o/1091/23

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00003736256
BY BEIJING SEVEN TALENTS TECHNOLOGY CO., LTD.
TO REGISTER THE TRADE MARK:

DEKCO

IN CLASS 9

AND

IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 435130
BY ELITE SECURITY PRODUCTS LIMITED

BACKGROUND AND PLEADINGS

1. On 23 December 2021, Beijing Seven Talents Technology Co., Ltd. ("the applicant") applied to register the trade mark shown on the cover page of this decision in the UK. The application was published for opposition purposes on 29 April 2022.

2. The application was partially opposed by Elite Security Products Limited ("the opponent") on 20 July 2022. The opposition is based upon section 5(2)(b) of the Trade Marks Act 1994 ("the Act") and is directed against the following goods of the application:[1]

Class 9 Security cameras; Surveillance cameras; Video cameras; Video surveillance cameras; Webcams; Video surveillance systems; Electric doorbells; Sensors for determining temperature.

3. Under section 5(2)(b), the opponent relies upon the following trade mark:

GuardCam deco

Comparable UK trade mark (EU) registration no. UK00917969427[2]
Filing date 17 October 2018.
Registration date 26 February 2019.
Priority date 3 July 2018.
Relying upon some of the goods for which the earlier mark is registered, namely:

Class 9 Motion sensitive security lights; security cameras; security cameras incorporating an audio warning; motion sensitive security lights

[1] In the opponent's Notice of Opposition (Form TM7), the opponent also lists *power switches* and *electrical outlets* as goods which they are opposing. However, these terms are not contained within the applicant's applied-for specification.
[2] Following the end of the transition period of the UK's withdrawal from the EU, all EU trade marks ("EUTM") registered before 1 January 2021 were recorded as comparable trade marks in the UK trade mark register (and as a consequence, have the same legal status as if they had been applied for and registered under UK law). A 'comparable trade mark (EU)' retains the same filing date, priority date (if applicable) and registration date of the EUTM from which it derives.

incorporating a security camera with or without an audio warning; electrical and electronic apparatus for use in remote control; mobile apps; digital video storage and transmission apparatus and instruments; closed circuit television apparatus and instruments; intruder alarm systems; parts and fittings for all the aforesaid goods.

4. The opponent claims that there is a likelihood of confusion because the goods are identical or highly similar, and the marks are similar to a high degree.

5. The applicant filed a counterstatement denying the claims made.

6. The opponent is represented by Roome Associates Limited and the applicant is represented by MARINOS CLEANTHOUS. Neither party requested a hearing, however, the opponent filed written submissions and submissions in lieu of a hearing. I make this decision having taken full account of all the papers, referring to them as necessary.

7. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Act relied 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

DECISION

Section 5(2)(b)

8. Section 5(2)(b) reads as follows:

"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."

9. The applicant's Notice of Defence (Form TM8) requested proof of use of the opponent's mark. However, as highlighted in the official letter of the Registry dated 28 October 2022, the opponent's mark had not completed its registration process more than five years before the relevant date. Accordingly, the use provisions at s.6A of the Act do not apply. The opponent may rely on all of the goods it has identified without demonstrating that it has used the mark.

Section 5(2)(b) case law

10. In making this decision, I bear in mind the following principles gleaned from the decisions of the EU courts 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 C-120/04, *Shaker di L. Laudato & C. Sas v OHIM,* Case C-334/05P and *Bimbo SA v OHIM,* Case C-591/12P:

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

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

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;

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

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

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

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

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

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

Comparison of goods

11. The competing goods are as follows:

Opponent's goods	**Applicant's goods**
Class 9 Motion sensitive security lights; security cameras; security cameras incorporating an audio warning; motion sensitive security lights incorporating a security camera with or without an audio warning; electrical and electronic apparatus for use in remote control; mobile apps; digital video storage and transmission apparatus and instruments; closed circuit television apparatus and instruments; intruder alarm systems; parts and fittings for all the aforesaid goods.	Class 9 Security cameras; Surveillance cameras; Video cameras; Video surveillance cameras; Webcams; Video surveillance systems; Electric doorbells; Sensors for determining temperature.

