

O-260-20

THIS DECISION REPLACES O/088/20

TRADE MARKS ACT 1994

IN THE MATTER OF UK APPLICATION NO 3352073  
BY PUTIAN YA JIU TRADING CO. LTD TO REGISTER A TRADE MARK:

**QAKKY**

AND

THE OPPOSITION THERETO UNDER NO 415556 BY  
AUDEMARS PIGUET HOLDING SA

## **Procedural irregularity**

1. On 12 February 2020 I issued a decision in these proceedings which included a brief finding under s.5(3) Trade Marks Act 1994 (the Act). After the decision was published it came to light that due to a procedural irregularity I was not aware that the opponent had written to the Tribunal on 25 November 2019 to confirm that it did not intend to pursue the 5(3) ground.

2. This is a procedural irregularity which is described in rule 74(1) of the Trade Marks Rule 2008, and reads as follows:

“...the registrar may authorise the rectification of any irregularity in procedure (including the rectification of any document filed) connected with any proceeding or other matter before the registrar or the Office.

(2) Any rectification made under paragraph (1) shall be made—

(a) after giving the parties such notice; and

(b) subject to such conditions,

as the registrar may direct.”

3. Having notified the parties of the proposed correction, this decision replaces the previous decision.

## **Background and pleadings**

4. On 9 November 2018, Putian Ya Jiu Trading Co. Ltd (the applicant) applied to register the above trade mark in class 14 for the following goods:<sup>1</sup>

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<sup>1</sup> *International Classification of Goods and Services for the Purposes of the Registration of Marks under the Nice Agreement (15 June 1957, as revised and amended).*

Alloys of precious metal; Bracelets; Brooches [jewellery]; Clocks; Charms [jewelry]; Cuff links; Earrings; Jewellery; Jewelry chains; Ornaments [jewellery]; Key rings of precious metals; Necklaces; Non-monetary coins; Personal ornaments of precious metal; Rings [jewellery]; Tie clips; Tie pins; Watch cases; Watches; Wristwatches.

5. The application was published on 23 November 2018, following which it was opposed by Audemars Piguet Holding SA (the opponent).

6. The ground of opposition is:

(i) Under s. 5(2)(b) of the Trade Marks Act 1994 (the Act) because there is a likelihood of confusion between the opponent's earlier mark and the application used for identical or similar goods and/or services.

7. It relies upon the following earlier trade marks:

| Mark details and relevant dates   | Goods relied upon   |
|---|---|
| <p><b>UKTM:</b> 989389</p> <p><b>ROYAL OAK</b></p> <p><b>Filed:</b> 23 March 1972</p> <p><b>Priority date:</b> 23 December 1971</p> <p><b>Date of entry in the register:</b><br/>23 December 1971</p> | <p><b>Class 14</b></p> <p>Horological instruments and parts thereof; watch bracelets; jewellery.</p>  |
| <p><b>IR:</b> 000001313617</p> <p><b>Royal Oak</b></p>  | <p><b>Class 14</b></p> <p>Jewelry, timepieces and chronometric instruments; all the aforesaid goods excluding those made of oak; precious metals and their alloys and goods made of</p> |

|   |  |
|---|--|
| <p><b>Date of designation of the EU:</b><br/>12 September 2016</p> <p><b>Date protection granted in EU:</b><br/>15 March 2017</p> | <p>these materials or coated therewith included in this class; jewelry, precious stones.</p> |
|---|--|

8. The opponent's UK mark is an earlier mark which is subject to proof of use. This is because, at the date of application of the contested mark, it had been registered for five years.<sup>2</sup> However, in its counterstatement the applicant was asked whether it wished the opponent to prove use of its earlier mark and the applicant answered 'No'. Accordingly, the opponent may rely on the full specifications for which its earlier marks are registered (as outlined in the above table).

9. The applicant filed a counterstatement in which it denied the grounds raised by the opponent.

10. Neither party requested to be heard. The opponent filed evidence and submissions in lieu of a hearing. The applicant included submissions with its counterstatement.

11. The applicant is represented by Isabelle Bertaux. The opponent is represented by Osborne Clarke LLP. Both sides seek an award of costs.

