

O/0878/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. 3392109

IN THE NAME OF ZHEJIANG GEELY HOLDING GROUP CO., LTD.

TO REGISTER THE FOLLOWING TRADE MARK:

AI SPACE

IN CLASS 12

AND

THE OPPOSITION THERETO UNDER NO. 446917

BY VOLKSWAGEN AKTIENGESELLSCHAFT

Background and pleadings

1. On 15 December 2023, ZHEJIANG GEELY HOLDING GROUP CO., LTD. (“the applicant”) applied to register the trade mark ‘AI SPACE’ in the UK. The mark was accepted and published in the Trade Marks Journal on 12 January 2024. The following goods were filed for under the mark:

Class 12: Gear boxes for land vehicles; Motors, electric, for land vehicles; propulsion mechanisms for land vehicles; Cars; sports cars; motor homes; Self-driving cars; Framing for land vehicles; Electric cars; Plug-in electric cars.

2. On 16 April 2024, Volkswagen Aktiengesellschaft (“the opponent”) opposed the trade mark based upon Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). This is on the basis of its earlier UK trade mark:¹

ALLSPACE

UK registration number: UK00915367014

Filing date: 20 April 2016

Registration date: 30 August 2016

For the following goods and services:

Class 12: Vehicles and conveyances; Vehicles for locomotion by land, air, water or rail, and parts therefor; Motorized land vehicles; Motors and drives for land vehicles; Propulsion mechanisms for land vehicles; Chassis for vehicles; Vehicle superstructures for vehicles; Couplings for land vehicles; Suspension shock absorbers for vehicles; Shock absorbing springs for vehicles; Pneumatic tires (tyres); Tires for vehicle wheels; Rims for vehicle wheels; Solid rubber tyres for vehicle wheels; Vehicle wheels, vehicle wheel hubs; Inner tubes for pneumatic tires; Repair outfits for inner tubes, Adhesive rubber patches for repairing tyre inner tubes, Spikes for tires [tyres], Snow chains; Tires (Non-skid

¹ On 1 January 2021, the UK left the EU after the expiry of the transition period. Under Article 54 of the Withdrawal Agreement, the Registry created comparable UK trade marks for all right holders with an existing EUTM. As a result of the opponent’s EUTM being registered as at the end of the Implementation Period, a comparable UK trade mark was automatically created. The comparable UK mark is now recorded on the UK trade mark register, has the same legal status as if it had been applied for and registered under UK law, and retains its original priority date.

devices for vehicle -); Vehicle seats; Rearview mirrors; Head-rests for vehicle seats; Anti-theft alarms for vehicles, anti-theft devices for vehicles; Cigar lighters for automobiles; Automotive vehicles; Cars; Lorries; Trailers and semi-trailers for vehicles, trailer hitches for vehicles; Omnibuses; Motorbikes; Mopeds; Bicycles; Cable transport apparatus and installations; Carts, shopping trolleys, baggage trolleys; Air vehicles; Boats, ships; Locomotives; Buses; Caravans; Tractors; Two-wheeled vehicles, scooters (vehicles); Chair lifts, cable cars; Wheelchairs for transporting invalids; Parts and accessories for all the aforesaid goods, included in this class.

Class 28: Sporting articles and equipment, gymnastic articles; Festive decorations and artificial Christmas trees; Fairground and playground apparatus; Toys, games, playthings and novelties; Scale model kits [toys]; Soft toys and other soft toy articles; Automatic and coin-operated amusement machines, arcade video game machines; Video game apparatus; Scale model vehicles; Toy vehicles; Scooters (toys); Scale model cars; Toy cars; Radio-controlled toy vehicles; Balls for games; Kaleidoscopes; Board games; Card games; Playing balls; Stationary exercise bicycles; Archery implements; Gymnastic articles; Race tracks of plastic; Gloves for games; Floats for fishing; Screens (Camouflage -) [sports articles]; Parts and accessories for all the aforesaid goods, included in this class.

