

O/0867/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00004165309

IN THE NAME

DOOSAN ENERBILITY CO., LTD.

TO REGISTER THE FOLLOWING TRADE MARK:

The logo consists of the word "DoSS" in a bold, blue, italicized sans-serif font. The letters are slanted to the right, giving it a dynamic appearance.

IN CLASS 06

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. OP000454509

BY DAUSSAN

BACKGROUND AND PLEADINGS

1. On 25 February 2025, DOOSAN ENERBILITY CO., LTD. (“the Applicant”) applied to register the trade mark shown on the cover page of this decision in the UK (“the Applicant’s mark”). The application was accepted and published in the Trade Marks Journal on 07 March 2025 in respect of the following goods:

Class 06: Stainless steels; steel pipes; steel sheets; metals in foil or powder form for 3D printers; metals and metal alloys; common metals and their alloys; ingots of common metal.

2. On 04 June 2025, DAUSSAN (“the Opponent”) opposed the application under section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opposition is directed against all of the Applicant’s goods listed above.
3. The Opponent relies upon the following trade mark (“the Opponent’s mark”):

DOSSOLITE

UK Trade Mark registration number UK00004213190

Filing date: 03 June 2025

Priority date: 24 January 2025 ¹

Registration date: 29 August 2025

Relying on all of the goods for which the mark is registered, namely:

Class 1: Industrial chemicals; Chemicals, for use in the following fields: Foundry and steel industry; Powders and Coverings, for use in the following fields: Wear prevention for foundry and steelwork components; Casting powders, for use in the following fields: Foundry and steel industry; Minerals in powder form for industrial use; Foundry moulding preparations; Substances for the purification of fluids; Chemical reagents, other than for medical or

¹ This is claimed from the EUIPO under filing no. 019135613

veterinary purposes; Coatings for waterproofing [chemicals]; Masonry, cement and concrete waterproofing preparations other than paints or oils; Fire retardant chemicals, Flame proofing solutions and Flame retarding compositions; Fire protection compositions; Refractory materials, powders and linings made of mineral substances, for use in the following fields: Foundry and steel industry; Purifying products used in the production of ferrous and non-ferrous metal castings.

Class 17: Insulating refractory materials for the steel industry; Insulating refractory materials, in particular granules, for making foundry moulds; Insulators; Insulating materials, Insulating cladding, insulation powders, Insulating boards and plates; Insulating materials, powders and refractory linings; Weatherstripping compositions; Caulking materials; Thermal insulating materials; Pipe muffers, not of metal.

4. By virtue of its earlier priority date, the above registration constitutes an earlier mark within the meaning of 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 use requirements specified within section 6A of the Act.
5. The Opponent submits that, due to the similarity between the trade marks and the similarity in respect of the goods, there exists a likelihood of confusion on the part of the public.
6. The Applicant filed a counterstatement denying that the respective marks are confusingly similar and that the goods are similar.
7. The Opponent is represented by Dolleymores LLP, and the Applicant is represented by Barker Brettell LLP. Neither party filed evidence nor requested

a hearing, however the Applicant filed submissions-in-lieu. I make this decision having taken full account of all the papers, referring to them as necessary.

DECISION

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

8. 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”

9. 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

10. 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.”

11. In the judgment of the Court of Justice of the European Union (“CJEU”) in *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, Case C-39/97, the court stated at paragraph 23 of its judgment that:

“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.”

12. The relevant factors identified by Jacob J. (as he then was) in *British Sugar Plc v James Robertson & Sons Limited* ("*Treat*") case, [1996] R.P.C. 281, for assessing similarity were:

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

13. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs)* (OHIM), Case T-325/06, the General Court stated that "complementary" means:

"...there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking."

14. The goods to be compared are:

<u>Opponent's Goods</u>	<u>Applicant's Goods</u>
Class 1: Industrial chemicals; Chemicals, for use in the following fields: Foundry and steel industry; Powders and Coverings, for use in the following fields: Wear prevention for foundry and steelwork components; Casting powders, for use in the following fields: Foundry and steel industry; Minerals in powder form for industrial use; Foundry moulding preparations; Substances for the purification of fluids; Chemical reagents, other than for medical or veterinary purposes; Coatings for waterproofing [chemicals]; Masonry, cement and concrete waterproofing preparations other than paints or oils; Fire retardant chemicals, Flame proofing solutions and Flame retarding compositions; Fire protection compositions; Refractory materials, powders and linings made of mineral substances, for use in the following fields: Foundry and steel industry; Purifying products used in the production of ferrous and non-ferrous metal castings. Class 17: Insulating refractory materials for the steel industry; Insulating refractory materials, in particular granules, for	Class 6: Stainless steels; steel pipes; steel sheets; metals in foil or powder form for 3D printers; metals and metal alloys; common metals and their alloys; ingots of common metal.