### **The opponent's evidence**

12. The opponent's evidence is provided by Leanne Marie Gulliver, an attorney at the opponent's representative. It comprises her witness statement and six exhibits and is dated 22 July 2019. Within the evidence is a screen print of marks on the UK Trade Mark Register<sup>3</sup> from which the opponent concludes that 'ROYAL OAK' is registerable. The registrability of the earlier mark is not in question in these proceedings and I will say no more about it. I do not intend to summarise the remaining evidence but will refer

<sup>2</sup> See section 6A(3)(a) of the Act (added by virtue of the Trade Marks Regulations 2018: SI 2018/825) which came into force on 14th January 2019.

<sup>3</sup> See LMG6

to it as necessary throughout this decision. I make this decision based on careful consideration of the papers before me.

## **The opposition**

13. Section 5(2)(b) of the Act which 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,

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

14. 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 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.

## Approach

15. I will begin by considering the opponent's case based on its earlier UKTM for the plain words ROYAL OAK.

## Comparison of goods

16. The relevant goods are as follows:

| The opponent's goods:   | The applicant's goods:   |
|---|--|
| <u>UKTM 989389</u><br><b>Class 14</b><br>Horological instruments and parts thereof; watch bracelets; jewellery. | <b>Class 14</b><br>Alloys of precious metal; Bracelets; Brooches [jewellery]; Clocks; Charms [jewelry]; Cuff links; Earrings; Jewellery; Jewelry chains; Ornaments [jewellery]; Key rings of precious metals; Necklaces; Non-monetary coins; Personal ornaments of precious metal; Rings [jewellery]; Tie clips; Tie pins; Watch cases; Watches; Wristwatches. |

17. In *Gérard Meric v Office for Harmonisation in the Internal Market*,<sup>4</sup> the General Court ("GC") stated that:

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

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<sup>4</sup> Case T- 133/05

18. In accordance with the principles outlined in *Meric*, with the exception of ‘non-monetary coins’, ‘key rings of precious metals’ and ‘alloys of precious metal’, the applicant’s goods are identical to the opponent’s goods, being included within the broader terms, ‘horological instruments’ or ‘jewellery’. I will initially proceed on the basis of the identical goods. If the opposition fails where the goods are identical then it will also fail where they are only similar.

### **The average consumer and the nature of the purchasing act**

19. In accordance with the above cited case law (para. 10), I must determine who the average consumer is for the goods at issue and also identify the manner in which those goods will be selected in the course of trade.

20. 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*<sup>5</sup>, 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 word ‘average’ denotes that the person is typical. The term ‘average’ does not denote some form of numerical mean, mode or median.”

21. The average consumer for the goods which I have found to be identical (at para. 14 above), is a member of the general public. The goods are likely to be selected from display counters or shelves in a store or from websites or catalogues. The purchase is, as a consequence, likely to be primarily visual, though I do not rule out an aural element where, for example, advice is requested from a sales assistant.

22. The cost of the goods at issue here many vary considerably. A luxury watch is likely to require a higher degree of attention to be paid to its purchase than would be paid to

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<sup>5</sup> [2014] EWHC 439 (Ch)

an inexpensive piece of costume jewellery. That said, the level of attention paid to the purchase of these goods will be at least average, to ensure the correct style, material, colour and so on.

**Comparison of marks**

23. The marks to be compared are as follows:

| Opponent's mark | Applicant's mark |
|-----------------|------------------|
| ROYAL OAK       | OAKKY            |

24. In making a comparison between the marks, I must consider the respective marks' visual, aural and conceptual similarities with reference to the overall impressions created by them, bearing in mind their distinctive and dominant components<sup>6</sup>, but without engaging in an artificial dissection of the marks, because the average consumer normally perceives a mark as a whole and does not analyse its details.

25. The opponent's mark is the two words ROYAL and OAK. The words are presented in upper case, in a plain black standard typeface, with no additional stylisation. In its submissions dated 28 November 2019, the opponent relies on UKIPO decision O-224-17 which it submits:

*“...recognised that the word ‘ROYAL’ possesses a low degree of inherent distinctive character for Class 14 goods. The Opponent therefore submits that the dominant and most distinctive part of the Opponent's Earlier Trade Marks is the word OAK.”*

26. The issue before the hearing officer in that case concerned competing marks which both included the word ‘ROYALE’ with a number of other elements. That case is not on all fours with this one in which, for one thing, only one of the marks includes the

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<sup>6</sup> *Sabel v Puma AG*, para.23

word 'ROYAL'. The earlier mark here is 'ROYAL OAK', two words with which the average consumer will be familiar and which, together, give a different overall impression to the impression given by the word ROYAL solus. I find that the first word ROYAL defines the second word OAK and as a consequence, the overall impression of the earlier mark rests in its totality.