Class 35: Retailing and wholesaling relating to motor vehicles, motors and engines and drives for land vehicles, chassis for land vehicles, vehicle superstructures and tyres for vehicle wheels; Retailing and wholesaling for mail order relating to motor vehicles, motors and engines and drives for land vehicles, chassis, vehicle superstructures for vehicles and tyres for vehicle wheels; Retailing and wholesaling via the Internet relating to motor vehicles, motors and engines and drives for land vehicles, chassis for vehicles, vehicle superstructures for vehicles and tyres for vehicle wheels; Retailing and wholesaling by means of teleshopping channels relating to motor vehicles, motors and engines and drives for land vehicles, chassis for vehicles, vehicle superstructures for vehicles and tyres for vehicle wheels; Bringing together, for others, of a variety of motor vehicles, motors and engines and drives for land

vehicles, chassis for vehicles, vehicle superstructures for vehicles and tyres for vehicle wheels, excluding the transport thereof, enabling customers to conveniently view and purchase those goods in a retail sales outlet; Arranging of contracts, for others, for the buying and selling of motor vehicles, motors and engines and drives for land vehicles, chassis for vehicles or vehicle superstructures for vehicles and tyres for vehicle wheels; Business administration and organisational administration of vehicle fleets, for others; Commercial information and advice for consumers (consumer advice shop); Administrative processing of orders (office functions); Arranging of contracts for others for the buying and selling of goods; Consultancy and assistance with regard to the management and organisation of commercial and business enterprises; Advertising; Business management; Business administration; Office functions; Personnel management consultancy, business consultancy, radio and television advertising, organisation of trade fairs for commercial and advertising purposes, news clipping services; Presentation of goods on communication media, for retail purposes; Public relations services; Auctioneering services; Sales promotion for others; Personnel recruitment; Relocation services for businesses; Administrative order processing; Accounting; Sponsorship search.

Class 37: Building, construction and demolition; Rental of tools, plant and equipment for construction and demolition; Mining and gas and oil extraction; Pest control and extermination (other than for agricultural, horticultural or forestry purposes), and disinfection; Modification, repair, disassembly, maintenance and care of vehicles; Vehicle breakdown assistance [repair]; Custom conversion of motor vehicle bodies, chassis, motors and engines (tuning), included in class 37; Vehicle painting; Vehicle polishing; Anti-rust treatment for vehicles; Vehicle maintenance; Vehicle cleaning; Tyre repair; Maintenance, cleaning and repair of boilers and burners; Repair information; Construction information; Installation of doors and windows; Quarrying services; Machinery installation, maintenance and repair; Airplane maintenance and repair; Shipbuilding; Photographic apparatus repair; Clock and watch repair; Repair of security locks; Rustproofing; Furniture maintenance; Leather care, cleaning and repair; Disinfecting, Burglar alarm

installation and repair; Consultancy and information in relation to the aforesaid services, included in this class.

3. By virtue of its earlier filing date, the above registration constitutes an earlier mark in accordance with section 6 of the Act. The opponent's earlier mark had been registered for more than five years at the filing date of the contested mark and is, therefore, subject to the proof of use requirements in section 6A of the Act. The opponent stated that it had used the earlier mark for all of the registered goods and services, and the applicant requested that it file proof of the same.

4. In its pleadings, the opponent submits that the marks are highly similar and the goods and services are highly similar or identical. As such, the opponent submits there will be a likelihood of confusion between the marks, including a likelihood of association.

5. The applicant filed a counterstatement in which it denies similarity between the marks and also between the goods and services. It therefore denies a likelihood of confusion between the marks.

6. Only the opponent filed evidence. No hearing was requested. Both parties filed submissions in lieu of a hearing. This decision is taken following a careful perusal of the papers.

7. The opponent is represented by WP Thompson. The applicant is represented by Sonder & Clay.

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. Hence this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

Evidence and submissions

9. The opponent's evidence was filed in the form of a witness statement, dated 18 December 2025. This was filed by Ewan Elder, the UK Product Manager of the

opponent. The witness statement includes one exhibit labelled Exhibit EE. The purpose of this evidence is to prove use of the earlier mark within the relevant period.

10. I confirm that I have taken all filed documents into account and will summarise them to the extent that I deem necessary below.

EVIDENCE

11. In his witness statement. Mr Elder states that the Tiguan ALLSPACE SUV vehicle was launched in the UK in 2018. He states that it is one of Europe's best-selling SUV vehicles and has previously been the opponent's biggest-selling vehicle worldwide.

12. Mr Elder states that Volkswagen Group United Kingdom Limited is the UK business arm of the opponent and a wholly owned subsidiary. He further states that the use of the mark shown in the evidence is made either by the opponent or with the consent of the opponent.

