

**O/452/20**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION NO. UK00003395284  
BY XIAMEN RISEFAR TEXTILE TECHNOLOGY CO., LTD  
TO REGISTER:**



**AS A TRADE MARK IN CLASS 25**

**AND**

**IN THE MATTER OF THE OPPOSITION THERETO  
UNDER NO. 417319 BY  
CAB 5-4**

## BACKGROUND AND PLEADINGS

1. On 28 April 2019, Xiamen Risefar Textile Technology Co., Ltd (“the applicant”) applied to register the trade mark shown on the cover of this decision in the UK. The application was published for opposition purposes on 10 May 2019. The applicant seeks registration for the following goods:

Class 25: Wind coats; Wind resistant jackets; Down jackets; Jumpers [pullovers]; Trousers; Singlets; Outerclotthing; Sports singlets; Jackets [clothing]; Shawls; Raincoats; Boots; Shoes; Sports shoes; Ski boots; Wet suits for water-skiing; Headgear; Headgear for wear; Ski suits; Ski gloves; Girdles; Scarfs.

2. On 12 August 2019, the application was opposed by CAB 5-4 (“the opponent”). The opposition is based on section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opponent relies on international registration no. WE00001177485 for the following trade mark:



3. The opponent’s mark was registered on 12 June 2013. With effect from 12 June 2013, the opponent sought to designate the EU as a territory in which it seeks to protect its mark under the terms of the Protocol to the Madrid Agreement. Protection was granted on 12 August 2014. The opponent relies upon only the goods and services set out in **paragraph 12** below.
4. In its Notice of Opposition, the opponent claims that “as a result of the identity and similarity of the goods and services concerned and the similarity between the marks, there exists a likelihood of confusion on the part of the public, including a likelihood of association.”

5. The applicant filed a counterstatement denying the claims made.
6. The applicant is represented by Isabelle Bertaux and the opponent is represented by STOBBS. Neither party has filed evidence. No hearing was requested and neither party has filed any written submissions. This decision is taken following a careful perusal of the papers.

## **DECISION**

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

7. 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.”

8. Section 5A of the Act states as follows:

“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.”

9. An earlier trade mark is defined in section 6 of the Act, the relevant parts of which state:

“(6)(1) In this Act an “earlier trade mark” means –

(a) a registered trade mark, international trade mark (UK) or Community trade mark or international trade mark (EC) which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks,

(2) References in this Act to an earlier trade mark include a trade mark in respect of which an application for registration has been made and which, if registered, would be an earlier trade mark by virtue of subsection (1)(a) or (b), subject to its being so registered.”

10. Given its registration date, the opponent’s mark qualifies as an earlier trade mark under the above provisions. As the opponent’s mark had not completed its registration process in the EU more than 5 years before the date of the application in issue, it is not subject to proof of use pursuant to section 6A of the Act. The opponent can, therefore, rely upon all of the goods and services for which the mark is registered. Given the fact that the opponent’s mark is not subject to proof of use, the applicant’s counterstatement in respect of proof of use will not be relevant to this decision.

11. 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 Office for Harmonization in the Internal Market (Trade Marks and Designs) (“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 and services**

12. The competing goods and services are set out as follows:

<b>The opponent’s goods and services</b>	<b>The applicant’s goods</b>
<p><u>Class 9</u> Protective helmets, vests, elbow and knee pads for sports; helmets for skiing, helmets for hockey, bicycle helmets; sunglasses, ski goggles; ski masks; directional compasses, magnifying glasses (optics); walkie-talkies; binoculars; avalanche rescue devices, namely locating apparatus and instruments, whistles and alarms for attracting attention; cases especially made for photographic apparatus and instruments; covers and cases for mobile telephones and computers; cell phone straps; headphones; software for computer games and mobile telephones.</p> <p><u>Class 18</u> Rucksacks, multi-purpose sports bags, belt bags, namely waist pouches for</p>	<p><u>Class 25</u> Wind coats; Wind resistant jackets; Down jackets; Jumpers [pullovers]; Trousers; Singlets; Outerclotthing; Sports singlets; Jackets [clothing]; Shawls; Raincoats; Boots; Shoes; Sports shoes; Ski boots; Wet suits for water-skiing; Headgear; Headgear for wear; Ski suits; Ski gloves; Girdles; Scarfs.</p>

skiing, backpacks for use in downhill and nordic skiing, hiking rucksacks, especially backpacks made of waterproof textile materials specially designed for skiing; trunks and suitcases; carry-on bags, travel bags, day packs for personal belongings; umbrellas and parasols.

