

O/1062/23

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. UK00003728090
BY BENSHEG HU TO REGISTER THE FOLLOWING TRADE MARK:**

Idee-home

IN CLASSES 20 AND 27

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 431101 BY RYOHIN KEIKAKU CO., LTD**

Background and Pleadings

1. On 2 December 2021, Bensheng Hu ('the Applicant'), filed an application to register the following trade mark:

Idee-home

2. The application was published for opposition purposes in the Trade Marks Journal on 24 December 2021. Registration is sought in respect of the following goods:

Class 20:	<i>Pillows; Scented pillows; Inflatable pillows; Throw pillows; Travel pillows; Bath pillows; Nursing pillows; Accent pillows; Neck pillows; U-shaped pillows; Bean bag pillows; Mirrors; Mirrors [furniture]; Wall mirrors; Hand mirrors; Shaving mirrors; Mirrored cabinets; Bathroom mirrors; Mirrors (silvered glass); Make-up mirrors for travel use; Make-up mirrors for the home; Racks; Furniture racks; Paper racks; Plant racks; Food racks; Shoe racks; Wine racks; Fodder racks; Storage racks; Clothes racks [furniture]; Wine racks [furniture]; Mattresses; Air mattresses; Foam mattresses; Mattress toppers; Mattress pads; Bed mattresses; Foam camping mattresses; Sleeping mats for camping [mattresses]; Inflatable mattresses for use when camping; Inflatable mattresses, other than for medical purposes; Beds, bedding, mattresses, pillows and cushions; Cushions; Seat cushions; Chair cushions; Pet cushions; Bean bag cushions.</i>
Class 27:	<i>Rugs; Rugs [mats]; Rugs (Door -); Fur rugs; Area rugs; Bathroom rugs; Rugs for animals; Carpets, rugs and mats; Anti-slip material for use under rugs.</i>

3. On 16 February 2022, the application was opposed by Ryohin Keikaku Co., Ltd ('the Opponent') based on section 5(2)(b) of the Trade Marks Act 1994 ('the Act').

The Opposition is directed against all of the Applicant's goods. The Opponent relies upon the following earlier registration, relying upon all of its goods:

UK00003703880¹

IDÉE

Filing date: 29 September 2021

Date of entry in register: 17 March 2023

Priority date: 22 May 2019 (EUIPO)

Class 20:	<i>Furniture; cushions; chairs; folding chairs; lounge chairs; ottomans; sofas; tables; dining tables; low tables; side tables; desks; display cabinets; mirrors [looking glasses]; freestanding partitions [furniture]; umbrella stands; shelves; bookshelves; book stands; sideboards; TV cabinets; furniture chests; chests of drawers; racks [furniture]; indoor window blinds [furniture]; trolleys [furniture]; beds; stools.</i>
Class 21:	<i>Japanese rice bowls [Chawan]; Yunomi [Japanese-style tea cups]; Japanese style tea-serving pots [Kyusu]; dishes and plates; mugs; cups and saucers; bowls; drinking glasses; wine glasses; small Sake cups; chopsticks; place mats, not of paper or textile; trays; butter dishes; dishware; coasters, not of paper or textile; cups of paper or plastic; non-electric tea pots; coffeepots, non-electric.</i>
Class 24:	<i>Cushion covers; towels of textile; handkerchiefs; kitchen towels of textile.</i>
Class 25:	<i>Clothing; footwear; aprons [clothing]; mufflers [clothing]; jackets; shirts; children's wear; T-shirts; suits; pants; coats; sweaters;</i>

¹ UK protection for this mark was sought pursuant to Article 59 of the Withdrawal Agreement between the United Kingdom and the European Union and the EU filing date was 22 May 2019.

	<i>skirts; nightwear; headwear; underwear; neckties; shawls; stoles; socks; gloves; tights; bath robes; dresses; slippers; room shoes; boots; sandals; sporting shoes; hats; caps being headwear; bathing suits; stocking; belts [clothing]; sleep masks; garters; suspenders; waistbands; masquerade costumes.</i>
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4. The Opponent claims that the parties' marks are highly similar and for identical or similar goods, leading to a likelihood of confusion between the parties' marks.
5. The Applicant filed a Defence and Counterstatement in which it denies the claim against it in its entirety.
6. The Opponent is represented by Marks & Clerk LLP . The Applicant is represented by United Legal Experts. Only the Applicant has filed evidence. A hearing was neither requested nor thought necessary, and neither party filed written submissions in lieu thereof. The following decision has been made after careful consideration of the papers before me.

Decision

Section 5(2)(b) of the Act and related case law

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

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

(a) ...

(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.”