13. The witness statement includes turnover figures for the sale of ALLSPACE vehicles in the UK, which are as follows:

Year	2018	2019	2020	2021	2022	2023
Sum of total turnover	£65,856,711	£130,531,910	£82,706,432	£91,968,14	£124,560,77	£108,348,663

14. Mr Elder states that SUVs represented over 40% of total Volkswagen sales in the UK in 2021, and 54.2% in 2023. Pages 139 to 144 of Exhibit EE provide the UK sales numbers for all of the opponent's car models, including the ALLSPACE model. The sales numbers of the total UK market are also included:

Year	Sales numbers of ALLSPACE vehicles	Total UK market
2018	2,365	2,367,147
2019	4,695	2,311,140
2020	3,065	1,631,064
2021	3,225	1,647,181

2022	4,162	1,614,063
2023	3,819	1,903,054

15. Mr Elder further includes the marketing spend for ALLSPACE vehicles in the UK, which are as follows:

	2018	2019	2020	2021	2022	2023	16/12/18 - 15/12/23
PPC (Pay Per Click)	£644	£10,244	£4,174	£13,750	£23,095	£18,792	£80,699
Display	-	£26,126	-	-	-	-	£26,126
Social	-	£16,843	-	-	-	-	£16,843

16. A sample of advertising and marketing materials for the UK are provided in pages 273-283 of the exhibit. Advertising evidence is also provided in the form of articles, press releases and social media posts. The term 'Tiguan Allspace' is used throughout all of the materials, alongside depictions of SUVs.

17. A sample of five invoices per year are provided on pages 16-45 of Exhibit EE, showing sales of vehicles bearing the ALLSPACE mark between 2018 and 2023. Mr Elder acknowledges that some of the 2018 invoices pre-date the relevant period but notes that they demonstrate the number of sales being made prior to the relevant date.

18. Pages 284-288 of the exhibit include a vehicle data file, dated 9 August 2021. Mr Elder states that this was the only vehicle data file and that it is not possible to discern how many consumers viewed the file.

19. Screenshots from the opponent's website and third-party retailer, Autotrader, are provided which show the use of the mark in relation to used vehicles for sale, targeted at UK consumers.

20. Reviews of ALLSPACE vehicles from various UK websites are provided at pages 215-239 of the exhibit.

MY APPROACH

21. In the applicant's submissions in lieu, it accepts that the evidence filed by the opponent shows use of the earlier mark in relation to Sports Utility Vehicles (SUVs). It further states:

"12. It is accepted that the goods of the Applicant:

Cars; sports cars; electric cars; Plug-in electric cars

are similar to the goods for which the Opponent has proven use."

22. I accept this submission and, as such, the Tribunal will not undertake a full examination of the evidence filed relating to proof of use of the opponent's mark at this stage. The examination of the opposition will proceed on the basis that proof has been shown for SUVs. I will return to consider the evidence of proof of use if it becomes necessary.

Decision

Section 5(2)(b)

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

"A trade mark shall not be registered if because-

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

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

Section 5A

24. Section 5A of the Act states:

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

The principles

25. 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 the goods and services

26. In comparing the respective specifications, all relevant factors should be considered, as per *Canon*, where the Court of Justice of the European Union (“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.”

27. The relevant factors identified by Jacob J. (as he then was) in the *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.

28. In *Gérard Meric v Office for Harmonisation in the Internal Market*, 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.”

Cars; sports cars; electric cars; plug-in electric cars

29. As noted above, in its submissions in lieu, the applicant acknowledged that the opponent’s term ‘Sports Utility Vehicles (SUVs)’ is similar to the above goods. I consider that the opponent’s goods fall under the scope of, or overlap in scope with, the above goods. The goods are therefore identical according to the principles of *Meric*.

30. As some of the contested goods, i.e. 'cars; sports cars; electric cars; plug-in electric cars', are identical to some of the goods on which the opposition is based, the Tribunal will not undertake a full comparison of the goods and services listed above. The examination of the opposition will proceed on the basis that the contested goods are identical to the goods and services covered by the earlier trade mark. If the opposition fails even where the goods/services are identical, it follows that the opposition will also fail where the goods/services are only similar.

Average consumer and the purchasing act

31. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97.

32. 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.

33. The goods and services at issue will be purchased by two groups of consumers. Firstly, they will be purchased by members of the general public. These consumers will take factors such as price and quality into account. The goods and services are usually expensive purchases and will be made relatively infrequently by these consumers. As such, I consider that these consumers will pay a high degree of attention during the purchasing process.

34. I also consider that the goods and services at issue will be purchased by businesses or professional organisations including rental car companies and transport providers. These consumers will take factors such as price, quality and suitability into account. As above, the goods and services are usually expensive purchases, although they will be made more frequently by business professionals. I consider that business professionals will also pay a high degree of attention during the purchasing process.

35. The goods and services at issue will be purchased in-person at car dealerships, as well as online from car manufacturers' or second-hand vehicle websites. Visual considerations will dominate the purchasing process as the consumer is likely to inspect the vehicle before purchasing and will likely have seen promotional material, read reviews or browsed websites. I accept that they may also receive word-of-mouth recommendations, but I consider that the aural element of the mark will be less important than the visual element for these goods.