12. When making the comparison, all relevant factors relating to the goods in the specifications should be taken into account. In the judgment of the Court of Justice of the European Union ("CJEU") in *Canon*, Case C-39/97, the court stated at paragraph 23 that:

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

13. Guidance on this issue has come from Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, where he identified the factors for assessing similarity as:

> (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

14. 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 Institüt für Lemsysteme 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."

15. I bear in mind the following applicable principles of interpretation from *Sky v Skykick* [2020] EWHC 990 (Ch), paragraph 56 (wherein Lord Justice Arnold, in the course of his judgment, set out a summary of the correct approach to interpreting broad and/or vague terms):

"(1) General terms are to be interpreted as covering the goods or services clearly covered by the literal meaning of the terms, and not other goods or services.

(2) In the case of services, the terms used should not be interpreted widely, but confined to the core of the possible meanings attributable to the terms.

(3) An unclear or imprecise term should be narrowly interpreted as extending only to such goods or services as it clearly covers.

(4) A term which cannot be interpreted is to be disregarded."

Sensors for determining temperature.

16. The opponent's earlier goods include "motion sensitive security lights incorporating a security camera with or without an audio warning […] parts and fittings for all the aforesaid goods". I consider that such parts will include a sensor which detects 'motion' by reference to changes in the infrared heat signals that it can 'see' – such as the body temperature of a person walking into view - to trigger the security light switch on the camera. I therefore consider that the applicant's "sensors for determining temperature" falls within the opponent's aforesaid broader category. The goods are identical on the principle outlined in *Meric.*

Security cameras.

17. "Security cameras" appears identically in both specifications.

Surveillance cameras; video cameras; video surveillance cameras.

18. In my view, each of the applied-for terms listed above are essentially identical to the opponent's "security cameras", each falling within the ordinary scope of that term and thus are identical on the principle outlined in *Meric*. It is also possible that security cameras may be considered to be used mainly on residential houses, to act as a deterrent to crime, whereas surveillance cameras are more commonly used by private

businesses with the aim to monitor and catch criminals in the act. If so, the goods are at least similar to a high degree, on the basis that they are all types of video cameras that record people's activities in order to monitor, detect and prevent crime, and so have the same nature, method of use and purpose. The goods will overlap in trade channels, with the same undertakings providing all of the above goods and they will also be in competition as alternative choices to one another.

19. I have given my view above that a security camera is a video camera and the goods are therefore identical. However, I recognise that one common form of "video cameras" may be a portable video camera used for general filming, whereas the opponent's "security cameras" are used for security purposes and affixed to either a wall or ceiling. Therefore, even on that understanding, the opponent's "security cameras" are similar to a medium degree to the applicant's "video cameras" as they both record and capture video and therefore overlap in nature and purpose, will be distributed by the same general electrical retailers (in different aisles) and will overlap in user.

Video surveillance systems.

20. I consider that the applicant's "video surveillance systems" are a network of cameras/recorders which sends its collective data to a central system, which is used to monitor a specific location or area for security and safety purposes. I therefore consider that there will be significant overlap with the opponent's "security cameras" and "digital video storage and transmission apparatus and instruments". The goods overlap in nature, purpose and method of use as they all record and/or store data. I also consider that there will be an overlap in user and purpose as they can all be used by businesses for security purposes. I consider that the goods may be, to some extent, in competition as you could choose either or to achieve the same result. I therefore consider that the goods are similar to a high degree.

Webcams.

21. I consider that the opponent's "security cameras" are similar to the applicant's "webcams". A webcam is a type of video camera which records or streams to a

computer/computer network. I therefore consider that the goods, which are both types of cameras, overlap in nature, and to some extent, in purpose. I also consider that there would be an overlap in user and distribution channels, as general electrical retailers would sell both goods, albeit in different aisles. The goods do not overlap in method of use, especially as the opponent's goods are specifically used for security purposes and would be affixed to the outside of a building or to a ceiling. The goods are neither in competition nor complementary. I therefore consider that they are similar to a medium degree.

Electric doorbells.

22. Firstly, I note that in some apartment complexes, systems may be used which have a video/camera system linked to a door bell, so that the owner of the flat can see who is ringing their apartment's bell. However, as highlighted by *Sky v Skykick* above*,* I consider that including those goods within the term "electric doorbell" would be interpreting it too widely. The term simply covers a doorbell which is electric in nature.