8. In accordance with section 6 of the Act, the Opponent's mark is an earlier mark by virtue of its priority date (22 May 2019) which fell before the filing date of the applied-for mark (2 December 2021).
9. Section 6A of the Act provides that where the date on which the registration procedure of the earlier mark was completed more than 5 years prior to the application date (or priority date) of the applied-for mark, the Opponent may be required to prove use of the earlier mark. In the instant case, section 6A is not engaged because the Opponent's mark had been registered in the UK for less than 5 years on the filing date of the applied-for mark. Therefore, the Opponent may rely upon all of the goods that it seeks to rely upon.
10. The following principles are derived from the decisions of the Court of Justice of the European Union² ("CJEU") in *Sabel BV v Puma AG*, Case C-251/95; *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97; *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97; *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98; *Matratzen Concord GmbH v OHIM*, Case C-3/03; *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C120/04; *Shake di L. Laudato & C. Sas v OHIM*, Case C-334/05P; and *Bimbo SA v OHIM*, Case C-591/12P:

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

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

² Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Trade Marks Act relied on in these proceedings are derived from an EU Directive. This is why this decision continues to make reference to the trade mark case-law of EU courts.

(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.

The Applicant's evidence

11. The Applicant's evidence comes from Mr Shahzaib Amin Malik, of United Legal Experts, which represents the Applicant. Mr Malik's Witness Statement is dated 1 May 2023. The evidence focuses on: examples of the applied-for mark being used in the marketplace; the meaning of the word 'idee'; and the existence of other trade marks featuring the word element 'idee'.

12. I note the following from the Applicant's evidence:

- (a) Mr Malik states that in the period 2018 to 2023, the Applicant has enjoyed sales in the sum of £180,000 and spent £75,000 on marketing and advertising in the UK and EU.³
- (b) The English translation of the French word 'idée' provided by the online version of the Collins Dictionary is 'idea'.⁴
- (c) A product listing from the Amazon website for a rug sold under the Applicant's mark 'idee-home'.
- (d) A print-out from TM View, the EUIPO's online trade marks database listing marks present on the register which feature the element 'idee' or 'idée'. The vast majority of the entries relate to marks registered in non-EU states. I note that six entries relate to marks registered in the EU or the UK; one UK registration and five registrations for EU Member States. The UK mark is registered in respect of goods in classes 29 and 30. It is not clear what the Applicant is seeking to demonstrate by adducing this material. State of the Register evidence can be relevant in certain circumstances; for example, if a party is seeking to demonstrate that the prevalence of a certain word in trade marks being used in the marketplace indicates that that word is used descriptively in a particular trade.⁵ However, no such argument has been

³ Witness Statement of S. A. Malik at [5], Exhibit SAM1.

⁴ As above, at [8], Exhibit SAM5.

⁵ Decision BL O/0999/23 [HYALU] BIOTIC, at [12].

advanced in the instant case. I find that the material adduced is of little assistance.

- (e) Print-outs from the Applicant's website 'idee-home.com' showing product listings for rugs, mirrors and pillows with prices expressed in dollars \$.

Preliminary matters

- (i) The Applicant's evidence of use of its applied-for mark

13. I note that the Applicant has filed evidence of use of its mark and has claimed that it has been using its mark 'long before the application of the opponent even well before the priority date which is mentioned in the opponent trade mark'.⁶ If the Applicant thought that it had an earlier unregistered right upon which it could rely against the Opponent's earlier mark, then it has not instituted invalidation proceedings against that earlier mark. If invalidation proceedings had been instituted and the Opponent had also filed evidence, then this might have been relevant to the matter of whether there was a defence of honest concurrent use. However, no such action is pending. The Applicant's evidence of the use of its mark is therefore of little assistance.

- (ii) Evidence of confusion in the marketplace

14. I note the following from Mr Malik's Witness Statement:

'The opponent stated in their paras [sic] about the similarity between the marks which creates likelihood of confusion, however, no substantive evidence has been provided to support such claim [sic]'⁷

and

⁶ Witness Statement of S. A. Malik at [18].

⁷ As above, at [17].

‘The burden of proof is on the cancellation applicant,⁸ whereas it is clear that applicant [sic] failed to provide substantive evidence and proof.’⁹

15. It is not incumbent upon the Opponent to provide evidence of actual confusion in the marketplace. Furthermore, as noted above at [9], the Opponent is not obliged to demonstrate that it has used its mark at all. For the purposes of this decision, therefore, I am entitled to presume that the Opponent’s mark is not in fact being used. I am required to make the assessment of the likelihood of confusion notionally and objectively based on the opponent’s goods, as registered, and the applicant’s goods, as applied for, in accordance with the relevant case law. That assessment requires that I must not take into account the actual way that either party has used their marks in the marketplace or the kinds of goods that those marks have been used in relation to thus far. It is, therefore, inevitably often the case in opposition proceedings that one or other party is not currently using its mark. In the absence of evidence of the Opponent using its mark, it is, unsurprisingly, necessarily the case that there is no evidence of actual confusion in the marketplace.

Comparison of goods

16. Section 60A of the Act provides:

(1) For the purpose of this Act goods and services-

(a) are not to be regarded as being similar to each other on the ground that they appear in the same class under the Nice Classification.

(b) are not to be regarded as being dissimilar from each other on the ground that they appear in different classes under the Nice Classification.

⁸ It is presumed that this is typographical error and that the Applicant intended to refer to the Opponent.

