O/1153/23

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO.
UK00003799422 BY SYCAMORE LIGHTING LTD
TO REGISTER:

AS A TRADE MARK IN CLASSES 11 & 20
AND
AND IN THE MATTER OF OPPOSITION THERETO
UNDER NO 437909
BY TECH LIGHTING L.L.C.

BACKGROUND AND PLEADINGS

1. Sycamore Lighting Ltd ("the applicant") applied to register the trade mark shown on the cover page of this decision in the UK on 15 June 2022. The application was accepted and published in the Trade Marks Journal on 9 September 2022 in respect of the following goods:

> **Class 11:** *Lighting; light emitting diode lighting fixtures; display lighting; diffusers (light -); wall lights; lighting transformers; decorative lighting; lighting installations; light installations; lighting apparatus; lighting fixtures; led [light-emitting diode] lighting fixtures; light-emitting diodes [led] lighting apparatus; led mood lights; led lighting installations.*
>
> **Class 20:** *Mirrors; mirror stands; mirror frames; mirrors [furniture]; decorative mirrors; wall mirrors; shaving mirrors; bathroom mirrors; mirrored cabinets; mirrors enhanced by electric lights; make-up mirrors for travel use; make-up mirrors for the home.*

2. On 9 December 2022, Tech Lighting L.L.C. ("the opponent") filed a notice of opposition on the basis of section 5(2)(b) of the Trade Marks Act 1994 ("the Act"). The opposition is directed at all the goods of the application. The opponent relies on the following trade mark:

TECH LIGHTING

International Registration designating the UK no. 1585404
International registration date 25 February 2021
Date of protection in the UK 12 August 2021
("the opponent's mark")

Relying on the following goods:

> **Class 11**: *Electrical lighting fixtures*

3. The opponent submits that there is a likelihood of confusion because the applicant's mark is similar to its own mark and the respective goods are identical or similar. The applicant filed a defence and counterstatement denying the claims made.

4. The applicant is represented by Murgitroyd & Company; the opponent is represented by J.A. Kemp LLP. Neither party filed evidence. No hearing was requested. Neither party filed submissions in lieu of a hearing.

5. 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.

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

6. Section 5(2)(b) of the Act reads as follows:

> "(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 or association with the earlier trade mark."

7. Section 5A of the Act is as follows:

> "5A Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the

trade mark is applied for, the application is to be refused in relation to those goods and services only."

8. Given its filing date, the opponent's mark qualifies as an earlier trade mark pursuant to section 6 of the Trade Marks Act. The opponent's registration did not complete its protection process more than five years before the application date of the applicant's mark. The conditions of use, therefore, do not apply to the registration. Therefore, the opponent can rely on all the goods in its registration.

9. The following principles are 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 impression 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 greater degree of similarity between the marks, and vice versa;

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

(i) mere association, in the strict sense that the later mark brings to mind the earlier mark, 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 will wrongly believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

THE COMPARISON OF THE GOODS

10. The goods to be compared are as follows:

The applicant's goods	**The opponent's goods**
Class 11 *Lighting; light emitting diode lighting fixtures; display lighting; diffusers (light -); wall lights; lighting transformers;*	Class 11 *Electrical lighting fixtures*

decorative lighting; lighting installations; light installations; lighting apparatus; lighting fixtures; led [light-emitting diode] lighting fixtures; light-emitting diodes [led] lighting apparatus; led mood lights; led lighting installations. <u>Class 20</u> *Mirrors; mirror stands; mirror frames; mirrors [furniture]; decorative mirrors; wall mirrors; shaving mirrors; bathroom mirrors; mirrored cabinets; mirrors enhanced by electric lights; make-up mirrors for travel use; make-up mirrors for the home.*	

11. 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."

12. 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.

13. In *Boston Scientific Ltd v OHIM*, Case T-325/06, the General Court (GC) stated that "complementary" means:

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

14. In *Gérard Meric v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* case T-133/05, the General Court ("GC") stated:

"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 the trade mark application (Case T-388/00 Institut für Lernsysteme v OHIM – Educational Services (ELS) [2002] ECR II-4301, paragraph 53) or when the goods designated by the trade mark application are included in a more general category designated by the earlier mark".

