

BL O/0900/26

TRADE MARKS ACT 1994

IN THE MATTER OF
TRADE MARK APPLICATION NUMBER 4162202
BY ALNOJOOM TRADING LTD
TO REGISTER THE TRADE MARK:



IN CLASS 20

AND

IN THE MATTER OF OPPOSITION THERETO
UNDER NUMBER 600003695
BY COMFY QUILTS LIMITED

BACKGROUND AND PLEADINGS

1. On 19 February 2025, ALNOJOOM TRADING LTD (“the applicant”) applied to register the trade mark shown on the cover page of this decision (“the contested mark”) in the UK. The application was accepted and published in the Trade Marks Journal for opposition purposes on 7 March 2025 and registration is sought for the following goods:

Class 20: Hangers [Coat -]; Chairs on skid frames; Bed mattresses; Mattresses; Futon mattresses [other than childbirth mattresses]; Foam mattresses; Mattress toppers; Mattress pads; Mattress (Straw -); Straw mattress; Beds, bedding, mattresses, pillows and cushions; Foam camping mattresses; Latex mattresses; Mattress bases; Air mattresses; Floating inflatable mattresses [airbeds]; Spring mattresses; Mattresses (Spring -); Camping mattresses; Straw mattresses; Nap mats [cushions or mattresses]; Sleeping mats for camping [mattresses]; Sofa beds; Bedding for cots [other than bed linen]; Bed slats; Divan beds; Beds incorporating inner sprung mattresses; Inner sprung mattresses; Inflatable mattresses for use when camping; Memory foam pillows; Pillows; Air mattresses for use when camping; Inflatable pillows; Bedding for nursery cots [other than bed linen]; Latex pillows; Air pillows; Bunk beds; Bed chairs; Beds; Fire resistant mattresses; Bumper guards for cots, other than bed linen; Inflatable mattresses, other than for medical purposes; Bath pillows; Bamboo pillows; Bumper guards for cribs, other than bed linen; Chair beds; Nursing pillows; Maternity pillows; Bed rails; Scented pillows; Bed frames; Foldaway beds; U-shaped pillows; Mattresses made of flexible wood; Futons; Cushions [furniture]; Stuffed pillows; Inflatable pet beds; Infant beds; Air cushions; Furniture being convertible into beds; Support pillows for use in baby seating; Storage boxes for pillows [furniture]; Beds of wood; Hybrid beds being soft sided waterbeds [other than for medical use]; Portable mattresses for automobiles; Travel pillows; Adjustable beds; Furniture; Furniture and furnishings; Upholstered furniture; Metal furniture and furniture for camping; Dressers [furniture]; Wooden furniture; Credenzas [furniture]; Furniture cabinets; Cabinets

[furniture];Patio furniture; Recliners [furniture];Bentwood furniture; Pouffes [furniture];Kitchen furniture; Washstands [furniture];Bedroom furniture; Cupboards being furniture; Outdoor furniture; Nursery furniture; Drawers for furniture; Benches [furniture];Garden furniture; Household furniture; Bathroom furniture; Lawn furniture; Furniture shelves; Shelves [furniture];Desks [furniture];Panelling for furniture; Furniture for kitchens; Kitchen dressers [furniture];Wooden shelving [furniture];Leather furniture; Slatted furniture; Chairs being office furniture; Stationery cabinets [furniture];Shop furniture; Tables [furniture];Seating furniture; Furniture moldings; Office furniture; Furniture (Office -);Indoor furniture; Furniture for bathrooms; Lounge furniture; Furniture for storage; Storage furniture; Consignment shelving [furniture];Furniture of metal; Metal furniture; Bamboo furniture; Furniture racks; Racks [furniture];Trolleys [furniture];Furniture parts; Furniture partitions; Furniture frames; Arbours [furniture];Furniture chests; Pet furniture; Lockers [furniture];Pedestals [furniture];Furniture partitions of wood; Partitions of wood for furniture; Furniture (Partitions of wood for -);Consoles [furniture];Furniture for offices; Furniture for vivariums; Antique style furniture; Furniture for shops; Transformable furniture; Doors for furniture; Furniture doors; Stackable furniture; Furniture for washrooms; Mirrors [furniture];Furniture for conservatories; Trestles [furniture];Glass furniture; Metal cabinets [furniture];Inflatable furniture; Furniture (Inflatable -);Garden furniture manufactured from wood; Wooden racks [furniture];Fireguards [furniture];Seats [furniture];Metal shelving [furniture];Furniture for children; Furniture for caravans; Joints for furniture; Modular bathroom furniture; Computer furniture; Shelves being nursery furniture; Furniture for camping; Camping furniture; Furniture for saunas; Legs for furniture; Drawers [furniture parts];Drawers as furniture parts; Domestic furniture; Cane furniture; Screens [furniture];Furniture screens; Metal office furniture; Countertops [furniture parts].