⁹ Witness Statement of S.A. Malik at [20].

(2) In subsection (1), the ‘Nice Classification’ means the system of classification under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, which was last amended on 28 September 1975.

17. The CJEU in *Canon*, Case C-39/97, stipulates that all relevant factors relating to the parties’ goods and services must be taken into account:

“[23] 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”.

18. Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281¹⁰, identified the following factors for assessing similarity of the respective goods and services:

- (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

¹⁰ *British Sugar Plc v James Robertson & Sons Ltd* [1996] R. P. C. 281, pp 296-297.

whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

19. Goods (or services) may be grouped together for the purposes of assessment, as Geoffrey Hobbs QC (as he then was), sitting as the Appointed Person, said in *Separode Trade Mark* BL O-399-10:

“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. In making an assessment between the competing goods and services, I bear in mind the decision of the General Court in *Gérard Meric v Office for Harmonisation in the Internal Market*.¹¹ The General Court held to the effect that goods and services can be considered as identical when the goods and services designated by the earlier mark are included in a more general category, designated by the trade mark application and vice versa.

21. Case law establishes that “... Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise” but “Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question.”¹²

22. The goods to be compared are set out above at [2] and [3].

Class 20

¹¹ Case T-133/05

¹² *YouView TV Ltd v Total Ltd*, [2012] EWHC 3158 (Ch).

23. The Opponent has argued that the Applicant's goods are identical, similar or complementary to the Opponent's goods in classes 20 and 24.¹³ I set out in the following table which goods I find to be identical, either by virtue of identically or synonymously-worded terms, or according to the principle in 'Meric':

Earlier mark:	Applied-for mark:
<i>mirrors [looking glasses]</i>	<i>Mirrors; Mirrors [furniture]; Wall mirrors; Hand mirrors; Shaving mirrors; Bathroom mirrors; Mirrors (silvered glass); Make-up mirrors for travel use; Make-up mirrors for the home</i>
<i>Furniture</i>	<i>Mirrored cabinets,¹⁴ Beds</i>
<i>cushions</i>	<i>cushions; Cushions; Seat cushions; Chair cushions; Pet cushions; Bean bag cushions.</i>
<i>racks [furniture]</i>	<i>Racks; Paper racks; Plant racks; Food racks; Shoe racks; Wine racks; Storage racks; Clothes racks [furniture]; Wine racks [furniture]</i>

24. The Opponent has argued that the Applicant's *Furniture racks* and *Fodder racks* are identical to the Opponent's *racks [furniture]*.¹⁵ I disagree. To my mind, the term 'racks [furniture]' covers racks which *are* items of furniture. I understand the Applicant's 'furniture racks' to mean racks for the storage of furniture e.g. in furniture warehouses. I understand the Applicant's 'fodder racks' to be racks for agricultural use, i.e. to hold animal fodder such as hay or silage. I do not, therefore,

¹³ Opponent's statement of grounds, at [12].

¹⁴ I disagree with the Opponent's argument that *mirrored cabinets* are identical to *mirrors*; however, I find them to be identical to *furniture*.

¹⁵ Opponent's statement of grounds, at [12].

consider that 'furniture racks' or 'fodder racks' would be encompassed by the term 'racks [furniture]'. I will compare these terms applying the usual 'Treat' factors.

Contested goods: *Furniture racks*

25. I compare these goods to the Opponent's *racks [furniture]*. The parties' goods will overlap in purpose to the broad extent that both are intended as storage solutions. Their specific purposes will, however, differ; I find that 'racks [furniture]' will cover racks for household use e.g. to store shoes or magazines, whereas the Applicant's 'furniture racks' are intended to stack furniture in warehouses etc. Users will therefore be different; the Applicant's 'racks [furniture]' will be purchased predominantly by the general public, whereas the Opponent's 'furniture racks' will be purchased by the professional public, e.g. furniture retailers or manufacturers. Trade channels will also likely be distinct; the same outfit would, to my mind, unlikely provide racks for household use alongside racks for industrial use. The respective goods will differ somewhat in methods of use; one being for industrial use as opposed to the other for domestic use. The goods will also differ in terms of physical nature; racks for household use will typically be smaller, and more often decorative or aesthetically pleasing, than racks for professionals to stack furniture. I do not consider the respective goods to be in competition, neither being substitutable for the other. I do not find complementarity, either; neither good is necessary or useful for the other. I find the parties' goods to have a **very low level of similarity**.