23. I therefore do not consider that any of the opponent's goods are similar to the applicant's "electric doorbells". The goods do not overlap in nature, method of use, or purpose, as the applicant's goods alert the homeowner that someone is at the door, whereas the opponent's goods are used for security purposes, or are general electrical parts and fittings. The goods are therefore neither in competition nor complementary. The goods may all be distributed through general electrical retailers; but they will not be sold in the same aisle or in close proximity. They may also overlap in user. However, I do not consider that this is enough to establish similarity. The goods are dissimilar.

24. It is a prerequisite of section 5(2)(b) that the goods be identical or at least similar. The opposition will, therefore, fail in respect of the goods that I have found to be dissimilar.[3] The opposition under section 5(2)(b) fails for the following goods:

Class 9 Electric doorbells.

[3] *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA

The average consumer and the nature of the purchasing act

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

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

26. The average consumer for the goods is likely to be a member of the general public or, in the context of security and surveillance for commercial premises, a business user. Even where the goods are relatively low cost, given their importance in ensuring the safety of the user, I consider that at least a medium degree of attention will be paid. Where the user is a business user, who will be concerned with the safety of the premises, I consider that to between a medium and high degree of attention will be paid.

27. The goods are likely to be selected from the shelves of an electrical retailer or their online equivalents. Consequently, visual considerations are likely to dominate the selection process. However, I do not discount an aural component to the purchase given that advice may be sought from retail assistants.

Comparison of the trade marks

28. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade mark as a whole and does not proceed to

analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the trade marks must be assessed by reference to the overall impressions created by the trade marks, bearing in mind their distinctive and dominant components. The CJEU stated, at paragraph 34 of its 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."

29. 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.

30. The respective trade marks are shown below:

Opponent's trade mark	Applicant's trade mark
GuardCam deco	DEKCO

31. The opponent's mark consists of the words "GuardCam deco". GuardCam is twice the length of the word "deco" and is the first part of the opponent's mark. However, for reasons I will come to discuss in the conceptual comparison, the word "GuardCam" is highly allusive of the nature of the opponent's security camera goods, which reduces its role in the overall impression of the mark. In my view, the more distinctive element of the mark is the word "deco" which therefore plays a greater role in the overall impression.

32. The applicant's mark consists of the word "DEKCO" written in a stylised, capitalised typeface. I consider that the stylisation plays a lesser role, with the invented word "DEKCO" being the dominant and distinctive element, playing a greater role in the overall impression of the mark.

33. Visually, the marks coincide in the letters D, E, C and O. I also bear in mind that the opponent's mark is a word mark, and its registration covers use in any standard typeface, including presenting the mark in upper and lower-case, or title-case. These are, therefore, visual points of similarity. However, the opponent's mark starts with the word "GuardCam", and I bear in mind that the average consumer tends to pay more attention to the beginning of the marks.[4] The applicant's mark also includes the letter "K" in the middle of the mark, and is presented in a stylised typeface. These act as visual points of difference. I therefore consider that the marks are visually similar to between a low and medium degree.

34. Aurally, the opponent's mark will be pronounced as G-ARD-CAM-DEK-OH. The opponent submits that the "K" in the middle of the applicant's mark will have no impact phonetically. In my view, the applicant's mark will be pronounced as DEK-CO, but given that both the K and C have the same sound, the overall aural effect is practically indistinguishable from DEK-OH. Indeed, some may squarely pronounce the applicant's mark as DEK-OH.

35. The beginning of the marks differ aurally, however as they overlap in the DEK and OH syllables (which I consider the more distinctive element of the opponent's mark) I find the marks to be aurally similar to between a low and medium degree.

36. In relation to the conceptual comparison of the marks, the opponent argued in its submissions in lieu that although the contested mark has no direct meaning for the goods in question, any meaning that can be ascribed will apply equally to both marks. The applicant's counterstatement makes no reference at all to the conceptual comparison of the marks.