2. On 4 June 2025, Comfy Quilts Limited ('the opponent') filed a fast-track opposition, opposing the application under section 5(2)(b) of the Trade Marks Act 1994 ('the

Act”). Within its TM7F, the opponent indicated that the opposition is directed against all the goods in class 20 of the application.

3. The opponent relies upon the following earlier United Kingdom Trade Mark (UKTM) (series of two) for its opposition:

UK3799684

DEEPSLEEP

DEEP SLEEP

Filing date: 16 June 2022

Registration date: 18 November 2022

For the purposes of these proceedings, the opponent is relying on all of the goods for which the earlier mark is registered:

Class 20	Mattresses; cushions; pillows; travel pillows; mattress pads; mattress toppers; padded supports for personal use; bolsters; soft furnishings; bedding (except linen); filled bedding.
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Class 24	Bedroom textile fabrics; pillow cases; pillow covers; pillow shams; duvets; duvets filled with goose feathers; duvets filled with goose down; duvet covers; quilts; textile covers for duvets; bed linen; bed covers; bed blankets; bed spreads; bed throws; bed coverings; bed sheets; bed quilts; bed skirts; bed valances; mattress covers; blankets; sleeved blankets and other wearable blankets; sleeping bags; bags for sleeping bags.
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4. The opponent claims that when the opposed mark and the earlier mark are considered globally taking into account the similarity between them and the identity and/or similarity in the goods, confusion is not merely likely but inevitable.¹
5. The applicant filed a counterstatement submitting that the similarity of goods is not significant enough to cause confusion under section 5(2)(b) and that the marks are sufficiently differentiated by branding, reputation and market presence.²
6. Given the filing dates, the opponent's mark is an earlier mark, in accordance with section 6 of the Act. However, as it has 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.
7. Rule 6 of the Trade Marks (Fast Track Opposition) (Amendment) Rules 2013, S.I. 2013 No. 2235, disapplies paragraphs 1-3 of Rule 20 of the Trade Mark Rules 2008, but provides that Rule 20 (4) shall continue to apply. Rule 20(4) states that:

“(4) The registrar may, at any time, give leave to either party to file evidence upon such terms as the registrar thinks fit.”
8. The net effect of these changes is to require the parties to seek leave in order to file evidence in fast-track oppositions. No leave was sought in respect of these proceedings.
9. 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. Only the

¹ TM7F filed 4 June 2025, page 12, paragraph 13.

² Amended TM8 filed 24 September 2025, page 7, paragraph 4(f).

opponent filed written submissions in lieu of a hearing. This decision is taken following a careful consideration of the papers.

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

Preliminary Matters

12. I note that within the Form TM8 and Counterstatement, in particular at paragraph 4, the applicant has supplied evidence of the use of its own mark. Firstly, as these are fast-track proceedings, as mentioned above, it is a requirement that leave is sought in order to file evidence. This was not done. In any event, the evidence provided focuses on the use of its own mark within the UAE. This is not relevant to proceedings before this Tribunal, nor the registration for protection in the United Kingdom. Therefore, the evidence is of no assistance to the applicant and I will not consider it further.

DECISION

Section 5(2)(b)

13. Sections 5(2)(b) and 5A of the Act state:

“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.”

Relevant Law

14. 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:

The principles

(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

15. In comparing the respective specifications, all relevant factors should be considered, as per *Canon*, 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.”

16. 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.

17. In *Gérard Meric v OHIM*, Case T- 133/05, the General Court (“GC”) stated that:

“29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 Institut für Lernsysteme v OHIM – Educational Services (ELS) [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark.”

18. Further, in *Kurt Hesse v OHIM*,³ the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v OHIM*,⁴ the GC stated that “complementary” means:

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

19. I bear in mind that it is permissible to group goods together for the purposes of assessment: *Seaparode Trade Mark*.⁵

“The determination must be made with reference to each of the different species of goods listed in the opposed application for registration; if and to the extent that the list includes goods which are sufficiently comparable to be assessable for registration in essentially the same way for essentially the same reasons, the decision taker may address them collectively in his or her decision.”