Contested goods: *Fodder racks*

26. I compare these goods to the Opponent's *racks [furniture]*. Although the parties' goods will overlap in purpose to the broad extent that racks tend to be used for storage, their specific purposes will differ; household use versus agricultural use (i.e. for feeding animals hay/silage). Although users will inevitably overlap to the extent that purchasers of fodder racks will almost always have homes and therefore be potential purchasers of household racks, I do not consider such trite overlap to be particularly significant. Trade channels will be distinct; fodder racks will be sold via agricultural suppliers whereas the Opponent's household racks will

be sold via the more 'domestic' retailers. Methods of use will also differ; fodder racks will be used outdoors or in animal sheds/stables, whereas the Opponent's racks will typically be used in the home. The goods will differ in terms of physical nature; fodder racks will typically be much larger as compared to racks for the home, which are also more likely to be decorative/aesthetically pleasing. I find the parties' goods to be neither competitive nor complementary. I find the parties' goods to have a **very low level of similarity.**

Contested goods: **Pillows**,¹⁶ **Accent pillows**; **Throw pillows**

27. It is my understanding that 'accent pillows' and 'throw pillows' are typically decorative pillows used on beds. Pillows are soft items against which to support one's head or body, particularly when sleeping or resting. I compare these goods to the Opponent's **cushions**. The parties' goods will overlap in purpose to the extent that both are intended to support the head or body, albeit pillows are typically used with beds, whereas cushions are often used on sofas and chairs, as well as on beds. Users and trade channels will overlap; both will be purchased predominantly by the general public from the same retail outlets and their online equivalents. Methods of use will overlap; both will be used against which to rest one's body or head. The overlap will not, however, be total; many pillows are used purely for sleeping on and would unlikely also be placed decoratively on beds. The goods will be similar in nature; both parties' offerings will take the form of a fabric 'bag', usually square or rectangular, stuffed with a soft material such as feathers or fibres. The goods will, in many instances, be competitive; one might deliberate over whether to purchase a decorative pillow or decorative cushion to arrange on a bed. I do not consider the goods to be complementary; neither is necessary or important for the other. I find the parties' goods to be **highly similar.**

Contested goods: *Travel pillows*; *Neck pillows*; *U-shaped pillows*

28. In my view, each of the above terms will encompass pillows used to support the neck while travelling. I compare these goods to the Opponent's **cushions**. The

¹⁶ This term appears twice in the Applicant's class 20 specification.

parties' goods will overlap in purpose to the broad extent that both are intended to provide support. The goods will differ in terms of their specific purposes; the Applicant's goods will encompass ergonomically-shaped pillows intended to support the neck while travelling, particularly when the user is in a sitting position. Users will overlap; both parties' offerings will be purchased predominantly by the general public. Trade channel overlap is possible, although not, to my mind, commonplace; both parties' offerings might be offered by the same retail outlets and their online equivalents. Where the respective goods are available from the same physical shops, I would not expect both cushions and the Applicant's pillows to be located in the same section; cushions would most likely be with other home furnishings whereas travel/neck/U-shaped pillows will likely be in a separate section of the shop, possibly a 'travel section'. The goods will be similar in nature to the broad extent that both parties' goods will be soft items filled with some sort of soft material such as feathers, fibres or foam. However, the goods will likely be very different in shape; 'cushions' will most often be square or rectangular whereas the Applicant's goods will have an ergonomic design, often a 'U' shape to fit comfortably around the neck. Specific methods of use will also differ somewhat; the Applicant's goods will typically be used to support the neck whereas the Opponent's cushions will typically be used with sofas or chairs and will often have an additional decorative function. I do not consider the goods to be in competition; an average consumer would not realistically deliberate over whether to purchase a travel, neck or 'U'-shaped pillow over a cushion. There is no complementarity between the parties' offerings, either; neither is necessary or important for the other. I find the parties' goods to **have a low level of similarity.**

Contested goods: *Bean bag pillows*

29. I understand that 'bean bag pillows' are typically large pillows filled with 'beanbag' filling used for sitting or lying on the floor. I compare these goods to the Opponent's **cushions**. The parties' goods will overlap in purpose to the extent that the Opponent's 'cushions' will cover 'floor' cushions. Methods of use will also therefore overlap. Users and trade channels will be shared; both will be purchased predominantly by the general public from the same retail outlets and their online equivalents. The goods will also coincide in terms of their physical nature. The

parties' goods will be in competition in some instances; one might deliberate over whether to purchase a 'bean bag pillow' or a 'floor' cushion. The respective goods are not, in my view, complementary; neither good being necessary or important for the other. I find the parties' goods to be **highly similar.**

Contested goods: ***Nursing pillows***

30. I understand the above term to encompass pillows intended to provide support to an infant while it is nursed. I compare these goods to the Opponent's **cushions**. The parties' goods will overlap in purpose to the broad extent that both provide support, albeit the Applicant's goods are specifically intended to support an infant while it is feeding. Although users will inevitably overlap to the extent that purchasers of nursing pillows will almost always have homes and therefore be potential purchasers of cushions, I do not consider such trite overlap to be particularly significant. Trade channel overlap is possible, although I do not consider it to be commonplace; some outlets might sell both parties' goods. Methods of use will differ; nursing cushions will be placed underneath the nursing infant on the care-giver's lap. The goods will have a similar physical nature in that both will be filled with soft material, albeit nursing cushions will likely be ergonomic and, therefore, a different shape to cushions for sofas/chairs etc. I do not consider the respective goods to be competitive; a purchaser of nursing pillows would unlikely consider other cushions as an alternative. I do not find complementarity; neither good is necessary or important for the other. I find the parties' goods to **have a low level of similarity.**

