks rendering the competing marks different in length. Overall, I find the marks visually similar to at least a medium degree.

Aural comparison

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

50. Aurally, the opponent's mark will be pronounced as 'Gadget-Centre', whereas the applicant's marks will be pronounced as 'Gadget-Centre-U-K-Limited'. Accordingly, the first two words of the respective marks will be identically pronounced. Overall, I find that the marks are aurally similar to at least a medium degree.

Conceptual comparison

51. 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 GC and the CJEU including *Ruiz Picasso v OHIM* [2006] E.C.R.-I-643; [2006] E.T.M.R 29. The assessment must, therefore, be made from the point of view of the average consumer.

52. The meaning of 'Gadget Centre' is obvious, and therefore in terms of the goods and services at issue will likely convey the idea of an establishment concerned with gadgets, being small mechanical devices or appliances. Therefore, as the competing marks identically contain the words 'Gadget Centre' they share conceptual similarity. Accordingly, I find there to be a very high degree of conceptual similarity between the marks.

Distinctive character of the earlier trade marks

53. The distinctive character of a trade mark can be measured only, first, by reference to the goods or services in respect of which registration is sought and, second, by reference to the way it is perceived by the relevant public. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, 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).”

54. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The degree of distinctiveness is an important factor as it directly relates to whether there is a likelihood of confusion; the more distinctive the earlier mark, the greater the likelihood of confusion.

55. Neither party has made any specific comments on the distinctiveness of the earlier mark. Although the distinctiveness of a mark can be enhanced by virtue of the use that has been made of it, the opponent has not filed any evidence of use. Consequently, I have only the inherent position to consider.

56. The earlier mark contains the word ‘Gadget Centre’ which, as previously stated, will likely be perceived as a reference to an establishment that is concerned with gadgets. Consequently, I find that the phrase ‘Gadget Centre’ has an allusive nature in terms of the goods at issue. Overall, I find that the opponent’s mark has a low degree of inherent distinctive character.

Likelihood of confusion

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

58. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one trade mark for the other, while indirect confusion is where the average consumer realises the trade marks are not the same but puts the similarity that exists between the trade marks and goods down to the responsible undertakings being the same or related.

59. Earlier in the decision I concluded that the marks are visually and aurally similar to at least a medium degree, and conceptually similar to a very high degree. I have found that the earlier mark has a low degree of inherent distinctive character for the goods at issue. Furthermore, I have found that similarity between the goods and services ranges from similar to a low degree to identical. I have found that the average consumer of the goods and services will include members of the general public and businesses or professional users, who will pay at least a medium degree of attention when selecting the goods or services. I have found that the purchasing process will be largely visual, however, I have not discounted aural considerations.

60. I bear in mind that the applicant's marks contain the entirety of the earlier mark and that this shared element has a low degree of distinctive character. Furthermore, the overall impression of the mark is dominated by the shared element, 'Gadget Centre', which appears as the first two words in the applicant's marks. The '(U.K)/UK' and 'Ltd' elements present in the applicant's marks, though not negligible, do not add distinctiveness to the marks and would merely be perceived as an indication of

geographic location and company status. Accordingly, although the average consumer views marks as a whole, case law also directs me to bear in mind the dominant and distinctive elements of the marks. It is settled case-law that the average consumer is unlikely to see the marks side-by-side and will therefore be reliant on the imperfect picture of them they have kept in their mind. Accordingly, with all things considered, given the similarity of the marks and the similarity or identity between the goods and services, I find that the average consumer is unlikely to recall the differences between the marks resulting in the consumer confusing the marks for one another and therefore, there is a likelihood of direct confusion.

Conclusion

61. The opposition under Section 5(2)(b) of the Act has succeeded. Subject to any successful appeal, the application will be refused.

Costs

62. The opponent has been successful and is entitled to an award of costs in line with the scale published in Tribunal Practice Notice (“TPN”) 2/2016. For Fast Track opposition proceedings, costs are capped at £500, excluding the official fee. I award costs to the opponent on the following basis:

Official fee:	£100
Preparing a statement and considering the other side’s statement:	£200
Considering the other side’s written submissions:	£50
Total	£350

63. I therefore order Gadget Centre (U.K) Ltd to pay usama&saeed Ltd the sum of £350. This sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 25th day of August 2023

**Sam Congreve
For the Registrar**