20. The goods to be compared are shown in the table below:

³ Case C-50/15 P

⁴ Case T-325/06

⁵ BL O/399/10

The opponent's goods	The applicant's goods
<u>Class 20:</u> Mattresses; cushions; pillows; travel pillows; mattress pads; mattress toppers; padded supports for personal use; bolsters; soft furnishings; bedding (except linen); filled bedding.	<u>Class 20:</u> Hangers [Coat -]; Chairs on skid frames; Bed mattresses; Mattresses; Futon mattresses [other than childbirth mattresses]; Foam mattresses; Mattress toppers; Mattress pads; Mattress (Straw -); Straw mattress; Beds, bedding, mattresses, pillows and cushions; Foam camping mattresses; Latex mattresses; Mattress bases; Air mattresses; Floating inflatable mattresses [airbeds]; Spring mattresses; Mattresses (Spring -); Camping mattresses; Straw mattresses; Nap mats [cushions or mattresses]; Sleeping mats for camping [mattresses]; Sofa beds; Bedding for cots [other than bed linen]; Bed slats; Divan beds; Beds incorporating inner sprung mattresses; Inner sprung mattresses; Inflatable mattresses for use when camping; Memory foam pillows; Pillows; Air mattresses for use when camping; Inflatable pillows; Bedding for nursery cots [other than bed linen]; Latex pillows; Air pillows; Bunk beds; Bed chairs; Beds; Fire resistant mattresses; Bumper guards for cots, other than bed linen; Inflatable mattresses, other than for medical purposes; Bath pillows;

	Bamboo pillows; Bumper guards for cribs, other than bed linen; Chair beds; Nursing pillows; Maternity pillows; Bed rails; Scented pillows; Bed frames; Foldaway beds; U-shaped pillows; Mattresses made of flexible wood; Futons; Cushions [furniture]; Stuffed pillows; Inflatable pet beds; Infant beds; Air cushions; Furniture being convertible into beds; Support pillows for use in baby seating; Storage boxes for pillows [furniture]; Beds of wood; Hybrid beds being soft sided waterbeds [other than for medical use]; Portable mattresses for automobiles; Travel pillows; Adjustable beds; Furniture; Furniture and furnishings; Upholstered furniture; Metal furniture and furniture for camping; Dressers [furniture]; Wooden furniture; Credenzas [furniture]; Furniture cabinets; Cabinets [furniture]; Patio furniture; Recliners [furniture]; Bentwood furniture; Pouffes [furniture]; Kitchen furniture; Washstands [furniture]; Bedroom furniture; Cupboards being furniture; Outdoor furniture; Nursery furniture; Drawers for furniture; Benches [furniture]; Garden furniture; Household furniture; Bathroom furniture; Lawn furniture; Furniture shelves; Shelves [furniture]; Desks [furniture]; Panelling
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	for furniture; Furniture for kitchens; Kitchen dressers [furniture];Wooden shelving [furniture];Leather furniture; Slatted furniture; Chairs being office furniture; Stationery cabinets [furniture];Shop furniture; Tables [furniture];Seating furniture; Furniture moldings; Office furniture; Furniture (Office -);Indoor furniture; Furniture for bathrooms; Lounge furniture; Furniture for storage; Storage furniture; Consignment shelving [furniture];Furniture of metal; Metal furniture; Bamboo furniture; Furniture racks; Racks [furniture];Trolleys [furniture];Furniture parts; Furniture partitions; Furniture frames; Arbours [furniture];Furniture chests; Pet furniture; Lockers [furniture];Pedestals [furniture];Furniture partitions of wood; Partitions of wood for furniture; Furniture (Partitions of wood for -);Consoles [furniture];Furniture for offices; Furniture for vivariums; Antique style furniture; Furniture for shops; Transformable furniture; Doors for furniture; Furniture doors; Stackable furniture; Furniture for washrooms; Mirrors [furniture];Furniture for conservatories; Trestles [furniture];Glass furniture; Metal cabinets [furniture];Inflatable furniture; Furniture (Inflatable -);Garden furniture
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	manufactured from wood; Wooden racks [furniture]; Fireguards [furniture]; Seats [furniture]; Metal shelving [furniture]; Furniture for children; Furniture for caravans; Joints for furniture; Modular bathroom furniture; Computer furniture; Shelves being nursery furniture; Furniture for camping; Camping furniture; Furniture for saunas; Legs for furniture; Drawers [furniture parts]; Drawers as furniture parts; Domestic furniture; Cane furniture; Screens [furniture]; Furniture screens; Metal office furniture; Countertops [furniture parts].
<u>Class 24:</u> Bedroom textile fabrics; pillow cases; pillow covers; pillow shams; duvets; duvets filled with goose feathers; duvets filled with goose down; duvet covers; quilts; textile covers for duvets; bed linen; bed covers; bed blankets; bed spreads; bed throws; bed coverings; bed sheets; bed quilts; bed skirts; bed valances; mattress covers; blankets; sleeved blankets and other wearable blankets; sleeping bags; bags for sleeping bags.	