Contested goods: ***Scented pillows***

31. The Applicant's goods will encompass pillows which have been imbued with a fragrance, e.g. lavender. I compare these goods to the Opponent's **cushions**, which will, in my view, include scented versions. For the same reasons provided above at [27], I find the parties' goods **to be highly similar.**

Contested goods: ***Bath pillows***

32. I understand that 'bath pillows' are pillows intended to provide support whilst bathing. I compare these goods to the Opponent's **cushions**. The parties' goods will overlap in purpose to the broad extent that both are intended to provide support. Their specific purposes will differ, however; bath pillows will be specifically used while bathing. The goods will therefore differ in methods of use. Although users will inevitably overlap to the extent that purchasers of nursing pillows will almost always have homes and therefore be potential purchasers of cushions, I do not consider such trite overlap to be particularly significant. The respective goods' physical natures will also differ; bath pillows will be inflatable and fashioned from waterproof materials whereas cushions for sofas etc will typically be composed of textiles with feather or fibre fillings. There is no competition between the parties' goods; neither being substitutable for the other. I do not find complementarity; neither good is necessary or important for the other. I find the parties' goods to have a **very low level of similarity**.

Contested goods: *Inflatable pillows*

33. It is my understanding that 'inflatable' pillows are typically used for travelling or camping because they are compact in size when in their deflated state and therefore easy to pack and carry when not inflated for use. I compare these goods to the Opponent's **cushions**. The goods will coincide in purpose only to the very broad extent that both are used to provide support when resting or relaxing. However, inflatable pillows have the additional purpose of being inflatable and therefore portable when deflated. Users will overlap only in the very trite way that users of inflatable pillows might also have homes and therefore be potential users of cushions for chairs and sofas. Trade channel overlap is, in my view, unlikely; inflatable pillows will likely be purchased from camping shops or other specialised outlets. Methods of use will diverge; inflatable pillows will be folded and packed when deflated and inflated for use, whereas cushions in general will not be so used. The goods will have distinct physical natures; their appearances being very different. I find the parties' goods to be neither competitive nor complementary; neither party's offering is substitutable or necessary/important for the other. I find the parties' goods to have a **very low level of similarity**.

Contested goods: *Mattresses; Foam mattresses; Bed mattresses; mattresses*

34. The Applicant's goods are all mattresses which are typically used with beds. I compare these goods to the Opponent's *beds*. The goods will overlap in purpose to the extent that both items are used for sleeping on, albeit beds comprise the frame or base upon which mattresses are placed. Users and trade channels will overlap; the respective goods will be purchased predominantly by the general public and sold via the same outlets and their online equivalents. Methods of use will differ to the extent that the bed functions as a base for the mattress, whereas the mattress is used to support the person comfortably while sleeping or resting. The respective goods will differ in terms of their physical nature; bed frames or bases will be different in appearance to mattresses. There is no competition between the parties' goods, neither being substitutable for the other. I do, however, find complementarity; mattresses are important for beds, without which they cannot be used, and the average consumer may presume both parties' goods to originate from the same undertaking. I find the parties' goods to have **no more than a medium level of similarity.**

Contested goods: *Mattress toppers; Mattress pads*

35. It is my understanding that mattress toppers or pads are used as 'extensions' to existing mattresses to add extra cushioning and support. I compare these goods to the Opponent's *beds*. The goods will overlap in purpose to the extent that both items are used for sleeping on, albeit beds comprise the frame or base upon which the mattresses and, in turn, mattress toppers/pads are placed. Users and trade channels will overlap; the respective goods will be purchased predominantly by the general public and sold via the same outlets and their online equivalents. Methods of use will differ to the extent that the bed functions as a base for the mattress and, in turn, mattress topper/pad, whereas the mattress topper/pad is placed on top of the mattress to provide extra cushioning. The respective goods will differ in terms of their physical nature; bed frames or bases will be different in appearance to mattress toppers or pads. There is no competition between the parties' goods, neither being substitutable for the other. I do not find complementarity, either; while mattress toppers/pads are used *with* beds by virtue of being used with the

mattresses which are, in turn, placed upon beds, I consider mattress *toppers* or *pads* to be too far removed from beds to be considered complementary to them. All things considered, I find the parties' goods to have a level of similarity that is above low but below medium.

Contested goods: *Air mattresses; Inflatable mattresses for use when camping; Inflatable mattresses, other than for medical purposes;*

36. The Applicant's goods are, to my mind, intended to be slept on while camping, or for other occasional use. I deem 'inflatable' and 'air' mattresses to be synonymous. I compare these goods to the Opponent's *beds*. I consider the term 'bed' to cover 'camping beds'. To the extent that the Opponent's term covers 'camping beds' the goods will share the same purpose. Users and trade channels will overlap; both air/inflatable mattresses and camping beds will typically be purchased by the general public and may be sold via the same retail outlets and their online equivalents. The parties' goods will overlap in terms of their methods of the use to the broad extent that both will be used as temporary beds, particularly when camping. However, their specific methods of use will differ; camping beds will typically be foldable whereas inflatable or air mattresses will need to be inflated or deflated, as the case may be. The goods will also differ in terms of their physical nature; camping beds will typically consist of a foldable frame and thin mattress as opposed to the Applicant's inflatable mattresses which will typically be rolled up when not in use. I consider the respective goods to be in a competitive relationship; camping beds and inflatable mattresses are alternatives when deliberating over which option to choose for a camping trip. I do not find complementarity; neither party's offering is necessary or important for the other. I find the parties' goods to have a level of similarity of above medium but below high.