27. The applicant's mark is 'OAKKY', presented in upper case, in a plain black typeface. There is a small degree of stylization to the letter 'O' which has a squared appearance. The stylisation is not particularly noticeable within the mark and the overall impression is dominated by the word.

### **Visual similarity**

28. The applicant submits that the entirety of both marks must be compared and draws my attention to the beginning of the opponent's mark, which it submits is the part which catches the consumer's attention and is the word 'ROYAL'. It also points to the difference in length between the parties' respective marks, and the differing typefaces. It concludes that the marks are visually different.

29. The opponent submits:

*"14. Visually, the Applicant's Trade Mark is similar to the Opponent's Earlier Trade Marks. The Opponent disagrees with the Applicant's assertion in its Counterstatement that the Opponent's Second Trade Mark is in a 'fancy typeface whereas the Applicant's sign is the figurative trade mark...written in a more classic typeface'. The Opponent submits that both of these marks are stylised words in unremarkable fonts. The second, and dominant word, in the Opponent's Earlier Trade Marks "OAK" is clearly reproduced in its entirety at the beginning of the Applicant's Trade Mark."*

30. I have already found that 'OAK' is not the dominant part of the earlier mark. The overall impression of the earlier mark rests in the whole mark. The typeface differences referred to by the applicant are not significant. Normal and fair use of the earlier word

mark ROYAL OAK would include use in a range of standard typefaces, some of which would be more visually similar to the application.

31. Visual similarity rests in the fact that both marks include the letters O-A-K. OAK is the second word in the earlier mark and the first three letters of the application. Differences lie in the first word ROYAL in the earlier mark, which has no equivalent in the application, and the additional letters K-Y on the end of the applicant's mark, to form a word which would not be readily identified by the average consumer. Taking these factors into account, I find these marks to be visually similar to a low-medium degree.

### **Aural similarity**

32. The opponent submits that the respective marks are phonetically similar. It finds:

*“15...The prefix of the Applicant's Trade mark is OAK - which is phonetically identical to the dominant and distinctive part of the Opponent's Earlier Trade Marks i.e. OAK.”*

33. The applicant submits that the earlier mark will be pronounced RO-YAL OAK and the applicant's mark will be pronounced OAK-KEY. It concludes that the pronunciation and rhythm are different, with no syllables in common and concludes that the marks are aurally different.

34. The opponent's mark will be pronounced according to the average consumer's pronunciation of two English words with which it will be familiar. Most likely this will be ROY-AL followed by OAK. I agree that the most likely pronunciations of the application OAK-KEY or OAK-EY. The aural similarity between these marks rests in the syllable 'OAK' which is the third syllable of the earlier mark and the first syllable in the application. The differences lie in the word ROYAL at the beginning of the earlier mark which is two syllables which do not appear in the application. In addition, the application includes the 'KEY' or 'EY' syllable at the end of the mark, which does not appear in the earlier mark. I find these marks to be phonetically similar to a low to medium degree.

## Conceptual similarity

35. For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer.<sup>7</sup> The assessment must be made from the point of view of the average consumer who cannot be assumed to know the meaning of everything.<sup>8</sup>

36. The applicant submits that the average consumer will dissect the earlier mark into 'ROYAL' and 'OAK' which will be given their individual conceptual meanings. It continues (reproduced as written):

*"Royal' will be understood as 'good or excellent' or 'big or great' (Cambridge dictionary)<sup>9</sup> and 'Oak' will be understood as being a large tree that is common in northern countries, or the hard wood of this tree (Cambridge dictionary).<sup>10</sup>*

*Therefore, the opponent's trademark "Royal Oak" has a semantic content, namely as meaning a big tree.*

*And as all know, the Royal Oak is a common historic term in the UK, it means "the English oak tree within which the future King Charles II of England hid to escape the Roundheads following the Battle of Worcester in 1651"([https://en.wikipedia.org/wiki/Royal\\_Oak](https://en.wikipedia.org/wiki/Royal_Oak)).<sup>11</sup>*

*The contested sign will be seen as one meaningless, invented word, since there is nothing in the sign that would incite them to mentally dissect it into different parts and to go out the word 'OAK'.*

*It is concluded from the explanations above that the earlier mark will be perceived as having the concept described above. The contested sign will be perceived as meaningless.*

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<sup>7</sup> This is highlighted in numerous judgments of the GC and the CJEU including *Ruiz Picasso v OHIM* [2006] e.c.r.-I-643; [2006] E.T.M.R. 29.