21. The following terms are found identically in both specifications: *Mattresses; pillows and cushions; Pillows; Travel pillows; Mattress pads; Mattress toppers.*

Beds

22. Beds will share trade channels (particularly by way of bed stores) and users with mattresses (from the opponent's specification), those being primarily members of the general public looking to furnish a bedroom. There is an element of complementarity in that mattresses are at least important to beds and vice versa, and the consumer is likely to believe the same entity would be responsible for both. The broad purpose, that being for sleeping on, is shared, as is the method of use to an extent. There will be no competition between the goods, and the nature will differ. Overall, I consider the goods to be similar to between a medium and a high degree.

Bed mattresses; Futon mattresses [other than childbirth mattresses]; Foam mattresses; Mattress (Straw -); Straw mattress; Foam camping mattresses; Latex mattresses; Air mattresses; Floating inflatable mattresses [airbeds]; Spring mattresses; Mattresses (Spring -); Camping mattresses; Straw mattresses; Sleeping mats for camping [mattresses]; Inner sprung mattresses; Inflatable mattresses for use when camping; Fire resistant mattresses; Air mattresses for use when camping; Inflatable mattresses, other than for medical purposes; Mattresses made of flexible wood; Portable mattresses for automobiles;

23. All of the above goods from the applicant's specification fall within the opponent's 'mattresses' and therefore, I find these goods to be identical under the *Meric* principle.

Bedding; Bedding for cots [other than bed linen]; Bedding for nursery cots [other than bed linen];

24. The above terms either encompass or fall within the opponent's 'bedding (except linen)' and therefore, I find these goods to be identical under the *Meric* principle.

Memory foam pillows; Inflatable pillows; Latex pillows; Air pillows; Bath pillows; Bamboo pillows; Nursing pillows; Maternity pillows; Scented pillows; U-shaped pillows; Stuffed pillows; Support pillows for use in baby seating;

25. The above terms all fall within the opponent's 'pillows' and therefore, I find these goods to be identical under the *Meric* principle.

Cushions [furniture]; Air cushions;

26. The above terms all fall within the opponent's 'cushions' and therefore, I find these goods to be identical under the *Meric* principle.

Sofa beds; Divan beds; Beds incorporating inner sprung mattresses; Bunk beds; Bed chairs; Beds; Chair beds; Foldaway beds; Futons; Infant beds; Furniture being convertible into beds; Beds of wood; Hybrid beds being soft sided waterbeds [other than for medical use]; Adjustable beds; Bed frames; Bed slats; Bed rails; Mattress bases;

27. All of the goods above are either beds or their parts. These will all share trade channels (particularly by way of bed stores) and users with mattresses, those being primarily members of the general public looking to furnish a bedroom. There is an element of complementarity in that mattresses are at least important to beds and vice versa, and the consumer is likely to believe the same entity would be responsible for both. The broad purpose, that being for sleeping on, is shared, as is the method of use to an extent. There will be no competition between the goods, and the nature will differ. Overall, I consider the goods to be similar to between a medium and a high degree.

Bumper guards for cots, other than bed linen; Bumper guards for cribs, other than bed linen; Nap mats [cushions or mattresses];

28. The above terms all fall within the opponent's 'soft furnishings' and therefore, I find these goods to be identical under the *Meric* principle.

Furnishings;

29. I consider the above term to encompass the opponent's 'soft furnishings' and therefore, I find these goods to be identical under the *Merck* principle.

Furniture; Upholstered furniture; Chairs on skid frames; Dressers [furniture]; Wooden furniture; Credenzas [furniture]; Furniture cabinets; Cabinets [furniture]; Patio furniture; Recliners [furniture]; Bentwood furniture; Pouffes [furniture]; Kitchen furniture; Washstands [furniture]; Bedroom furniture; Cupboards being furniture; Outdoor furniture; Nursery furniture; Benches [furniture]; Garden furniture; Household furniture; Bathroom furniture; Lawn furniture; Furniture shelves; Shelves [furniture]; Desks [furniture]; Furniture for kitchens; Kitchen dressers [furniture]; Wooden shelving [furniture]; Leather furniture; Slatted furniture; Stationery cabinets [furniture]; Tables [furniture]; Seating furniture; Indoor furniture; Furniture for bathrooms; Lounge furniture; Furniture of metal; Metal furniture; Bamboo furniture; Furniture racks; Racks [furniture]; Arbours [furniture]; Furniture chests; Pedestals [furniture]; Consoles [furniture]; Antique style furniture; Transformable furniture; Stackable furniture; Furniture for washrooms; Mirrors [furniture]; Furniture for conservatories; Trestles [furniture]; Glass furniture; Metal cabinets [furniture]; Inflatable furniture; Furniture (Inflatable -); Garden furniture manufactured from wood; Wooden racks [furniture]; Fireguards [furniture]; Seats [furniture]; Metal shelving [furniture]; Furniture for children; Modular bathroom furniture; Computer furniture; Shelves being nursery furniture; Storage boxes for pillows [furniture]; Furniture for storage; Storage furniture; Domestic furniture; Cane furniture; Screens [furniture]; Furniture screens; Furniture partitions; Trolleys [furniture];