Contested goods: *Foam camping mattresses; Sleeping mats for camping [mattresses]*

37. I compare these goods to the Opponent's *beds*, to the extent that 'beds' will encompass 'camping beds'. For analogous reasons to those set out above at [36],

I find the parties' goods to have a level of similarity of **above medium but below high**.

Contested goods: *bedding*

38. 'Bedding' encompasses 'bedclothes' such as sheets, quilts, pillow cases and duvets etc. I compare these goods to the Opponent's **beds**. The parties' goods will differ in terms of their specific purposes; beds are the frames or bases for mattresses, whereas 'bedding' comprises the bedclothes which are arranged on beds. Users will overlap; both will be purchased predominantly by the general public. Trade channels may sometimes overlap; some outlets might sell both beds and bedding. The parties' goods will differ in terms of their physical nature and methods of use. There is no competition between the goods; neither good being substitutable for the other. I do not find complementarity, either; although bedding is important for beds, I consider that the average consumer would unlikely presume both beds and bedding to derive from the same undertaking. I find the parties' goods to **have a low level of similarity**.

Class 27

39. The Opponent has argued that the Applicant's class 27 goods are similar to the Opponent's *furniture* in class 20.

Contested goods: ***Rugs; Rugs [mats]; Rugs (Door -); Fur rugs; Area rugs; Bathroom rugs; Rugs for animals; Carpets, rugs and mats***

40. The Applicant's goods are floor coverings typically made from wool or other textile materials. I compare these goods to the Opponent's *furniture* in class 20. In my view, 'furniture' covers items intended to support various 'everyday' activities such as sitting, eating, sleeping, storage or working. The purposes of the respective goods are therefore distinct. Users will overlap; both will be purchased by both the general and professional public. Trade channels may overlap somewhat. The parties' goods will differ in their methods of use; furniture will be sat/slept upon, used as storage or for writing at, whereas the Applicant's function as floor

coverings. The goods will also differ greatly in terms of their physical nature; carpets and mats being flat wool/textile items with broad surface areas as compared to the various sorts of furniture items which will be very different in appearance. I find the parties' goods to be neither competitive nor complementary. All things considered, I find the parties' goods to be dissimilar. If I am wrong about that, then the goods have only a very low level of similarity.

Contested goods: *Anti-slip material for use under rugs.*

41. Bearing in mind the purposes, users, trade channels, physical natures and methods of use of the parties' goods, and considering the matters of competition and complementarity, I do not find the contested goods to bear any level of similarity to any of the Opponent's goods. I find the parties' goods to be dissimilar.
42. Some similarity between the parties' goods and services is necessary in order for an opposition under section 5(2)(b) of the Act to succeed. I will therefore give no further consideration to the goods that I have found to be dissimilar, since the opposition must necessarily fail to that extent.

Average consumer and the purchasing act

43. The average consumer is deemed to be reasonably well-informed and reasonably observant and circumspect. The word "average" denotes that the person is typical. 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*.
44. I consider that the average consumer of the goods at issue in this Opposition will be predominantly the general public. The purchasing act will be primarily visual. Typically, the goods will be examined in physical shops, or, in the case of online purchases, product information will be read, before making a purchase. There may also be an aural aspect to the purchasing process where advice is sought from retail staff. In some cases, a transaction will conclude after discussion of the

purchaser's needs with the seller. Many of the goods will have a modest price-point of tens of pounds (e.g. items of bedding, shoe racks), others will be priced in the hundreds (e.g. beds). I consider that purchases of these goods will entail a measure of care because consumers tend to be fairly attentive when purchasing items which will be displayed in the home. In my view, the average consumer would pay a **medium to high level of attention** when selecting the goods. Factors influencing the purchasing decision will likely include, *inter alia*, the size and/or colour of the goods, ease of use (e.g. inflatable pillows or mattresses).

Comparison of the marks

Earlier mark: IDÉE	Applied-for mark: Idee-home
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45. 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.”

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

Overall impression of the marks

47. The earlier mark is a 'word' mark¹⁷ in a plain typeface consisting of the single word 'IDÉE'. The overall impression of the mark therefore derives from that sole element.

48. The Applicant's mark is also a 'word' mark and comprises 'idee-home', also in a plain typeface. My view is that the average consumer would recognise 'idee' and 'home' as two elements. I consider that both elements will contribute to the overall impression of the mark due to being conjoined by the hyphen. However, the element 'idee' will, in my view, be the more dominant element due to 'home' being somewhat descriptive.