making foundry moulds; Insulators; Insulating materials, Insulating cladding, insulation powders, Insulating boards and plates; Insulating materials, powders and refractory linings; Weatherstripping compositions; Caulking materials; Thermal insulating materials; Pipe muffs, not of metal.	
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Stainless steels; Steel sheets; Metals and metal alloys; Common metals and their alloys; ingots of common metal.

15. The Applicant's goods consist of raw, semi-finished or finished metal materials used in manufacturing, construction and industrial applications. Their users are likely to be both business customers and technically knowledgeable professionals in sectors such as engineering, manufacturing, construction, metalworking and steel production. By contrast, the Opponent's Class 1 goods consist primarily of industrial chemicals and chemical preparations. These goods differ from the Applicant's goods in their physical nature, being chemicals, powders, preparations and mineral compositions rather than metal products. They also differ in their primary purpose and method of use. The Applicant's goods are metals used as materials in their own right, whereas the Opponent's Class 1 goods are principally used in the production, treatment, protection and processing of materials.
16. However, several of the Opponent's Class 1 goods are expressly directed towards the foundry and steel industries, namely *“chemicals for use in the foundry and steel industry”*; *“powders and coverings for wear prevention for foundry and steelwork components”*; *“casting powders”*; *“foundry moulding preparations”*; *“refractory materials, powders and linings made of mineral*

substances for use in the foundry and steel industry"; and *"purifying products used in the production of ferrous and non-ferrous metal castings"*. Those goods are likely to be used during the manufacture, casting or treatment of steel and metal products such as those covered by the Applicant's specification. Consequently, the respective goods may be purchased by the same professional users and may be supplied through overlapping industrial trade channels. While they are not competitive, there is a degree of complementarity between them. Nevertheless, the relationship is indirect because the Applicant's goods can be produced and used without the specific chemicals identified in the Opponent's specification, and vice versa. Accordingly, I find these goods to be similar to the Applicant's goods to a low degree.

Steel pipes

17. I will compare the above term of the Applicant against the Opponent's *"Pipe muffs, not of metal"*. In terms of their nature, the goods differ significantly. Steel pipes are metal products used as structural components in construction and industrial settings. Pipe muffs, not of metal on the other hand, are insulating or protective fittings designed to be placed around pipes. They are therefore different physical goods made from different materials. The goods also differ in their primary purpose. The essential purpose of steel pipes is to form part of a structural system. By contrast, pipe muffs are intended to insulate, protect or improve the performance of pipes. As such, the goods are not in competition, and a consumer would not substitute one for the other.
18. However, there is some overlap in their end users. Pipe muffs are specifically designed for use with pipes and may be installed around steel pipes in industrial, commercial or domestic environments. Consequently, the goods are likely to be encountered by the same professional consumers. They may also be sold through overlapping trade channels specialising in piping and industrial equipment.
19. Turning to complementarity, the fact that pipe muffs are designed for use with pipes creates a relationship between the goods. However, applying the

guidance in *Boston Scientific*, the relationship falls short of the degree of complementarity required to establish a strong similarity. Whilst pipe muffs may be used with steel pipes, they are not indispensable to the use of steel pipes. Steel pipes can be installed and function without pipe muffs, and pipe muffs can be used with pipes made from a variety of materials. Consequently, consumers are unlikely to believe, solely on that basis, that responsibility for the respective goods lies with the same undertaking.

20. Taking all of these factors into account, namely the differences in nature and primary purpose, the absence of competition, but recognising the potential overlap in users, trade channels and the existence of a limited complementary relationship, I find goods to be similar to a low degree.