30. The above goods are types of furniture that are likely to be found in the home/garden. In comparing the goods with the opponent's 'soft furnishings', I find that there may be some goods which will share nature (e.g. scatter cushions and sofas) but some will differ. I consider the users to be the same as it will be the general public looking to furnish a home. I consider there to be an overlap in trade channels (by way of home stores in particular) and the shared broad purpose of furnishing a home. I do not believe they are in competition nor are they

complementary. I therefore consider the goods to be similar to between a medium degree.

Drawers for furniture; Panelling for furniture; Furniture moldings; Furniture frames; Furniture partitions of wood; Partitions of wood for furniture; Furniture (Partitions of wood for -); Doors for furniture; Furniture doors; Joints for furniture; Furniture parts; Legs for furniture; Drawers [furniture parts]; Drawers as furniture parts; Countertops [furniture parts];

31. These terms can be broadly said to be parts of furniture. Therefore, they are a step away from the goods in the paragraph above as the goods as a whole. Therefore, I do not consider there to be an overlap in the nature of the goods. There could still be an overlap in the user of the goods and trade channels, although I consider this overlap to be less. I do not believe they are in competition nor are they complementary. I therefore find them to be similar to a low degree at best.

Shop furniture; Chairs being office furniture; Office furniture; Furniture (Office -); Lockers [furniture]; Furniture for offices; Furniture for vivariums; Furniture for shops; Furniture for caravans; Furniture for saunas; Metal office furniture; Consignment shelving [furniture];

32. The above goods from the applicant's specification are furniture but with more specific usages which are outside usual household furniture. Therefore, even where the user remains as the general public, I cannot see any other overlaps of the other *Treat* factors. A general overlap of user is not enough to warrant a finding of similarity and I therefore find these goods to be dissimilar.

Metal furniture and furniture for camping; Furniture for camping; Camping furniture;

33. As all of the above goods are related to camping, I consider there to be a potential overlap in user to the opponent's 'sleeping bags'. Further, I consider that the goods might all be available in similar camping/outdoor activity stores. They differ in nature and purpose, they are not in competition nor are they complementary. I therefore find them to be similar to a low degree.

Hangers [Coat -];

34. I consider that coat hangers are found in the home and used for organising clothes, usually within wardrobes. There is no overlap in nature or purpose as hangers have a specific use, that is to hang clothes upon whereas soft furnishing are more likely to be decorative in nature. Any overlap in user would be at a very general level. There is no obvious overlap in trade channels, and even if they were found in the same stores, it would be in very different sections. I do not believe they are in competition nor are they complementary. I therefore consider the goods to be dissimilar.

Inflatable pet beds; Pet furniture;

35. I note that the opponent has 'blankets' generally within class 24 and consider that this could include blankets for pets. Therefore, I find there to be an overlap in user and purpose with the above goods. There could also be an overlap in trade channels as all goods could be found in pet stores. There might be a slight overlap in nature also. They are not complementary nor are they in competition. I therefore find them to be similar to a medium degree.

36. In *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA, Lady Justice Arden stated that:

“49..... I do not find any threshold condition in the jurisprudence of the Court of Justice cited to us. Moreover I consider that no useful purpose is served by holding that there is some minimum threshold level of similarity that has to be shown. If there is no similarity at all, there is no likelihood of confusion to be considered. If there is some similarity, then the likelihood of confusion has to be considered but it is unnecessary to interpose a need to find a minimum level of similarity.”

37. As I have found no similarity for the following goods, the opposition in relation to them fails here:

Class 20: Shop furniture; Chairs being office furniture; Office furniture; Furniture (Office -); Lockers [furniture]; Furniture for offices; Furniture for vivariums; Furniture for shops; Furniture for caravans; Furniture for saunas; Metal office furniture; Consignment shelving [furniture]; Hangers [Coat -];