Class 11

15. It is permissible to group goods together for the purpose of comparison where they are *"sufficiently comparable for registration in essentially the same way for the same reasons";*[1] I deem this to be the case in respect of the following goods in the applicant's specification, which are all lighting fixtures: "*lighting", "light emitting diode lighting fixtures", "display lighting", "diffusers (light -)", "wall lights", "decorative lighting", "lighting apparatus", "lighting fixtures"*, *"led mood lights"*, *"led [light-emitting diode] lighting fixtures",* "*lighting installations", "light installations",* "*light-emitting diodes [led] lighting apparatus"* and *"led lighting installations".* I consider that these goods in the applicant's specification fall in the broader category of *"electrical lighting fixtures"* or describe the same goods in the opponent's specification. Therefore, I consider the goods to be identical on the principle outlined in *Meric.*

16. In the absence of any evidence or submissions to the contrary, I consider that *"lighting transformers"* in the applicant's specification lighting components that convert the voltage from the mains power supply. I bear in mind that *"the mere fact that a particular good is used as a part, element or component of another does not suffice in itself to show that the finished goods containing those components are similar".*[2] The goods do not overlap in nature, method of use and purpose. However, these goods may overlap in user in that an electrician, for example, may purchase light fixtures as well as components thereof. The goods may also overlap in trade channels, as I consider that the goods are likely to reach the market through the same stores such as lighting and home improvement stores. I do not consider that the goods are in competition, however, I do consider them to be complementary. However, I do consider them to be complementary. This is on the basis that the average consumer may consider that a light fixture and a set of lights with a transformer attached may originate from the same undertaking. In addition, I consider that given the role played by light transformers, they may be

[1] *Separode* Trade Mark, BL O/399/10, paragraph 5
[2] *Les editions Albert Rene v OHIM,* Case T-336/03, paragraph 61

important/indispensable to lighting fixtures. Taking the above into account, I consider that the goods will be similar to a low to medium degree.

Class 20

17. I consider that the following goods in the applicant's specification can be grouped together, as they are all forms of mirrors: "*mirrors", "mirror stands", "mirrors [furniture]", "decorative mirrors", "wall mirrors", "shaving mirrors", "bathroom mirrors", "mirrored cabinets"* and "*make-up mirrors for the home".* These goods are similar to the opponent's goods as they may overlap in users and trade channels as they will both reach the market through home retail stores. However, I do not consider that the goods share the same nature, purpose or method of use. In addition, they are not in competition nor are they complementary. Therefore, I consider the marks to be similar to a low degree. Similarly, I consider that *"mirror frames"* in the applicant's specification are also similar to a low degree.

18. I consider that "*make-up mirrors for travel use"* in the applicant's specification and the opponent's goods are similar. The goods may have a general overlap in users. I do consider that there may be a general overlap in trade channels, this is on the basis that travel mirrors are more likely to be sold in a cosmetic store and the opponent's goods are more likely to be sold in a homeware store. In addition, I do not consider that the goods coincide in nature, method of use or purpose. Further, they are neither in competition nor are they complementary. The general overlap in users is insufficient, in my view, to substantiate similarity. Therefore, I consider the goods to be dissimilar.

19. I consider that *"mirrors enhanced by electric lights"* in the applicant's specification and the opponent's goods are similar. I consider that the goods will overlap in trade channels and users. I also consider that the goods may be in competition, as someone installing light fixtures in their bathroom may decide to purchase a light fixture with a mirror over merely a light fixture, for example. I also consider that there may be some overlap in nature, purpose and method of use.

This is on the basis that, although the applicant's goods provide lighting and a reflective surface for the users to see themselves, the opponent's goods also provide lighting. I do not consider that the goods are complementary, as I do not consider that the goods are important/indispensable to one another in such a way that customers may think the responsibility for those goods lies with the same undertaking. Taking the above into account, I consider that the goods will be similar to a medium degree.

20. As some degree of similarity between the goods necessary to engage the test for likelihood of confusion,[3] the opposition must fail in respect of the following goods in the applicant's specification that I have found to be dissimilar to the opponent's goods:

Class 20: *make-up mirrors for travel use*

THE AVERAGE CONSUMER AND THE PURCHASING PROCESS

21. In *Hearst Holdings Inc & Anor v A.V.E.L.A. Inc & Ors* [2014] EWHC 439 (Ch), Birss J (as he then was) described the average consumer in these terms:

> "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 word 'average' denotes that the person is typical. The term 'average' does not denote some form of numerical mean, mode or median."