Metals in foil or powder form for 3D printers

21. The Applicant's goods are metallic raw materials used in 3D printing processes to create finished metal components. The Opponent's Class 1 goods, namely "*powders and coverings for wear prevention for foundry and steelwork components; casting powders for use in the foundry and steel industry; minerals in powder form for industrial use; refractory materials, powders and linings made of mineral substances, for use in the foundry and steel industry*", are industrial materials used in foundry, steelmaking and metal-processing operations.
22. Whilst the goods may share a similar nature on a general level i.e., being powders, they differ in their purpose and method of use. The Applicant's goods constitute the material from which a finished product is produced, whereas the Opponent's goods are used to facilitate, protect or support manufacturing processes. They also share some similarities in terms of their users and trade channels. Both are likely to be purchased by industrial undertakings operating in the metalworking, engineering and manufacturing sectors and may be supplied through specialist industrial distributors. However, the goods are not in competition and are not complementary in the sense described in *Boston Scientific*, as neither is indispensable or particularly important for the use of the

other. Taking all relevant factors into account, I find the goods to be similar to a low degree.

23. Turning to the Opponent's goods in class 17, namely, "*insulating refractory materials, in particular granules, for making foundry moulds; insulation powders; insulating materials, powders and refractory linings*" there is again a slight overlap in nature at a general level where all of the goods are in powder or granule form. However, they differ in their purpose and method of use. The Applicant's goods are used to manufacture finished products through 3D printing, whereas the Opponent's goods are used to protect equipment, retain heat or facilitate industrial processes. Nevertheless, the goods may be encountered by the same professional consumers in the broader metal-manufacturing sector and may be sold through overlapping specialist industrial suppliers. However, they are not in competition and do not exhibit the degree of complementarity required by *Boston Scientific*. Consequently, while there is some overlap at a general level, the differences remain significant. I therefore find the goods to be similar to a low degree.

The average consumer and the nature of the purchasing act

24. 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).
25. 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)* [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.

26. I have no submissions regarding the identity of the average consumer from the Opponent. The Applicant, though, submits that both parties operate in the engineering and industrial fields and therefore the average consumer for both parties is the same.

27. The goods at issue consist of industrial metal products and raw or semi-finished metallic materials, namely stainless steels; steel sheets; metals and metal alloys; common metals and their alloys; and ingots of common metal. These goods are primarily directed at commercial and industrial users, such as

manufacturers, engineers, construction companies, fabricators, metal processors and businesses operating within the engineering, building and manufacturing sectors. While some of the goods may also be purchased by members of the general public for specialist construction or fabrication projects, the average consumer is likely to be predominantly professional in nature.

28. Given the technical nature of the goods, the average consumer is likely to consider things such as grade, composition, strength, durability, corrosion resistance, and suitability for a particular industrial application. As a result, consumers are likely to pay a higher-than-average degree of attention when selecting the goods. The purchasing process is likely to involve comparing technical documentation, product specifications and price quotations before purchasing the goods.
29. The purchasing act is therefore likely to be primarily visual in nature, as consumers will encounter the goods through catalogues, websites, technical specifications, and product listings. However, aural considerations should not be discounted, as the goods may also be discussed with suppliers, sales representatives or procurement personnel.

Comparison of trade marks

30. 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 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”.

31. 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.
32. The trade marks to be compared are as follows:

The Opponent's mark	The Applicant's mark
DOSSOLITE	<i>DoSS</i>

33. The Opponent submits that the distinctive element of the Applicant's mark is “DOSS”, whilst the distinctive element of its own mark is “DOSSO”. It argues that neither term has any recognised meaning and that neither is descriptive of the goods at issue. The Opponent further contends that the element “LITE” in its mark is of lesser significance because it appears at the end of the mark and is likely to be understood as an allusion to something that is “lightweight”. Consequently, the Opponent submits that the elements “DOSS” and “DOSSO” are the most memorable and distinctive components of the respective marks and are therefore the elements most likely to be recalled by consumers. On that basis, it maintains that the marks “DOSS” and “DOSSOLITE” are visually and phonetically similar.
34. The Applicant submits that the marks must be assessed by reference to their overall impressions, whilst acknowledging that their individual components should also be considered. The Applicant argues that its mark is a stylised blue

logo presented in an italic font and that, due to its combination of upper and lower case lettering, it may be verbalised either as “Doss” or as the individual letters “D-O-S-S”. In contrast, the Opponent’s mark consists of the single term “DOSSOLITE”, with no stylisation suggesting that any particular element should be given greater emphasis. The Applicant further submits that the Opponent’s mark is more than twice the length of its own mark and that, because “LITE” is arguably a recognised expression, consumers are likely to perceive a natural break within the mark. It contends that the marks differ aurally, as the Opponent’s mark comprises three syllables whereas its own mark would comprise either one syllable (“Doss”) or four syllables (“D-O-S-S”). Finally, the Applicant submits that neither mark conveys any conceptual meaning and that the marks are therefore visually and aurally distinguishable.