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

37. I do not rule out that a small (but not significant) proportion of the UK public may consider that the "deco" element of the opponent's mark is an abbreviated version of the word "decorative" (as perhaps in 'art deco'). However, I do not consider that this is an obvious term to be used, recognised or attributed by the average consumer in the context of the opponent's security camera goods. Instead, I find that a significant proportion of average consumers will perceive both "deco" in the opponent's mark, and the applicant's "dekco" mark, as words with no immediate graspable concept or meaning. Consequently, although these distinctive elements are very similar to each other, I find the position is neutral based on an assessment of conceptual similarity with the second part of the opponent's mark.

38. The opponent submits that the element at the beginning of its mark, "GuardCam", will be recognised as being the combination of two words "Guard" and "Cam", with "guard" meaning to watch over in order to protect or control, and "cam" being "readily understood" as an abbreviation of the word "camera". The opponent also submits that the word will likely be perceived as referring to the goods themselves. I agree with opponent's submissions. I consider that the word "GuardCam" will be recognised as referring to a camera which watches and protects, which is therefore, highly allusive of the nature of the opponent's "security cameras". On this basis, the respective marks are conceptually dissimilar, as the opponent's mark evokes a concept that is not present in the applied-for mark.

Distinctive character of the earlier trade mark

39. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 the CJEU stated that:

> "22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the 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

C108/97 and C-109/97 Windsurfing Chiemsee v Huber and Attenberger [1999] ECR 1-2779, 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 promotion of 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)."

40. 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.

41. As the opponent has not filed any evidence to show that the distinctiveness of its mark has been enhanced through use, I only have the inherent position to consider. The first word of the opponent's mark "GuardCam", is composed of an ordinary dictionary word 'guard', meaning to watch over in order to protect, and the shortening of the word 'camera'. "GuardCam" is therefore highly allusive of the nature of the opponent's security camera goods. The second word (and the more dominant element) of the opponent's mark, "Deco" will be recognised by a significant proportion of average consumers as an invented word with no meaning. Consequently, the mark overall is inherently distinctive to a medium degree.

Likelihood of confusion

42. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the

average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods down to the responsible undertakings being the same or related. 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. This includes 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. It is necessary for me to keep in mind the distinctive character of the earlier 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.

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

- I have found the marks to be visually and aurally similar to between a low and medium degree.
- I have found the more dominant element of the opponent's mark and the distinctive whole of the applicant's mark (the invented words deco and DEKCO), to be conceptually neutral. However, as a whole, as the opponent's mark evokes the concept of a camera that watches over in order to protect and control, the marks are conceptually dissimilar.
- I have found the opponent's mark to be inherently distinctive to a medium degree.
- I have identified the average consumer for the goods to be the general public and business who will select the goods primarily by visual means, although I do not discount an aural component.
- I have concluded that at least a medium degree of attention will be paid during the purchasing process for the goods by the general public, with business users paying between a medium and high degree of attention.
- I have found the applicant's similar goods vary from being identical to similar to a medium degree to the opponent's goods.

44. I bear in mind that in *Comic Enterprises Ltd v Twentieth Century Fox Film Corporation* [2016] EWCA Civ 41, Kitchin LJ stated that:

> "if, having regard to the perceptions and expectations of the average consumer, the court concludes that a significant proportion of the relevant public is likely to be confused such as to warrant the intervention of the court then it may properly find infringement."

45. This was, of course, in the context of infringement. However, the same approach is appropriate under section 5(2).[5] It is not, therefore, necessary for me to find that the majority of consumers will be confused. The question is whether there is a likelihood of confusion amongst a significant proportion of the public displaying the characteristics attributed to an average consumer.

46. I also bear in mind that the average consumer rarely has the chance to make direct comparisons between trade marks and, instead, must rely upon the imperfect picture of them retained in its mind (imperfect recollection).

47. As highlighted above, a significant proportion of consumers will see the word DECO at the end of the opponent's mark as being an invented word. It is consequently the distinctive element of the mark, and plays a greater role in the overall impression. The applicant's mark, DEKCO, is also an invented word with no recognisable meaning. These invented word elements are, therefore, conceptually neutral. This means that there is no conceptual hook to assist in differentiating between what will be perceived as invented words with no meaning.

48. The words DECO and DEKCO both start with the letters D and E, and end in the letters C and O. The only difference between the words is the letter "K" in the middle of the applicant's mark, which could therefore be easily overlooked, especially as it does affect the aural pronunciation of the invented word, resulting in aural identity (or virtually so) between the invented words.