Class 25

Clothing, footwear, headgear, including boots, footwear, gloves, hats; suits, gloves, shoes and boots for skiing and other snow sports; after-ski boots, ski trousers adaptable to shoes, gaiters; boots and gloves for skiing; clothing and footwear for indoor and outdoor racket sports; clothing and footwear for tennis; bathing caps; sports underwear.

Class 28

Sports articles excluding clothing, footwear and mats; skis, bindings and poles for Alpine skiing and Nordic skiing, ski brakes; seal skins (ski coverings); snowboards, snowboard bindings; covers and cases specially designed for skis and snowboards; sledges; protective padding (part of sportswear); bags for carrying sporting articles; surfboards, body boards, kneeboards, wakeboards, sailboards, water skis, skateboards, kite-surfing boards.

Class 35

Promotion of the goods and services of others by means of contractual agreements, particularly partnership (sponsorship) and licenses, offering them the opportunity to associate their identity or products with values of excellence, technical sophistication and exclusivity of an upmarket ski brand; promoting the goods and services of others by means of the so-called image transfer; retailing of goods of all kinds, in particular sports articles and sportswear; retail services by means of a global computer network (the Internet), in particular of clothing and articles for sports, particularly skiing; presentation of goods on all communication media for retail sale; business consultancy relating to the opening and operation of retail outlets, the bringing together of orders and for advertising for retail outlets; set-up, launch and management of purchase inducement, loyalty and advertising programs; customer loyalty services and customer club services for commercial, promotional and/or advertising purposes.

13. When making the comparison, all relevant factors relating to the goods and services 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”.

14. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, for assessing similarity were:

- (a) The respective uses of the respective goods or services;
- (b) The respective users of the respective goods or services;
- (c) The physical nature of the goods or acts of service;
- (d) The respective trade channels through which the goods or services reach the market;
- (e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be, found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;
- (f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

15. The General Court (“GC”) confirmed in *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, that, even if goods or services are not worded identically, they can still be considered identical if one term falls within the scope of another or (vice versa):

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

16. In its counterstatement, the applicant has admitted that “some of the goods are similar and relate to same [sic] category of products to the massive list of goods covered by the Opponent’s trademark.” Further, the applicant has stated that, “the identity and similarity (to various degrees) between the goods is not sufficient to offset the differences between the signs”. While the applicant’s admission of identity and similarity is noted, it has not specified which goods it considers identical or which it considers similar (and to what degree). I must therefore carry out my own assessment on the comparison of goods and their degree of similarity.

17. “Boots”, “down jackets”, “girdles”, “headgear”, “headgear for wear” “jackets [clothing]”, “jumpers [pullovers]”, “outerclothing”, “raincoats”, “shoes”, “singlets”, “ski suits”, “sports shoes”, “sports singlets”, “trousers”, “wet suits for water-skiing”, “wind coats” and “wind resistant jackets” in the applicant’s mark’s specification are either self-evidently identical to, or fall within the category of, “clothing, footwear, headgear, including boots, footwear, gloves, hats” in the opponent’s mark’s specification. These goods will therefore be identical, either self-evidently, or under the principle outlined in *Meric*.

18. “Ski boots” and “Ski gloves” in the applicant’s mark’s specification fall within the category of “boots and gloves for skiing” in the opponent’s mark’s specification. These goods will therefore be identical under the principle outlined in *Meric*.

19. “Scarfs” and “shawls” in the applicant’s mark’s specification describe pieces of fabric that are commonly worn for warmth. These goods will overlap in user and purpose with “clothing, [...] headgear” contained in the opponent’s mark’s specification. Further, there will be overlap in trade channels because the same undertakings are likely to produce clothing, scarves and shawls. Scarves and

shawls will also be found in shops next to items such as jumpers, jackets and knitted hats and, in some instances, may also be sold together. There will be overlap in nature and method of use. I, therefore, consider these goods to be highly similar.

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

20. 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 decide the manner in which these goods are likely to be selected by the average consumer in the course of trade. 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.”

21. Given my findings above, it is only necessary for me to consider the average consumer of the parties' class 25 goods.

22. I am of the view that the average consumer for the goods will be members of the general public. The goods at issue are most likely to be sold through a range of clothing retailers and their online or catalogue equivalents. In clothing retailers, the goods at issue will be displayed on shelves or racks, where they will be viewed and self-selected by the consumer. A similar process will apply to websites and catalogues, where the consumer will select the goods having viewed an image displayed on a webpage or in a catalogue. The selection of the goods at issue will, therefore, be primarily visual. While the visual aspect plays a greater role in the

selection process, I do not discount aural considerations in the form of advice sought from sales assistants, word of mouth recommendations or telephone queries with retailers.