22. I consider that the average consumer of the goods are members of the general public and professionals/business users. The goods are likely to be self-selected from retail outlets, websites and catalogues. Therefore, visual considerations are likely to dominate the purchasing process. However, I do not discount that there are aural

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

considerations, as the average consumer may seek advice from a sales assistant or receive word of mouth recommendations.

23. I consider that the goods are unlikely to be purchased frequently by the general public but professionals/business users such as electricians may purchase goods for their clients more often. The cost of the goods will vary. For example, lighting transformers are likely to be cheaper than lighting installations. When purchasing the goods, I consider that the average consumer will consider factors such as compatibility, aesthetics, price and, particularly in relation to the class 11 goods, they will also consider output, efficiency and safety.

24. Taking all the above into account, I consider that the average consumer will pay a medium degree of attention when purchasing the goods. However, given that a business user may be purchasing goods on behalf of clients, for example, I consider that they will pay a medium to high (but not the highest) degree of attention when purchasing the goods.

COMPARISON OF THE MARKS

25. 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 in *Bimbo* that:

> "it is necessary to ascertain in each individual case, the overall impression made on the target public by the sign for which the 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."

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

27. The respective marks are shown below:

Applicant's mark	**Opponent's mark**
	TECH LIGHTING

28. The opponent's specification consists of a word only mark 'TECH LIGHTING' which appears in upper case. I consider that the text 'TECH LIGHTING' will play a greater role in the overall impression with the stylisation of the text playing a lesser role.

29. The applicant's mark consists of both a device element and a word element. The device element consists of two interconnected shapes, one of which is presented in grey and the other in green. Presented within the grey shape is the word 'Tech', which appears in a standard bold font. Presented in the green shape is the word 'Light', which appears in a standard font. Below the shapes, in a stylised font, appears the word 'mirrors'. Under the text is the appearance of a reflection of the word 'mirrors'. Given the prominent size of the device element, I am of the view that it provides an equal role in the overall impression of the mark with the words 'Light Tech mirrors/Light Tech Mirrors'. I recognise that some consumers may see the marks as 'Light Tech

Mirrors' and the others will see it as 'Tech Light Mirrors' due to the presentation of the words in the mark.

30. Visually, the marks coincide in the text 'Tech Light'. However, the marks differ in the presence of the text 'ing' and 'mirrors' in the respective marks. In addition, the marks differ in the presence of the devices, colour and mirror effect in the applicant's mark. Taking the above into account, I consider that the marks are visually similar to a medium degree.

31. Aurally, both marks will be given their ordinary everyday pronunciations. The marks coincide in the pronunciation of 'TECH LIGHT' at the beginning of the marks. They differ in that the opponent's mark will follow the text with 'ING' and the applicant's marks will go on to pronounce the word 'mirrors'. I am not of the view that the device or mirror effect in the applicant's mark will be pronounced. Taking the above into account, I consider that the marks will be similar to a medium degree.

32. Conceptually, I do not consider that the device element in the applicant's mark will convey any conceptual message to the average consumer. Instead, it will be perceived as a decorative background for the words. This leaves a conceptual comparison between the word elements of both marks.

33. The applicant's mark consists of three words that the average consumer would readily understand, being the words 'Tech', 'Light' and 'mirrors'. 'Tech' will be understood as a shortening of technology. The words 'Light' and 'mirrors' will be considered descriptive of the goods for which the applicant seeks to protect in that they are goods that can be said to relate to light or mirrors. In addition, I consider that the reflection of the word mirrors will reinforce the meaning of the word. Similarly, the opponent's mark consists of two words that are readily understood 'Tech' and 'Lighting'. The word Tech will be given the same meaning as in the applicant's mark. The word Lighting is a variant associated with the word 'light' and will be considered descriptive of the goods the applicant has protection for. When viewed as a whole, the applicant's mark will not convey any obvious meaning beyond the individual meaning of its words. This will also be the case in relation to the opponent's mark. Whilst the applicant's mark differs conceptually in the concept

of ‘mirrors’, the ‘tech’ and ‘light/lighting’ elements establish a level of conceptual similarity. Taking this into account, I consider the marks to be conceptually similar to a medium degree.

DISTINCTIVE CHARACTER OF EARLIER MARK

34. 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 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).”

35. Registered trade marks possess various degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark

can be enhanced by virtue of the use made of it. The opponent makes no claim to enhanced distinctiveness through the use made of the earlier mark and has not filed evidence of use, therefore I only have the inherent distinctiveness of the mark to consider.