38. I shall continue considering the opposition in relation to:

Class 20: Mattresses; pillows and cushions; Pillows; Travel pillows; Mattress pads; Mattress toppers; Beds; Bed mattresses; Futon mattresses [other than childbirth mattresses]; Foam mattresses; Mattress (Straw -); Straw mattress; Foam camping mattresses; Latex mattresses; Air mattresses; Floating inflatable mattresses [airbeds]; Spring mattresses; Mattresses (Spring -); Camping mattresses; Straw mattresses; Sleeping mats for camping [mattresses]; Inner sprung mattresses; Inflatable mattresses for use when camping; Fire resistant mattresses; Air mattresses for use when camping; Inflatable mattresses, other than for medical purposes; Mattresses made of flexible wood; Portable mattresses for automobiles; Bedding; Bedding for cots [other than bed linen]; Bedding for nursery cots [other than bed linen]; Memory foam pillows; Inflatable pillows; Latex pillows; Air pillows; Bath pillows; Bamboo pillows; Nursing pillows; Maternity pillows; Scented pillows; U-shaped pillows; Stuffed pillows; Support pillows for use in baby seating; Cushions [furniture]; Air cushions; Sofa beds; Divan beds; Beds incorporating inner sprung mattresses; Bunk beds; Bed chairs; Beds; Chair beds; Foldaway beds; Futons; Infant beds; Furniture being convertible into beds; Beds of wood; Hybrid beds being soft sided waterbeds [other than for medical use]; Adjustable beds; Bed frames; Bed slats; Bed rails; Mattress bases; Bumper guards for cots, other than bed linen; Bumper guards for cribs, other than bed linen; Nap mats [cushions or mattresses]; Furnishings; Furniture; Upholstered furniture; Chairs on skid frames; Dressers [furniture]; Wooden furniture; Credenzas [furniture]; Furniture cabinets; Cabinets [furniture]; Patio furniture; Recliners [furniture]; Bentwood furniture; Pouffes [furniture]; Kitchen furniture; Washstands [furniture]; Bedroom furniture; Cupboards being furniture; Outdoor furniture; Nursery furniture; Benches [furniture]; Garden furniture; Household furniture; Bathroom furniture;

Lawn furniture; Furniture shelves; Shelves [furniture]; Desks [furniture]; Furniture for kitchens; Kitchen dressers [furniture]; Wooden shelving [furniture]; Leather furniture; Slatted furniture; Stationery cabinets [furniture]; Tables [furniture]; Seating furniture; Indoor furniture; Furniture for bathrooms; Lounge furniture; Furniture of metal; Metal furniture; Bamboo furniture; Furniture racks; Racks [furniture]; Arbours [furniture]; Furniture chests; Pedestals [furniture]; Consoles [furniture]; Antique style furniture; Transformable furniture; Stackable furniture; Furniture for washrooms; Mirrors [furniture]; Furniture for conservatories; Trestles [furniture]; Glass furniture; Metal cabinets [furniture]; Inflatable furniture; Furniture (Inflatable -); Garden furniture manufactured from wood; Wooden racks [furniture]; Fireguards [furniture]; Seats [furniture]; Metal shelving [furniture]; Furniture for children; Modular bathroom furniture; Computer furniture; Shelves being nursery furniture; Storage boxes for pillows [furniture]; Furniture for storage; Storage furniture; Domestic furniture; Cane furniture; Screens [furniture]; Furniture screens; Furniture partitions; Trolleys [furniture]; Drawers for furniture; Panelling for furniture; Furniture moldings; Furniture frames; Furniture partitions of wood; Partitions of wood for furniture; Furniture (Partitions of wood for -); Doors for furniture; Furniture doors; Joints for furniture; Furniture parts; Legs for furniture; Drawers [furniture parts]; Drawers as furniture parts; Countertops [furniture parts]; Metal furniture and furniture for camping; Furniture for camping; Camping furniture; Inflatable pet beds; Pet furniture;

The average consumer and the purchasing act

39. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties' goods. I must then determine the manner in which the goods are likely to be selected by the average consumer. 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.

40. The average consumer for the goods at issue is likely to be a member of the general public.

41. The selection of such goods is largely a visual process, as the average consumer will wish to physically handle the goods to ensure the correct sizing, whilst simultaneously appraising the overall aesthetic impact. If the consumer is buying online, then I also note they will see the marks on the websites. I do not, however,

ignore the potential for the marks to be spoken, for example, by sales assistants in a retail establishment or when making a purchase from a catalogue, over the telephone. However, in the latter circumstances, the consumer will have had an opportunity to view the goods, perhaps electronically via an online catalogue or website, or on paper. Therefore, when considering the aural impact of the marks, the visual impression of these goods will already have played a part in the consumer's mind.

42. Although the prices of individual items will vary greatly, I consider that the average consumer will pay a medium degree of attention during the purchase of the goods as they will be mindful of factors such as size, colour and material etc.

Comparison of trade marks

43. It is clear from *Sabel* 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 states at paragraph 34 of its judgment in *Bimbo*, 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 relevant 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.”

44. 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 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 marks.