Overall Impression

35. The Opponent’s mark consists solely of the word “DOSSOLITE”. As there are no additional elements, its overall impression resides in that word as a whole. I have taken into account the Opponent’s submission that the element “DOSSO” is more dominant than “LITE”; however, I do not agree. In my view, a significant proportion of consumers will perceive the mark as a single invented term with no readily identifiable meaning. Whilst I acknowledge that some consumers may dissect the mark into the elements “DOSSO” and “LITE”, and therefore consequently perceive “LITE” as alluding to a lighter or lightweight version of “DOSSO” (whatever that may be), I consider this to represent only a minority of consumers. Accordingly, for the majority of the relevant public, the overall impression of the mark lies in the word “DOSSOLITE” as a whole.
36. The Applicant’s mark consists of the word “DoSS” presented in a blue, italicised, minimally stylised, font. Despite this limited stylisation, the dominant impression of the mark remains the word ‘DoSS’ itself.

Visual Comparison

37. The Opponent's mark comprises nine letters, whereas the Applicant's mark consists of only four. I recognise, however, that the first four letters of the Opponent's mark, "DOSS", are identical to the Applicant's mark in its entirety, with the marks differing only through the addition of the final five letters, "OLITE", in the Opponent's mark. I also note that the Applicant's mark is presented in a minimally stylised blue font, which creates a point of visual differentiation, albeit not a particularly significant one. Taking into account the overall impressions conveyed by the respective marks, I consider them to be visually similar to between a low and medium degree.

Aural Comparison

38. Aurally, the Opponent's mark comprises three syllables and is likely to be pronounced "DOSS-O-LITE". As regards the Applicant's mark, I consider it more likely than not that it will be pronounced as the single syllable "DOSS". Whilst I acknowledge the Applicant's submission that the capitalisation of the mark may lead some consumers to articulate it as the individual letters "D-O-S-S", I consider this less likely. Given the brevity of the sign, a significant proportion of consumers are more likely to perceive and pronounce it as a single word.
39. On that basis, the Applicant's mark is identical to the first syllable of the Opponent's mark, with the remaining syllables "O-LITE" serving as points of difference. Taking all of the above into account and bearing in mind the overall impressions of the marks, I find them to be aurally similar to a fairly low degree.

Conceptual Comparison

40. Conceptually, the Opponent's mark is likely to be perceived as an invented word that conveys no clear or immediately recognisable meaning. In relation to the Applicant's mark, whilst I note that "DOSS" is a dictionary-defined slang term meaning "to sleep outside or in an empty building because you have no

home and no money”² I do not consider that meaning to be one that will readily occur to a significant proportion of consumers. Rather, I consider that many consumers will perceive “DOSS” as a meaningless term in the context of the goods at issue. Consequently, neither mark is likely to convey a clear conceptual message to the average consumer. In those circumstances, I regard the marks as conceptually neutral.

Distinctive character of the earlier trade marks

41. 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

² <https://dictionary.cambridge.org/dictionary/english/doss>

statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

42. 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 marks, I only have the inherent position to consider.
43. The Opponent submits that the distinctive element of its mark is “DOSSO” and that “LITE” alludes to something that is lightweight. It states that “DOSSO” has no meaning nor is it descriptive of the goods concerned, therefore rendering it distinctive.
44. The Applicant makes no specific submissions regarding the distinctiveness of the Opponent’s mark, but simply states “The Opponent has not made any claim to enhanced distinctiveness and so a normal level of distinctiveness is assumed”.
45. The Opponent’s mark consists of the plain word “DOSSOLITE” without any additional stylisation or figurative elements. As such, the inherent distinctive character rests solely in the word itself. Given that the mark consists of a word that is likely to be perceived as invented, which will be attributed no particular meaning, I consider it to be inherently distinctive to a high degree.

Likelihood of confusion

46. 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.

47. 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.
48. Throughout the course of this decision, I have determined that:
- The goods are range from being dissimilar to similar to a low degree.
 - The average consumers are primarily manufacturers, engineers, construction companies, fabricators, metal processors and businesses operating within the engineering, building and manufacturing sectors. The goods may also be purchased by members of the general public for specialist construction or fabrication projects; however, this does not constitute a significant number.
 - The consumer will exhibit a higher-than-average level of attention when purchasing the goods, and the purchasing process is mainly visual but aural considerations may play a part.