<sup>8</sup> See the comments of Anna Carboni, sitting as the Appointed Person in *Chorkee*, *BL O/048/08*, paragraphs 36 and 37.

<sup>9</sup> These definitions are not provided in evidence.

<sup>10</sup> As above.

<sup>11</sup> This page is not provided in evidence.

*Therefore, there are no conceptual commonalities between the signs.”*

37. The opponent submits:

*16. Conceptually, the Applicant’s Trade Mark is similar to the Opponent’s Earlier Trade Marks. The Applicant’s Trade Mark is inspired by the word OAK, and could be said to describe a certain characteristic of some products (e.g. wine). Therefore, both the Applicant’s Trade Mark and the Opponent’s Earlier Trade Marks reference OAK, and this is the word that the relevant public will recall.*

*17. In addition, the Opponent disagrees with the Applicant’s conclusion in its Counterstatement that ROYAL OAK will be understood to mean ‘a big tree’.*

*Further to the Witness Statement of Leanne Marie Gulliver, the Opponent disagrees that the relevant public will understand the Opponent’s Trade Marks to be “a common historic term in the UK... it means “the English Oak tree within which the future King Charles II of England hid to escape the Roundheads following the Battle of Worcester in 1651.””*

38. To show that this is little remembered, the opponent provides evidence which includes a print from Wikipedia about ‘Royal Oak Day’<sup>12</sup> which it says has had many other names and has fallen into disuse.

39. The applicant is, in effect, asking me to take judicial notice of the fact that ‘we all know’ that Royal Oak is a reference to a particular tree in which the future king hid during the English Civil War. I refer to the *Chorkee* case<sup>13</sup> in which Anna Carboni, sitting as the Appointed Person, stated in relation to the word CHEROKEE:

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<sup>12</sup> See LMG1

<sup>13</sup> BL O-048/08

“36...By accepting this as fact, without evidence, the Hearing Officer was effectively taking judicial notice of the position. Judicial notice may be taken of facts that are too notorious to be the subject of serious dispute. But care has to be taken not to assume that one’s own personal experience, knowledge and assumptions are more widespread than they are.

37. I have no problem with the idea that judicial notice should be taken of the fact that the Cherokee Nation is a Native American tribe. This is a matter that can easily be established from an encyclopedia or internet reference sites to which it is proper to refer. But I do not think that it is right to take judicial notice of the fact that the average consumer of clothing in the United Kingdom would be aware of this. I am far from satisfied that this is the case. No doubt, some people are aware that CHEROKEE is the name of a native American tribe (the Hearing Officer and myself included), but that is not sufficient to impute such knowledge to the average consumer of clothing (or casual clothing in the case of UK TM no. 1270418). The Cherokee Nation is not a common subject of news items; it is not, as far as I am aware, a common topic of study in schools in the United Kingdom; and I would need evidence to convince me, contrary to my own experience, that films and television shows about native Americans (which would have to mention the Cherokee by name to be relevant) have been the staple diet of either children or adults during the last couple of decades.”

40. Whilst I am aware of the meaning of the term, I am unable to take judicial notice of it. It is not the type of notorious fact that can be accepted without evidence of it. In my view, some average consumers would know the historic reference, but I am unable, without evidence, to conclude that their numbers would be significant. It is more likely that the average consumer will know that the term refers to a tree. The combination of ROYAL and OAK is likely to lead to a conceptual impression of a tree which is in some way special or superior to other oak trees. The application will either be seen as an invented word or as an invented word which contains the word OAK and may then bring to mind the tree. If the latter is the case then there will be a low degree of conceptual similarity between the marks. However, I find it more likely that the application will be seen as an invented word and will not have a conceptual meaning.

## **Distinctive character of the earlier mark**

41. In determining the distinctive character of a trade mark and, accordingly, in assessing whether it is highly distinctive, it is necessary to make an overall assessment of the greater or lesser capacity of the trade mark to identify the goods for which it has been registered as coming from a particular undertaking and thus to distinguish those goods from those of other undertakings - *Windsurfing Chiemsee v Huber and Attenberger*.<sup>14</sup>

42. The opponent has provided evidence. Exhibits LMG4 and LMG5 relate to the opponent's goods and take the form of prints from Google and Google Trends. The pages were printed on 22 July 2019 (after the application date) and comprise a list of hits generated when the terms 'ROYAL OAK' and 'Watches' were entered into the search field. The hits returned appear to relate to the opponent's goods. However, I have no turnover figures, no invoices, no idea of the opponent's share of the market, and no examples of how the marks are actually used on the market. The evidence falls a long way short of showing that the opponent has enhanced the distinctive character of its trade mark through the use made of it.