Comparison of marks

36. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

“.....it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

37. It would be wrong, therefore, to dissect the trade marks artificially, although it is necessary to take into account the distinctive and dominant components of the marks and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

38. The respective trade marks are shown below:

The opponent's earlier mark	The applicant's contested mark
ALLSPACE	AI SPACE

39. In its written submissions, the opponent submits that the marks are highly visually, aurally and conceptually similar, due to both marks sharing the same first letter A and final five letters SPACE.

40. In its written submissions, the applicant submits that the marks are dissimilar due to its mark consisting of two common terms, AI and SPACE, AI being a common acronym for artificial intelligence.

Overall impression

41. The opponent's earlier mark is a word-only mark consisting of eight letters: ALLSPACE. Although there is no gap between the words, the consumer is likely to read this mark as two recognisable words, ALL and SPACE.² In my view, neither of the individual words is more dominant than the other and therefore the overall impression resides in the mark as a whole.

42. The contested mark is a word-only mark consisting of two words: AI and SPACE. Again, in my view, neither word dominates and therefore they play an equal role in the overall impression of the mark.

Visual comparison

43. The marks visually overlap where they both begin with the letter A and end with the same five letters: SPACE.

44. The marks differ where the earlier mark contains the second and third letters "LL", and the contested mark contains the second letter "I", as well as a space between the two words.

45. The visual differences between the marks result in the marks having no more than a medium degree of visual similarity.

Aural comparison

46. The consumer is likely to articulate the earlier mark as two syllables "ALL" and "SPACE". These two words will be pronounced in the usual way.

47. The contested mark consists of two words: "AI" and "SPACE". The first word is likely to be viewed as an acronym and pronounced as the two letters "A" and "I", as two syllables. The second word will be pronounced in the same way as in the earlier mark. As a whole the contested mark will therefore be articulated as three syllables in total, with the only similarity with the earlier mark occurring in the final syllable

² *Usinor SA v OHIM*, Case T-189/05

(SPACE). Given that the attention of the consumer is usually directed to the beginning of a mark³, I find the marks to have a lower than medium aural similarity.

Conceptual comparison

48. Both marks contain the word “SPACE”. This word has a variety of meanings and I consider that its concept differs when combined with the first element in each mark.

49. The earlier mark contains the words “ALL” and “SPACE”. Together, I find that these two words will convey the meaning of a complete area or maximum space to consumers, alluding to the feature of spaciousness in the vehicle.

50. I also consider that some consumers may view the earlier mark as an invented word with no known meaning, although I find this to be less likely and represent only a small number of consumers. In this situation, the earlier mark is conceptually neutral.

51. The contested mark contains the words “AI” and “SPACE”. As noted above, the word AI will be understood by the consumer to be an acronym for artificial intelligence. In combination, the two words will convey the concept of the technical field of artificial intelligence. It is possible that the meaning could also be understood to be a physical area in which artificial intelligence operates, but I consider this less likely.

52. Overall, I find that the concepts conveyed by both marks is different. The earlier mark conveys a message relating to spaciousness, whereas the contested mark conveys the concept of the technical field of artificial intelligence. Consequently, I find the marks conceptually dissimilar.

Distinctive character of the earlier trade mark

53. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 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

³ *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

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, 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.

55. The earlier mark consists of the word "ALLSPACE". I consider that a significant proportion of consumers will perceive it as a combination of the two dictionary words "ALL" and "SPACE". While neither word is directly descriptive of the goods at issue, together they evoke the concept of spaciousness, which alludes to a characteristic that vehicles may possess generous interior space. Consequently, although the mark is not descriptive, it is somewhat suggestive of the goods and, as such, I find that it possesses no more than a medium degree of inherent distinctiveness.

56. I now turn to consider the position with regards to an enhanced degree of distinctive character. I have already outlined the opponent's evidence above.

57. The evidence shows that the use of the mark 'ALLSPACE' for goods such as SUVs has been longstanding and consistent, with continuous sales over a number of years. The turnover provided for the sale of ALLSPACE vehicles in the UK is not insignificant. The evidence shows both sales numbers of vehicles under the ALLSPACE brand and the total UK market of vehicle sales. Sales under the ALLSPACE brand consist of between 0.1% and 0.25% of the total UK market. This figure, although not vast, is not insignificant. The evidence also shows that vehicles under the ALLSPACE brand have been advertised across various platforms. The marketing spend provided is not hugely significant in relation to the turnover figures, but it is not negligible.