45. The marks to be compared are as follows:

The opponent's earlier mark	The applicant's contested mark
DEEPSLEEP DEEP SLEEP	

Overall Impression

46. The applicant's mark is a figurative mark comprising the word 'DeepSleep', positioned at the centre of the mark, in slightly stylised upper and lower case letters. The first four letters 'Deep' are presented in dark blue letters and the latter five letters 'Sleep' in a lighter shade of blue. Below and to the right of the word 'DeepSleep' are the words 'Every Night' presented in a smaller, slightly stylised dark blue font in upper and lower case letters. Above the word 'DeepSleep' is a device element in shades of blue and white comprising a '+' symbol followed by clouds and a half crescent moon that appears to be sleeping. To the top right of the crescent moon is another '+' symbol. Even though the words 'Every Night' are presented in a smaller font, I consider that they will be read together as a whole phrase with the 'DEEP SLEEP' element. The phrase 'DEEP SLEEP EVERY NIGHT' is likely to be seen as explaining the intended purpose of the goods for which the mark is seeking protection. Therefore, I find that the device is the distinctive element of the mark (despite also having allusive qualities) and that the phrase and device are co-dominant.

47. The first in the series of the opponent's registration is the word only mark comprising the word 'DEEPSLEEP', there are no other elements to contribute to the overall impression of the mark which resides in the word itself. The second

mark in the series is a word only mark comprising the two words 'DEEP SLEEP'. I consider that they form a complete phrase and the overall impression lies in the combination of these two words.

Visual similarity

48. Visually, the marks coincide with the words 'DEEPSLEEP'. The contested mark contains the device element and the words 'EVERY NIGHT' which have no counterpart in the earlier marks. I bear in mind that a word mark may be used in any form, in any colour or font type.⁶ I therefore find the marks to be visually similar to a medium degree.

Aural similarity

49. I consider that both marks in the opponent's series will be pronounced with the ordinary everyday pronunciations of 'Deep' and 'Sleep'. This will be pronounced identically within the applicant's mark. Whilst I note *Enrich Learning* BL O/1141/25 where Phillip Johnson, acting as the Appointed Person reconfirmed the principles applied by the GC that descriptive or secondary elements of marks are not necessarily spoken, I consider that in this instance, given the words 'DEEP SLEEP EVERY NIGHT' form a cohesive phrase, that all elements will be articulated by the average consumer. Therefore, I find the marks to be aurally similar to a medium degree.

Conceptual similarity

50. Conceptually, the 'DEEP SLEEP' elements found in all marks will convey the idea of a stage of sleep that is harder to wake from and better quality. Both marks will share this conceptual message. The contested mark also includes the line 'EVERY NIGHT' which simply gives the idea that the deep sleep will occur every night. The message of sleep is further reinforced by the device element of a sleeping moon

⁶ *Herno S.p.A. v Miss Sparrow Ltd*, BL O/954/22 and judgment of 28 June 2017, *Josel v EUIPO — Nationale-Nederlanden Nederland (NN)*, T-333/15, not published, EU:T:2017:444, paragraphs 37 and 38 and the case-law cited

in the clouds. I therefore consider the marks to be conceptually similar to a high degree.

Distinctive character of the earlier mark

51. In *Lloyd Schuhfabrik Meyer* 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).”

52. 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.

53. As the opponent's goods are all related to sleeping, I consider that the earlier mark will be seen as allusive to those goods. Bearing in mind *Formula One Licensing BV v OHIM*, Case C-196/11P, where it was found that a registered trade mark must be assumed to have "at least some distinctive character", I consider the earlier mark to be inherently distinctive to a very low degree.

Likelihood of confusion

54. 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. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the opponent's trade mark, the average consumer for the goods, and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he has retained in his mind.

55. The following factors must be considered to determine if a likelihood of confusion can be established:

- I have found the marks to be visually similar to a medium degree, aurally similar to a medium degree and conceptually similar to a high degree.
- The earlier marks are word marks, the first being presented as one word and that is where the overall impression lies, the second being presented as two words that form a complete phrase and the overall impression lies in the combination of the two words.

- The distinctive element of the applicant's mark is the device with both the device and the phrase 'DEEP SLEEP EVERY NIGHT' being co-dominant in the mark.
- I consider that the average consumer is likely to be the general public and I have concluded that a medium level of attention will be paid during the purchasing process. I have also found the purchasing process to be largely visual.
- I have found the remaining goods at issue to be between identical and similar to a low degree.
- The earlier mark is inherently distinctive to a very low degree.

56. In *Face2FaceHR Partners Limited v Peninsula Business Services Limited*, O/0368/23, Emma Himsworth K.C., as the Appointed Person, reviewed the case law in *Whyte and Mackay v Origin* [2015] EWHC 1271 (Ch) and *Nicoventures Holdings Limited v The London Vape Co Ltd* [2017] EWHC 3393 (Ch), as well as guidance in the Common Communication on the Common Practice of Relative Grounds of Refusal - Likelihood of Confusion (impact of non-distinctive/weak components) dated 2 October 2014, which is referred to in the case law. Miss Himsworth summarised the correct approach when assessing the likelihood of confusion where the only common element between the marks in issue has no or low distinctiveness as follows, at paragraph 44:

“(1) The distinctiveness of the mark as a whole must be assessed, taking into account that a minimum degree of distinctiveness must be acknowledged.

