

**O/736/21**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION NO. 3564789**

**BY SHANGHAI DENGLIAN TRADING CO., LTD.**

**TO REGISTER THE TRADE MARK:**

**ANWIO**

**IN CLASS 11**

**AND**

**OPPOSITION THERETO UNDER NO. 600001622**

**BY**

**VENKATESH SIVARAMAN**

## Background and pleadings

1. On 7 December 2020, Shanghai Denglian Trading Co., Ltd. (“the applicant”) applied to register the trade mark shown below and the application was published for opposition purposes on 5 February 2021.

## ANWIO

2. Registration is sought for:

Class 11      Lamps; lighting apparatus and installations; chandeliers; ceiling lights; Chinese lanterns; lights, electric, for Christmas trees; electric lights for Christmas trees; street lamps; aquarium lights; light-emitting diodes [LED] lighting apparatus; headlights for automobiles; direction indicators for vehicles (Lamps for -); lights for automobiles; automobile lights; structural framework for ovens; air deodorizing apparatus; electrical hair driers.

3. Venkatesh Sivaraman (“the opponent”) opposes the trade mark on the basis of Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opposition is directed against all of the applicant’s goods and is reliant on the mark set out below.
4. Trade mark UK00003238392, filed on 20 June 2017, registered on 29 September 2017.

## ANSIO

5. The mark is registered for a variety of goods and services, this opposition being reliant upon the following goods:

Class 8      Hygienic and beauty implements for humans and animals.

Class 11      Electric fan, electric cooker, induction hob, electric kettle, electric rice cooker, electric slow cooker, electric hob, electric toaster. Portable electrical appliances, namely, cooling fans, room heaters, air cleaners, dehumidifiers and humidifiers for residential and industrial use; LED lights; cluster LED lights; 3D animal and figure shaped lights; 3D LED lights shaped as animals and figures; 3D LED lighting structures; 3D lighting structures; Battery fairy lights; Battery lights; Christmas lights; Christmas tree lights and lighting; Christmas tree ornaments for illumination [electric lights]; Christmas trees (Electric lights for-); Connectable lights; Connectable string lights; Curtain and net lights; Decorative lights and lighting; Electric lights and fairy lights; Electric lights for Christmas trees; Electric lights for festive decorations; Electrical lamps for outdoor lighting; Fairy lights; Fairy lights for festive decoration; Flower lights; Garden lights; Icicle shaped lights; Indoor lights; Installations for lighting Christmas trees; Installations for outdoor lighting; Lamps and lights for Christmas trees; Lights for external installation; Lights for external installations; Lights for festive decoration; Light reels; Multi action lighting; Ornaments for Christmas trees [lights]; Outdoor electrical lighting fixtures; Outdoor lights, lighting and fittings; Party and event lights and lighting; Rope and string lights; Strings of lights; Wedding lights. Apparatus for lighting, heating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes; Ovens; Hair driers; Bedwarmers, electric or non-electric, heating cushions (pads) and blankets, electric, not for medical purposes, cooking utensils, electric, apparatus and machines for purifying, conditioning, ventilating and deodorising air, radiators, alcohol burners, gas lighters, light bulbs, electric lights for Christmas trees, barbecues, fireplaces, domestic, apparatus for purifying, filtering, softening, sterilising, and vaporising water; Hair-dryers and adapters therefor; Microwave ovens; Diffusers (lighting); Lamps; Lighting apparatus and installations; Luminous tubes for lighting;

Ultraviolet ray lamps, not for medical purposes. Burners, boilers and heaters; Drying installations; Food and beverage cooking, heating, cooling and treatment equipment; Heating, ventilating, and air conditioning and purification equipment (ambient); Personal heating and drying implements.

Class 12 Vehicles, apparatus for locomotion by land, air or water; machines, apparatus and elements for transportation and general parts thereof and accessories therefor; parts included in class 12 of vehicles, aircraft and of watercraft, vehicle carbon composite brake discs.