23. The price and frequency of purchase of the goods at issue may vary. Even where the goods are of low cost and purchased relatively frequently, a number of factors will still be considered by the average consumer during the purchasing process. For example, the consumer may consider current fashion trends, price, quality and suitability. With this in mind, I consider that the average consumer will pay a medium degree of attention during the purchasing process.

### **Distinctive character of the earlier registration**

24. 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 C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and

statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

25. 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.

26. The applicant has stated that the distinctiveness of the opponent’s mark “must be seen as average”. The opponent has not made any submissions regarding the distinctive character of the opponent’s mark. The opponent has also filed no evidence of use of the earlier mark. Therefore, I have only the inherent position to consider. I must assess the inherent distinctiveness of the opponent’s mark as a whole. The opponent’s mark consists of a device element only. The device element is made up of six separate downward facing chevrons that combine to form an arrow, which is pointing down. The opponent’s mark does not describe or allude to the goods or services for which it is registered. It is my view that the device element in the opponent’s mark is not particularly complex in that it uses six separate shapes to form one larger standard shape, being an arrow. I therefore find that the opponent’s mark has a medium degree of inherent distinctive character.

### **Comparison of marks**

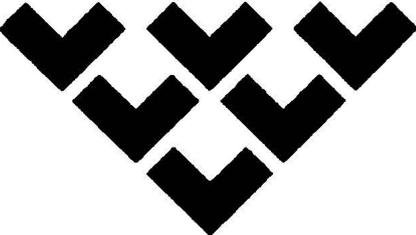
27. It is clear from *Sabel v Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the trade marks must be assessed by reference to the overall impressions created by the trade marks, bearing in mind their distinctive and dominant components.

28. 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 mark	Applicant's mark
	

31. I have no submissions from the parties but I do note that the opponent and the applicant have both addressed the similarity of the marks in their pleadings.

Overall Impression

*The applicant's mark*

32. The applicant's mark consists of a device and a word element. The device element consists of three upward facing chevrons that sit above two upward pointing arrows that are joined together by another chevron. Underneath the device element sits the word 'RISEFAR' presented in a standard font. I note that, in its

counterstatement, the applicant states that 'RISEFAR' may be seen by part of the relevant public as meaning 'to rise far above'. While the word will be seen as an unusual combination of two words that has no dictionary meaning, I agree with the applicant in that an average consumer is likely to take this as its meaning. I am of the view that the two elements are distinctive and striking to the eye. I therefore find that the two elements play a roughly equal role in the overall impression of the mark.

### *The opponent's mark*

33. The opponent's mark consists of a device element only. There are no other elements to contribute to the overall impression, which lies in the device itself.

### Visual Comparison

34. In its counterstatement, the applicant submits that:

"In addition, the figurative element in the Opponent's Trademark  contains differences to the one used in the Applicant's trademark "" and avoid any risk of confusion. The Opponent's trademark  uses black lines which can represent successive letters "V" or comers,-representing a down arrow whereas the figurative element in the Applicant's Trademark  uses black lines which can represent comers, representing an up arrow which is easily understandable as associated with the term "Rise-far".

The visual impression of the Opponent's trademark is therefore different than the one created by the figurative element of the Applicant's trademark."

35. Visually, there is a clear difference between the marks owing to the presence/absence of the word 'RISEFAR'. In terms of the respective device elements, the opponent's mark consists of six downward facing chevrons arranged to form a larger arrow shape. The applicant's device consists of four upward pointing chevrons and two upward pointing arrows that form a larger shape. As the

relevant case law makes clear, the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details.<sup>1</sup> Whilst both shapes are made up, in part, of chevrons, I find that the device elements in both marks, when considered as a whole, will be viewed as different shapes. To the extent that they are both recognised as arrows, this will be counteracted by their different presentation and the fact that they are pointing in different directions. Bearing all of this in mind, I find that the marks are visually similar to a low degree.

### Aural Comparison

36. In its counterstatement, the applicant submits that:

“Considering that the Applicant's Trademark has a verbal element contrary to the Opponent's trademark, only the Applicant's Trademark can be pronounced and therefore comes to the conclusion that the marks at stake are therefore phonetically different.

The relevant public will thus pronounce the verbal element in the Applicant's trademark and consider the differences between the trademarks at issue.”