- The marks at issue are visually similar to between a low and medium degree. The marks are aurally similar to a fairly low degree. The marks are considered conceptually neutral.
- The Opponent's mark is considered to possess a high level of inherent distinctive character.

49. I acknowledge that “DoSS” and “DOSSOLITE” share four letters at their beginnings, a position where the attention of consumers is usually directed.³ However, their overall visual and aural similarities only range from between a low and medium degree, and fairly low respectively. In particular, the Opponent's mark contains the additional element “OLITE”, resulting in a mark that is more than twice the length of the Applicant's mark and creating a noticeably different visual appearance and pronunciation. In the absence of any conceptual hook attributable to either mark, the conceptual comparison is neutral and does not serve to increase the similarity between them.
50. Further, whilst there is no special test applicable to the comparison of short marks ⁴, I consider that the brevity of the Applicant's mark, “DoSS”, compared with the considerably longer “DOSSOLITE”, makes the points of difference between the marks more readily apparent to consumers. In my view, this is particularly so given the higher-than-average degree of attention likely to be exercised when purchasing the relevant goods.
51. I have also borne in mind the principle of interdependency. Whilst a low degree of similarity between the goods may be offset by a greater degree of similarity between the marks, that is not the case here.
52. Taking all of the above into account, and allowing for imperfect recollection, I find that the differences between “DoSS” and “DOSSOLITE”, viewed alongside

³ While it is a general rule that beginnings of marks have more of an impact (see *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02), it is not always the case (see *CureVac GmbH v OHIM*, T-80/08)

⁴ See paragraph 44 of *BOSCO*, BL O/301/20

the low degree of similarity between the respective goods, are sufficient to enable consumers to distinguish between the marks. Accordingly, I find that there is no likelihood of direct confusion, whereby one mark would be mistaken for the other.

53. 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 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).”

54. 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*.⁵ 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.
55. 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.
56. In the present case, the marks share the element “DOSS”, which forms the entirety of the Applicant's mark and the beginning of the Opponent's mark. Whilst this commonality may lead consumers to notice a degree of similarity between the marks, I do not consider that it is likely to result in consumers assuming an economic connection between the parties.

⁵ *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207

57. I bear in mind that, in *L.A. Sugar*, the Appointed Person identified the addition of an element such as "LITE" as an example of the type of non-distinctive addition that may give rise to indirect confusion through a sub-brand or brand extension. However, I do not consider that the present case falls within that category. Whilst the Opponent's mark ends with the letters "LITE", I do not consider that the average consumer will naturally dissect "DOSSOLITE" into the separate elements "DOSSO" and "LITE", nor perceive it as a "lite" version of either "DOSS" or "DOSSO". Rather, in my view, "DOSSOLITE" will be perceived as a single, invented word, the overall impression of which lies in the mark as a whole. In those circumstances, I consider it unlikely that consumers would view the addition of a further five letters, resulting in a distinct nine-letter word with its own visual appearance and pronunciation, as a mere brand extension of "DOSS". Instead, they are more likely to regard "DOSSOLITE" as a separate trade mark in its own right.
58. Furthermore, there is no evidence before me to suggest that the shared element "DOSS" enjoys such a heightened level of distinctiveness that consumers would expect any mark incorporating that element to originate from the same undertaking. In circumstances where the marks are visually and aurally similar to no more than a medium degree, conceptually neutral, and the goods are similar only to a low degree, I consider that the differences created by the additional letters and syllables in "DOSSOLITE" are sufficient to distinguish the marks in the minds of consumers.
59. Taking all of the relevant factors into account, including the higher-than-average level of attention likely to be paid by consumers during the purchasing process, I do not consider that the average consumer would view "DOSSOLITE" as a variant, sub-brand or brand extension of "DoSS". Accordingly, I find that there is no likelihood of indirect confusion.

Conclusion

60. The opposition under Section 5(2)(b) of the Act has failed in its entirety. Subject to any successful appeal, the application will proceed to registration for all of the goods concerned.

Costs

61. 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") 1/2023.⁶ In the circumstances, I award the Applicant the sum of £600. The sum is calculated as follows:

Considering the notice of opposition and preparing the counterstatement.	£250
Preparing written submissions-in-lieu.	£350
Total	£600

62. I therefore order **DAUSSAN** to pay **DOOSAN ENERBILITY CO., LTD.** the sum of £600. This sum is to 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 24th day of September 2026

Oliver Rose'Meyer
For the Registrar

⁶ As the proceedings were commenced after 01 February 2023