(2) The distinctiveness of each of the components of both marks must be assessed with priority being given to the coinciding elements.

(3) The focus of the assessment of the likelihood of confusion should be on the impact of the non-coinciding components on the overall impression of the mark.

(4) Account must be taken of the similarities/differences in the non-coinciding elements of the marks.

(5) A coincidence of an element with a low level of distinctiveness will not usually lead to a likelihood of confusion.

(6) There may be a finding of a likelihood of confusion if (a) the non-coinciding elements of the mark are of lower (or equally low) degree of distinctiveness or are of insignificant visual impact and the overall impression is similar; or (b) the overall impression of the marks is highly similar or identical.”

57. I have also considered the following authorities concerning common elements with low distinctive character:

- *General Ecology, Inc. v Wan Jou Lin & Great Ins Company Ltd*, O/0331/23, in which Phillip Johnson, sitting as the Appointed Person, found that a mark containing NATURAL PURE was confusingly similar to NATURE PURE, notwithstanding that the common elements had only low distinctive character.
- *Purity Hemp*, BL O/115/22, in which Philip Harris, sitting as the Appointed Person, held that the shared use of the word PURITY was insufficient, of itself, to establish a likelihood of confusion.

58. The marks share the element ‘DEEPSLEEP’ (either with or without a space) which I have found to be of very low distinctiveness to at least some of the goods at issue due to being allusive. As I have found the word elements of the applied for mark to form a phrase, together with the device playing a co-dominant and more distinctive role in the mark, I do not believe these elements will be overlooked by the average consumer when paying a medium level of attention to a predominantly visual purchase. I believe this falls within the in paragraph 44(5) in the above mentioned *Nicoventures* case law, that is, a coincidence of an element with a low level of distinctiveness will not usually lead to a likelihood of confusion. Even though I have found some of the goods to be identical, I do not believe this will counteract the very low level of distinctiveness of the earlier mark and the visual differences between the marks. Therefore, I find there to be no likelihood of direct confusion.

59. I will therefore go on to consider indirect confusion. Indirect confusion was described in the following terms by Iain Purvis QC (as he then was), sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*:⁷

“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 recognised 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.).

⁷ BL O/375/10

(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).”

60. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ referred to the comments of James Mellor QC (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.

61. In assessing indirect confusion, the relevant question is whether the average consumer, having noticed the differences between the marks, would nevertheless assume that they are economically linked. The shared element is the phrase ‘DEEP SLEEP’/‘DEEPSLEEP’, which I have found to be of very low distinctive character. That shared element is therefore unlikely, without more, to indicate a connection between the undertakings.

62. Nor is this a case in which the common element is so strikingly distinctive that the average consumer would assume that only the opponent would use it. The additional elements in the applicant’s mark are low in distinctiveness, but they are not insignificant. In particular, the words ‘EVERY NIGHT’ and the device element contribute to the overall impression of the contested mark and do not merely suggest a sub-brand or brand extension of the earlier mark. That approach is consistent with paragraph 80 of *Purity Hemp*, where it was stated:

“Thus, given “The later mark is different from the earlier mark, but also has something in common with it” will the average consumer nevertheless “conclude that it is another brand of the owner of the earlier mark.”? I do not think so. The point about weak distinctiveness is that consumers will be less likely, depending on context, to jump to the conclusion the term is functioning in a distinctive, origin indicative way. I consider that to be the case here. The

overall differences outweigh the similarity, which is entirely due to the weak components.”

Applying that reasoning here, I find that the shared element is too low in distinctiveness to lead the average consumer to assume that the marks are used by the same or economically linked undertakings. Accordingly, I find that there is no likelihood of indirect confusion.

CONCLUSION

63. The opposition fails in its entirety and the application may proceed to registration subject to any successful appeal.

COSTS

64. The applicant has been successful and is entitled to a contribution towards its costs. An award of costs is made on the basis of the scale set out in Tribunal Practice Notice (“TPN”) 1/2023.

65. Therefore, using the guidance set out in the TPN above, I award the applicant the following:

Considering a notice of opposition and filing a counterstatement	£250
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Total	£250
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66. I therefore order Comfy Quilts Limited to pay ALNOJOOM TRADING LTD the sum of £250. 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 final determination of the appeal proceedings.

Dated this 30th day of September 2026

L Nicholas

For the Registrar