36. The opponent's mark consists of the words 'Tech lighting'.. The word lighting is descriptive of the goods that the mark is protected for. The word tech may also be allusive of the goods as a reference to technical lighting, for example. Taking this into account, I consider the marks to be similar to a low degree.

LIKELIHOOD OF CONFUSION

37. 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. The first is the interdependency principle, i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods or vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the opponent's trade mark, the average consumer of the goods and the nature of the purchasing process. In doing so, I must be mindful of 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.

38. I have found the marks to be visually, aurally and conceptually similar to a medium degree. I have found the degree of inherent distinctiveness of the earlier mark to be low. I have found average consumers to be members of the general public and professionals/business users. I have found that the purchasing process will be visual, although I do not discount aural considerations. I have found that the degree of attention paid during the purchasing process varies from medium to medium to high. I have found the goods to vary in similarity from identical to similar to a low degree.

39. Taking all of the above factors and the principle of imperfect recollection into account, I do not consider that the average consumer would mistakenly recall or misremember the marks. While the marks share the text 'Tech Light', I am of the view that the device element and addition of the word 'mirrors' in the applicant's mark are sufficient to enable the average consumer to differentiate between the parties' marks, particularly when paying a medium/medium to high (but not the highest) degree of attention during the selection process. Further, I consider that this will be the case because the word elements of the marks are not particularly distinctive, and the presentational differences are more significant. I consider that the visual, aural and conceptual differences between the parties' marks will mean that the average consumer will be able to accurately recall and remember which mark was which. Consequently, I do not consider there to be a likelihood of direct confusion between the marks, even for identical goods.

40. Indirect confusion was described in the following terms by Iain Purvis K.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 or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: "The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark.
>
> 17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:

(a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right ("26 RED TESCO" would no doubt be such a case).

(b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as "LITE", "EXPRESS", "WORLDWIDE", "MINI" etc.).

(c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension ("FAT FACE" to "BRAT FACE" for example)."

41. Whilst I note that the examples set out by Mr Purvis are not exhaustive, I note the recent case of *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors,*[4] wherein Arnold LJ referred to the comments of James Mellor QC (as he was then) sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he stated that a finding of a likelihood of indirect confusion is not a consolidation prize and that there needs to be a reasonably special set of circumstances in order to get indirect confusion where there is no 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.

42. In my view, even if the average consumer recognises the differences between the parties' marks, I do not consider that the average consumer would assume that they come from the same or economically linked undertakings. I consider that this will be the case because the word elements of the marks are not particularly distinctive, and the presentational differences are more significant . I consider that the average consumer will see the common use of the words 'Tech Light' within the marks to indicate different undertakings specialising in the same type of goods that coincidentally use the words 'Tech light' rather than indicating

[4] [2021] EWCA Civ 1207

that the marks originate from the same commercial origin. This is on the basis that they are descriptive/allusive in relation to the goods. On this point, I remind myself of the case *Duebros Limited v Heirler Cenovis GmbH*,[5] wherein Mr James Mellor Q.C., sitting as the Appointed Person, stressed that a finding of indirect confusion should not be made merely because two marks share a common element and that it is not sufficient that a mark merely calls to mind another mark. He further stressed that this is mere association and not indirect confusion. Bearing this in mind, even if the applicant's mark was to call to mind the opponent's mark in the mind of the average consumer, this is not sufficient to find a likelihood of indirect confusion. Consequently, I do not consider there to be a likelihood of indirect confusion between the parties' marks, even on identical goods. This finding also applies to the average consumers that I have found will pay a medium to high (but not the highest) degree of attention.

CONCLUSION

43. As a result of my findings above, the opposition under section 5(2)(b) fails. Subject to any appeal against my decision, the application may proceed to registration in the UK.

COSTS

44. The applicant has been successful and is entitled to a contribution towards its costs. The award of costs is governed by Tribunal Practice Notice 2/2016. In the circumstances, I award the applicant the sum of £300 as a contribution towards the cost of preparing a counterstatement and considering the opponent's statement.

45. I therefore order Tech Lighting L.L.C to pay Sycamore Lighting Ltd the sum of £300. This sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

[5] Case BL O/547/17

Dated this 4th day of November 2023

A Klass
For the Registrar,
the Comptroller-General