37. In *Dosenbach-Ochsner AG Schuhe und Sport v OHIM*, Case T-424/10 the General Court stated:

“45. ...contrary to what the applicant submits, a phonetic comparison is not relevant in the examination of the similarity of a figurative mark without word elements with another mark (see, to that effect, Joined Cases T-5/08 to T-7/08 *Nestle v OHIM – Master Beverage Industries (Golden Eagle and Gold Eagle Deluxe)* [2010] ECR II-1177, paragraph 67).

46. A figurative mark without word elements cannot, by definition, be pronounced. At the very most, its visual or conceptual content can be described orally. Such a description, however, necessarily coincides with either the visual

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<sup>1</sup> *Sabel BV v Puma AG*, Case C-251/95

perception or the conceptual perception of the mark in question. Consequently, it is not necessary to examine separately the phonetic perception of a figurative mark lacking word elements and to compare it with the phonetic perception of other marks”.

38. It would, therefore, be inappropriate in this case for me to consider the aural similarities or differences between the marks.

### Conceptual Comparison

39. In its counterstatement, the applicant submits that:

“The contested sign can be seen by part of the public 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 "RISE" and then "FAR" and by other part of the public as being associated to the meaning to rise far above easily understandable when associated to the figurative element representing an up arrow.

In any case, the verbal element being an invented word or having a conceptual meaning, it cannot be conceptually associated to the earlier Opponent's trademark as it does not contain any verbal element.

And the figurative element representing a down arrow for the Opponent's trademark and representing an up arrow for the Applicant's trademark, the concept behind the two trademarks is the contrary.

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

40. When making my assessment of the overall impression of the applicant's mark, I found that the word 'RISEFAR' is likely to be seen as meaning 'to rise far above' by the average consumer. Neither of the parties' device elements portray any identifiable concept. However, given that both marks may be identified as arrows (albeit pointing in different directions), there is some limited conceptual overlap.

## Likelihood of confusion

41. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods and services down to the responsible undertakings being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the earlier registration, 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.

42. Throughout this decision, I have found that:

- a. the goods at issue vary from being identical to similar to a high degree;
- b. the average consumer is a member of the general public who will purchase the goods primarily by visual means, although I do not discount an aural component;
- c. a medium degree of attention is likely to be paid by the average consumer during the purchasing process;
- d. the opponent's mark has a medium degree of inherent distinctive character;  
and
- e. the marks are visually similar to a low degree and, conceptually, overlap to a limited degree.

### Direct Confusion

43. I have taken the above factors into account in my assessment of the likelihood of confusion between the marks. Notwithstanding the principle of imperfect recollection and taking all of the above factors into account, I consider that the visual differences between the marks will be sufficient to enable the consumer to differentiate between the marks. Consequently, I do not consider there to be a likelihood of direct confusion between the marks, even when they are used on goods that are identical.

### Indirect confusion

44. 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.”

45. I must now consider the possibility of indirect confusion and whether average consumers would believe that there is an economic connection between the marks or that they are variant marks from the same undertaking as a result of the shared common elements of the marks. I do not consider that the use of the word ‘RISEFAR’ together with the device element in the applicant’s mark will be seen as

an alternative mark being used by the same undertaking. I am of the view that the differences in the device elements of the marks are sufficient enough to avoid any confusion between the marks. The only shared element between the marks is the fact that both device elements contain chevrons and may be seen as indicating different types of arrows. Even so, the chevrons are displayed differently and combined in a way that forms a different shape in each mark. Having recognised the differences between the marks, I can see no reason why the average consumer would conclude that one was a natural variant or brand extension of the other. Consequently, I do not consider there to be a likelihood of indirect confusion between the opponent's mark and the applicant's mark, even on goods that are identical.

## **CONCLUSION**

46. The opposition has been unsuccessful and the application will proceed to registration.

## **COSTS**

47. As the applicant has been successful, it is entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 2/2016. The applicant only filed a counterstatement which, while mostly relevant, did deal with the issue of proof of use. This was ultimately not relevant to this decision and I have, therefore, reduced the applicant's costs entitlement. In the circumstances, I award the applicant the sum of **£300** as a contribution towards its costs. The sum is calculated as follows:

Preparing a statement and considering the opponent's statement:	£300
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<b>Total:</b>	<b>£300</b>
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48. I therefore order CAB 5-4 to pay Xiamen Risefar Textile Technology Co., Ltd the sum of £300. This sum is to be paid within twenty-one days of the expiry of the

appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

**Dated this 16th day of September 2020**

**A COOPER**

**For the Registrar**