[5] *Soulcycle Inc v Matalan Ltd* [2017] EWHC 496 (Ch), Mann J.

49. I note that the beginning of the opponent's mark starts with the word "GuardCam", and that the beginning of marks tend to have more impact than the ends. However, in *Bristol Global Co Ltd v EUIPO,* T-194/14, the GC held that there was a likelihood of confusion between AEROSTONE (slightly stylised) and STONE if both marks were used by different undertakings in relation to identical goods (land vehicles and automobile tyres). This was despite the fact that the beginnings of the marks were different. The common element – STONE – was sufficient to create the necessary degree of similarity between the marks as wholes for the opposition before the EUIPO to succeed.

50. In this instance, as highlighted above, the word "GuardCam" is composed of an ordinary dictionary word, which means to watch over in order to protect and control, and the shortening of the word camera. Therefore, as a whole, the word is highly allusive of the nature of the opponent's security camera goods. On this basis, I consider that it is possible that an average consumer may less readily retain in mind that part of the trade mark, or it could be easily overlooked. Consequently, given that the average consumer rarely has the opportunity to compare marks side-by-side and will instead encounter them in different settings at different times will, to my mind, lead the average consumer to mistake one mark for the other. This is especially so, given that the goods are identical or similar to a medium degree, and the effect of the interdependency principle. I consider that there is a likelihood of direct confusion.

51. In the event that I am wrong in that regard, and for the sake of completeness, I will also assess if there is a likelihood of indirect confusion. Indirect confusion was described in the following terms by Iain Purvis Q.C. sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10:

> "16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later

mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: “The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark.”

52. 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.

53. I also find there to be a likelihood of indirect confusion on the basis of imperfect recollection. I am of the view that even if the the average consumer recognises and remembers the word “GuardCam” at the beginning of the opponent’s mark, they are still likely to imperfectly recall the differences in spelling between the words DECO and DEKCO, overlooking the letter “K” in the middle of the applicant’s mark. This is on the basis that conceptually, both are invented words with no conceptual meanings. Consequently there is no conceptual hook in order to differentiate between the invented words. This is particularly the case bearing in mind the level of distinctiveness of the opponent’s mark on the basis that it contains an invented word (DECO) which is neither allusive nor descriptive of the goods.

54. I appreciate that the word “GuardCam” is present to create a conceptual distinction between the marks, but, as highlighted above, it is highly allusive of the nature of the opponent’s security camera goods.

55. Therefore, it is my view that the average consumer will view the applicant’s mark as an alternative mark being used on identical or similar goods, by the same or economically linked undertakings, perhaps being an updated version of the same mark and therefore indicative of re-branding, or a sub-brand mark (with the applicant’s mark being the house brand, and the opponent’s mark being the sub-brand, potentially for

a line of security camera goods). I consider that it is not uncommon for undertakings re-brand themselves from time to time to accommodate changes in marketing considerations. Consequently, I consider there to be a likelihood of indirect confusion.

CONCLUSION

56. The opposition is partially successful in respect of the following goods, for which the application is refused:

Class 9 Security cameras; Surveillance cameras; Video cameras; Video surveillance cameras; Webcams; Video surveillance systems; Sensors for determining temperature.

57. The application can proceed to registration in respect of the following goods, for which the opposition has been unsuccessful:

Class 9 Electric doorbells.

58. The application can proceed to registration in respect of the following goods for which the opposition was not directed against:

Class 9 Video baby monitors; Baby monitors; Solar panels; Electronic locks.

COSTS

59. The opponent has been partially successful and is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice 2/2016. In the circumstances, I award the opponent the sum of **£500** as a contribution towards the costs of the proceedings. The sum is calculated as follows:

Filing a Notice of opposition and considering the applicant's counterstatement	£200
Preparing and filling written submissions and	£400

submissions in lieu of a hearing

Official Fee	£100
Total	**£500**

60. I therefore order Beijing Seven Talents Technology Co. , Ltd. to pay Elite Security Products Limited the sum of £500. This sum is to be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 16th day of November 2023

L FAYTER

For the Registrar