43. With regard to the inherent distinctiveness of the earlier mark, the words ROYAL OAK will most likely be taken to refer to a special or superior oak tree. The mark does not describe or allude to the opponent's goods and as such is a normal trade mark possessed of a medium degree of distinctive character.

## **Likelihood of confusion**

44. In assessing the likelihood of confusion I must adopt the global approach advocated by case law and take into account the fact that marks are rarely recalled perfectly, the consumer relying instead on the imperfect picture of them he has kept in his mind.<sup>15</sup> I must also keep in mind the average consumer for the goods, the nature of the purchasing process and have regard to the interdependency principle i.e. a

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<sup>14</sup> Joined Cases C-108/97 and C-109/97 [1999] ETMR 585.

<sup>15</sup> *Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V* paragraph 27

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.

45. I am making my initial finding on the basis of identical goods in class 14. The marks have a low to medium degree of visual and aural similarity and, at best, have a low degree of conceptual similarity, though are more likely to be conceptually dissimilar, where the average consumer sees the applicant's mark as an invented word. I have found the average consumer to be a member of the general public and the level of attention paid to the purchase to be at least average. The purchase will be primarily a visual one, though I do not rule out aural considerations. The earlier mark has a medium degree of inherent distinctive character.

46. The types of confusion were explained in *L.A. Sugar Limited v By Back Beat Inc*,<sup>16</sup> by Mr Iain Purvis Q.C., sitting as the Appointed Person:

“16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognised that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark.”

47. In *El Corte Inglés, SA v OHIM*,<sup>17</sup> the GC noted that the beginnings of words tend to have more visual and aural impact than the ends of words but noted that this is a general rule and not an unbending test to be applied in all circumstances. In this case,

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<sup>16</sup> BL O/375/10

<sup>17</sup> Cases T-183/02 and T-184/02

I find that the obvious differences, including the beginnings of the marks, are significant. In terms of direct confusion, the visual differences between the marks are sufficient to avoid the consumer thinking that one mark is the other mark.

48. The high point of similarity between these marks is the second word in the earlier mark, which is not reproduced within the application, rather, it is the first three letters of a different word which makes up the mark applied for. There is nothing about either of the marks which would bring the other to mind in a way which would result in the average consumer drawing the conclusion that the goods of one party originated from or are the responsibility of the other. I have found that there may be a degree of conceptual similarity where the consumer identifies the 'OAK' element in the application but, I find that OAKKY is not a mark which would be seen as a natural brand extension of the ROYAL OAK mark. In other words, there would not be indirect confusion between the competing marks.

49. I have made this assessment based on the high point of the opponent's case. Its word mark 'ROYAL OAK', in plain, unadorned text and with no stylisation, allows the mark comparison to be made taking account of fair and notional use of that mark. The opponent's remaining international mark is stylised and accordingly is registered as it appears and is slightly less similar to the opponent's mark than the mark I have already considered. I have based the assessment on identical goods in class 14 and have taken account of the full range of purchasing possibilities, including costume jewellery which is likely to involve a lower level of attention than some other goods in the same class. Even so, I have found that there will not be a likelihood of confusion. It follows that for a mark which is less similar and/or registered for goods which are less similar there will be no likelihood of confusion. Accordingly, I do not intend to consider the opponent's other mark or remaining goods as they put it in no better position.

## **CONCLUSION**

50. The opposition fails prima facie, under sections 5(2)(b) of the Act.

## **COSTS**

51. The opposition having failed, the applicant is entitled to a contribution towards its costs which I award on the following basis, bearing in mind that the applicant did not file evidence, its submissions were filed with its counterstatement and the decision was made from the papers:<sup>18</sup>

Official fees: £100

Preparing the notice of opposition and  
considering the counterstatement: £500

**TOTAL £600**

52. I order Audemars Piguet Holding SA to pay Putian Ya Jiu Trading Co. Ltd the sum of £600. These costs should be paid within 21 days of the date of this decision or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings (subject to any order of the appellate tribunal).

**Dated this 27<sup>th</sup> day of April 2020**

**Al Skilton  
For the Registrar,  
The Comptroller-General**

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<sup>18</sup> The scale of costs applicable to proceedings before the Comptroller can be found in Tribunal Practice Notice 2/2016.