Visual comparison

49. The common element in the parties' marks is the word 'idee'. I consider that the vast majority of average consumers may overlook The only points of difference between the marks are:

- the presence of the hyphen and word element 'home' in the Applicant's mark, which are absent from the Opponent's mark; and
- the presence of the acute accent above the first 'E' in the Opponent's mark: É. I do not consider that this difference will carry a great deal of weight in the overall impression.

The fact that the Applicant's mark is twice the length of the Opponent's mark will very likely be noticed by the average consumer. I find the marks to have a medium level of visual similarity.

¹⁷ In *LA Superquimica v EUIPO*, Case T-24/17, at paragraph [39] it was held that:

'[...] it should be noted that a word mark is a mark consisting entirely of letters, words or groups of words, without any specific figurative element. The protection which results from registration of a word mark thus relates to the word mentioned in the application for registration and not the specific figurative or stylistic aspects which that mark might have. As a result, the font in which the word sign might be presented must not be taken into account. It follows that a word mark may be used in any form, in any colour or font type (see 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).'

Aural comparison

50. It is common ground between the parties that 'idée' is a word in the French language. However, I must make my comparison from the standpoint of the average consumer in the UK. I must be prudent not to ascribe a greater knowledge to the UK average consumer than is warranted.¹⁸ My view is that there will be two groups of average consumers; those familiar with the French language, and those not so familiar. For average consumers who understand French, the earlier mark will likely be articulated as 'EE-DAY'. For average consumers unfamiliar with French, the mark will, in my view, be articulated as 'ID-EE' or, perhaps, 'EYE-DEE'. My view is that the Applied-for mark will not be seen as a French word, due to the absence of the acute accent above the first 'e' in 'idée'. I find that the average consumer will likely articulate the Applicant's mark as 'ID-EE HOME'. Given that both marks are short, I consider that the presence of the third syllable 'HOME' in the applied-for mark will be particularly apparent aurally. For average consumers familiar with French, I consider the marks be aurally similar to no more than a medium degree ('EE-Day' versus 'ID-EE HOME'). I find the marks to have at least a medium degree of aural similarity for average consumers not so familiar with the French language ('ID-EE' or 'EYE-DEE' versus 'ID-EE HOME').

Conceptual comparison

51. I first consider the perception of the average consumer who understands the French language. The earlier mark will be understood as the word for 'idea'. Given the absence of the acute accent above the first 'e' in 'idée', this element of the applied-for mark will likely be perceived as an invented word, with the 'home' element understood as the commonly-used word in the English language. The earlier mark might conjure the idea of goods which 'inspire' or provide 'ideas'. The word 'home' will likely be seen as descriptive of the type of goods sold under the mark. The Applicant's mark will, in my view, likely be perceived as a brand, featuring a made-up word, selling goods for the home. I find the marks to be conceptually different.

¹⁸ In *Wunderkind Trade Mark* [2002] R.P.C. 45, the registrar refused to attribute knowledge of the German meaning of the word 'Wunderkind' to UK consumers, despite evidence of a small number of uses of that word in UK press articles, a decision which was upheld by the High Court.

52. For average consumers unfamiliar with French, the 'idée' element will likely be perceived as an invented word, to which no concept will attach. Although the common element of the parties' marks will be devoid of concept, the word 'home' in the Applicant's mark, although descriptive, will still convey the notion of products for the home. For this group of consumers, there is no conceptual similarity.

Distinctive character of the earlier mark

53. *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 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: perhaps lower where a mark may be suggestive or allusive of a characteristic of the goods, ranging up to those with high inherent distinctive character, such as invented words which have no allusive qualities.
55. I have found that a proportion of UK consumers will understand the French language and will be aware that 'idée' means 'idea' in English. Another proportion of average consumers will not understand French and will therefore see 'idée' as an invented word to which no concept will attach. For average consumers who understand French, the earlier mark neither describes nor alludes to the goods in respect of which it is registered. **I find the mark to have at least a medium level of inherent distinctive character.** For average consumers who do not understand French, the earlier mark will have a **high level of inherent distinctive character.**
56. The Opponent has not adduced evidence of the use of its mark. I am therefore unable to make an assessment as to whether the earlier mark enjoys an enhanced level of distinctive character.

Likelihood of confusion

57. Confusion can be direct or indirect. Mr Iain Purvis QC, (as he then was) as the Appointed Person, explained the difference in the decision of *L.A. Sugar Limited v Back Beat Inc*¹⁹. Direct confusion occurs when one mark is mistaken for another. In *Lloyd Schuhfabrik*²⁰, the CJEU recognised that the average consumer rarely encounters the two marks side by side but must rely on the imperfect picture of them that they have kept in mind. Direct confusion can therefore occur by imperfect recollection when the average consumer sees the later mark but mistakenly matches it to the imperfect image of the earlier mark in their 'mind's eye'. Indirect confusion occurs when the average consumer recognises that the competing marks are not the same in some respect, but the similarities between them,

¹⁹ Case BL O/375/10 at [16].