58. Overall, the evidence shows consistent and geographically widespread sales of the goods in the UK over a number of years. I remind myself that the bar for proving enhanced distinctiveness is high. Having considered the evidence as a whole, I find that the opponent has demonstrated some enhancement to the distinctive character of its earlier mark as a result of use to a certain extent. The distinctive character of the earlier mark has been enhanced from no more than medium to a medium degree of distinctiveness.

GLOBAL ASSESSMENT – Conclusions on Likelihood of Confusion

59. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle, i.e., a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods (or services) and vice versa (*Canon* at [17]). It is necessary to keep in mind the distinctive character of the opponent's trade mark, the average consumer of the goods and the nature of the purchasing act. 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 they have retained in their mind (*Lloyd Schuhfabrik* at [26]).

60. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that

exists between the marks and the goods down to the responsible undertakings being the same or related.

61. Earlier in this decision, I found some of the relevant goods identical. I found the marks to be visually similar to a medium degree and aurally similar to a lower than medium degree. I found the marks to be conceptually dissimilar. I identified the average consumers to be members of the general public and business professionals, both paying a high degree of attention. I found that the goods and services would be selected primarily by visual means, although I did not discount aural means. I found the earlier mark to have a no more than medium degree of inherent distinctiveness, which had been enhanced by its use to medium.

62. As noted above, 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 (*Lloyd Schuhfabrik* at [26]).

63. Considering direct confusion, I note the similarities between the marks, being the first letter “A” and the final five letters “SPACE”. However, I consider that the change of the letters “LL” in the earlier mark to the letter “I” in the contested mark would not go unnoticed by the average consumer considering the conceptual differences between the marks, especially considering that I found that they would pay a high degree of attention during the purchasing process.

64. Taking all of the above factors into account, I am satisfied that the average consumer would not directly mistake the parties’ marks for each other on the applied for goods. I therefore do not find there to be a likelihood of direct confusion between the parties’ marks for the goods and services.

65. I will proceed to consider whether there is a likelihood of indirect confusion, whilst reminding myself that, as James Mellor QC sitting as the Appointed Person pointed out in *Cheeky Italian Ltd v Sutaria* (O/219/16) at [16], “a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion”.

66. In *L.A. Sugar Limited v By Back Beat Inc*, BL O/375/10, Mr Iain Purvis Q.C., 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).”

67. While the above examples in *L.A. Sugar* are noted, they are not intended to be treated as an exhaustive list of the only instances in which indirect confusion occurs.

68. For the consumers who view the earlier mark as two words “ALL” and “SPACE”, a portion of consumers would consider the marks to overlap in the use of the word “SPACE”. However, I do not consider that the consumer would find the word “SPACE” so distinctive that they would conclude that no other entity would use this word in its mark. I also do not consider the change of two letters “LL” in the earlier mark to one letter “I” in the contested mark to be consistent with a brand extension. This is particularly the case given the differences in the conceptual meanings conveyed by the marks. I do not see any reason why a consumer would view the change from the word “ALL” to the acronym “AI” (referring to artificial intelligence) to be an obvious brand extension.

69. It is possible that a consumer who is aware of the opponent’s earlier mark may note the use of the word “SPACE” in both marks. However, I do not see any logical reason for the consumer to conclude that the contested mark is another brand or brand extension of the owner of the earlier marks. If any consumers notice the use of the word “SPACE” in both marks, they will simply conclude that this is a coincidence.

70. I therefore do not consider there to be a likelihood of indirect confusion in relation to the goods I have found to be identical.

71. I did not undertake a full comparison of the goods and services above. As I have found no likelihood of confusion with identical goods, it follows that there will also be no likelihood of confusion where the goods/services are only similar.

CONCLUSION

72. The opposition fails in respect of all of the contested goods. Subject to any successful appeal, the application will proceed to registration in respect of all of the applied for goods.

COSTS

73. The applicant has achieved success in these proceedings and is therefore entitled to a contribution towards its costs. In the circumstances, I award the applicant the sum of **£950** as a contribution towards the cost of the proceedings, in accordance with Tribunal Practice Notice 1/2023. The sum is calculated as follows:

Considering the TM7 and statement of grounds and preparing and filing the TM8:	£250
Considering the other side's evidence:	£600
Preparing and filing submissions in lieu of a hearing:	£350
Total:	£950

74. I therefore order Volkswagen Aktiengesellschaft to pay ZHEJIANG GEELY HOLDING GROUP CO., LTD. the sum of **£950**. 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 28th day of September 2026

K HAZLEBACH

For the Registrar