²⁰ *Lloyd Schuhfabrik Meyer and Co GmbH v Klijsen Handel BV* (C-34297) at [26].

combined with the goods at issue, leads them to conclude that the goods are the responsibility of the same or an economically linked undertaking.

58. I must keep in mind that a global assessment is required taking into account all of the relevant factors, including the principles a) – k) set out above at [10]. When considering all relevant factors ‘in the round’, I must bear in mind that a greater degree of similarity between goods *may* be offset by a lesser degree of similarity between the marks, and vice versa.

59. Despite the identity and similarity that I have identified between the parties’ goods, my view is that net effect of the visual and aural differences between the parties’ marks is sufficient to prevent the average consumer from mistaking one mark for the other. I have found the marks to have a medium level of visual similarity. I have found the marks to have a level of aural similarity of ‘at least medium’, from the standpoints of both French-speaking and non-French-speaking average consumers. Despite both parties’ marks containing the element ‘idee’, I am of the view that the visual and aural differences that I have identified will be noticed by the average consumer, in what is primarily a visual purchase. I have found that the average consumer will display a medium to high level of attention during the purchasing act. Both marks are fairly short and the differences between them will, therefore, likely be particularly marked. Visually speaking, the Applicant’s mark is twice as long as the earlier mark. Aurally speaking, the third syllable of the Applicant’s mark (‘HOME’) will not go unnoticed. Despite the fact that the ‘Home’ element of the Applicant’s mark will likely be seen as descriptive, I am of the view that the presence of the hyphen to connect it to ‘idee’ accords visual prominence to both elements and would lead the average consumer to articulate the mark in its entirety. I find that there is no likelihood of direct confusion.

60. I now consider whether there is a likelihood of indirect confusion. I note that in the recent case of *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 *L.A. Sugar Limited v Back Beat Inc*²¹ Mr Iain Purvis Q. C. (as he then was), as the Appointed Person, explained that [my words in parentheses]:

17. Instances where one may expect the average consumer to reach such a conclusion [i.e. to conclude that marks relate to the same or economically linked undertakings] 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)".

62. My view is that the instant case falls within the second category outlined above. The word 'Home' is, in my view, descriptive of the goods with which I have found the Opponent's goods to be similar. The addition of the word 'home' to the common element 'idee', to my mind, appears consistent with a brand extension or sub-brand, e.g. a line of 'idee' goods especially for the home. I am of the view that the average consumer may presume the parties' marks to originate from the same or

²¹ Case BL O/375/10

economically-related undertakings. I find that there is a likelihood of indirect confusion. I find this to be the case even for goods that I have found to be similar to the Opponent's goods to only a low degree.²²

Outcome

63. The Opposition has been partially successful. Subject to a successful appeal, the Application:

- is refused in respect of the following goods only:

Class 20:

Mirrors; Mirrors [furniture]; Wall mirrors; Hand mirrors; Shaving mirrors; Bathroom mirrors; Mirrors (silvered glass); Make-up mirrors for travel use; Make-up mirrors for the home; Mirrored cabinets; Beds; cushions; Cushions; Seat cushions; Chair cushions; Pet cushions; Bean bag cushions; Racks; Paper racks; Plant racks; Food racks; Shoe racks; Wine racks; Storage racks; Clothes racks [furniture]; Wine racks [furniture]; Pillows; Accent pillows; Throw pillows; Travel pillows; Neck pillows; U-shaped pillows; Bean bag pillows; Nursing pillows; Scented pillows; Mattresses; Foam mattresses; Bed mattresses; mattresses; Mattress toppers; Mattress pads; Air mattresses; Inflatable mattresses for use when camping; Inflatable mattresses, other than for medical purposes; Foam camping mattresses; Sleeping mats for camping [mattresses]; bedding

- may proceed in respect of the following goods and services only:

Class 20:

Fodder racks; Furniture racks; Bath pillows; Inflatable pillows

Class 27:

²² However, I do not find a likelihood of confusion in respect of goods that I have found to be similar to a very low degree.

Rugs; Rugs [mats]; Rugs (Door -); Fur rugs; Area rugs; Bathroom rugs; Rugs for animals; Carpets, rugs and mats; Anti-slip material for use under rugs.

COSTS

64. The Opponent has enjoyed the greater level of success and is therefore entitled to a contribution to its costs based upon the scale published in Tribunal Practice Notice 2/2016, calculated as follows:

Filing fee for Notice of Opposition	£100
Preparation of Statement of Grounds and consideration of the other side's statement	£200
Consideration of the other side's evidence	£200 ²³
Sub-total:	£500
Less 25% to account for the fact that the Opposition has failed in respect of roughly a quarter of the opposed terms	-£125
Total:	£375

65. I therefore order Bensheng Hu to pay to Ryohin Keikaku Co., Ltd the sum of £375. This sum is to be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 8th day of November 2023

N. R. Morris
For the Registrar,
the Comptroller-General

²³ I have awarded a sum below the minimum threshold because the Applicant's evidence was scant, unnecessary and irrelevant.