6. The opponent filed Form TM7F. Form TM7F is a notice of “fast track” opposition, which can be used when the opposition is based on sections 5(1) and/or 5(2) of the Act.
7. In its Form TM7F, the opponent argues that the respective goods are identical or similar and that the marks are similar. Under further information, the opponent says that the applicant’s trade mark differs by only one letter and the pronunciation of the marks is the same when they are spoken.
8. The applicant filed a Form TM8, denying that the applicant’s mark is sufficiently similar to the opponent’s mark to create a risk of confusion for the relevant public and then making a number of points in its counterstatement that I will refer to later.
9. Rule 6 of the Trade Marks (Fast Track Opposition) (Amendment) Rules 2013, S.I. 2013 2235, disapplies paragraphs 1-3 of Rule 20 of the Trade Mark Rules 2008, but it provides that Rule 20(4) shall continue to apply. Rule 20(4) states that:  
  
“(4) The registrar may, at any time, give leave to either party to file evidence upon such terms as the registrar thinks fit.”

10. The net effect of these changes is to require parties to seek leave in order to file evidence in fast track oppositions. Rule 62(5) (as amended) states that arguments in fast track proceedings shall be heard orally only if (i) the Office requests it, or (ii) either party to the proceedings requests it and the registrar considers that oral proceedings are necessary to deal with the case justly and at proportionate cost; otherwise, written arguments will be taken.
11. In this case, neither party sought leave to file evidence.
12. A hearing was neither requested nor was it considered necessary.
13. The opponent filed a written submission, while the applicant did not.
14. The applicant is represented by Isabelle Bertaux, whereas the opponent is represented by Harper James Solicitors.

## **DECISION**

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

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

(a)...

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected

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

16. 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) a European Union 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.”

Given its filing date, the trade mark upon which the opponent relies qualifies as an earlier trade mark as defined in section 6(1) of the Act. Also, as this trade mark had not completed its registration process more than 5 years before the filing date of the application in issue in these proceedings, it is not subject to proof of use pursuant to section 6A of the Act.

### **Section 5(2)(b) – case law**

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

18. 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 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.

### **Comparison of the goods**

19. 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 of its judgment 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.”

20. Guidance on this issue has also 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.

21. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T-133/05, the General Court (“GC”) stated that:

“29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 *Institut for 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.”

22. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market* (Trade Marks and Designs) (OHIM), Case T-325/06, the 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.”

23. The goods in question are as follows:

Opponent's goods	Applicant's goods
<p><u>Class 8</u></p> <p>Hygienic and beauty implements for humans and animals.</p>	
<p><u>Class 11</u></p> <p>Electric fan, electric cooker, induction hob, electric kettle, electric rice cooker, electric slow cooker, electric hob, electric toaster. Portable electrical appliances, namely, cooling fans, room heaters, air cleaners, dehumidifiers and humidifiers for residential and industrial use; LED lights; cluster LED lights; 3D animal and figure shaped lights; 3D LED lights shaped as animals and figures; 3D LED lighting structures; 3D lighting structures; Battery fairy lights; Battery lights; Christmas lights; Christmas tree lights and lighting; Christmas tree ornaments for illumination [electric lights]; Christmas trees (Electric lights for-); Connectable lights; Connectable string lights; Curtain and net lights; Decorative lights and lighting; Electric lights and fairy lights; Electric lights for Christmas trees; Electric lights for festive decorations; Electrical lamps for outdoor lighting;</p>	<p><u>Class 11</u></p> <p>Lamps; lighting apparatus and installations; chandeliers; ceiling lights; Chinese lanterns; lights, electric, for Christmas trees; electric lights for Christmas trees; street lamps; aquarium lights; light-emitting diodes [LED] lighting apparatus; headlights for automobiles; direction indicators for vehicles (Lamps for -); lights for automobiles; automobile lights; structural framework for ovens; air deodorizing apparatus; electrical hair driers.</p>

<p>Fairy lights; Fairy lights for festive decoration; Flower lights; Garden lights; Icicle shaped lights; Indoor lights; Installations for lighting Christmas trees; Installations for outdoor lighting; Lamps and lights for Christmas trees; Lights for external installation; Lights for external installations; Lights for festive decoration; Light reels; Multi action lighting; Ornaments for Christmas trees [lights]; Outdoor electrical lighting fixtures; Outdoor lights, lighting and fittings; Party and event lights and lighting; Rope and string lights; Strings of lights; Wedding lights. Apparatus for lighting, heating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes; Electric coffee machines; Ovens; Hair driers; Bedwarmers, electric or non-electric, heating cushions (pads) and blankets, electric, not for medical purposes, cooking utensils, electric, apparatus and machines for purifying, conditioning, ventilating and deodorising air, radiators, alcohol burners, gas lighters, light bulbs, electric lights for Christmas trees, barbecues, fireplaces, domestic, apparatus for purifying, filtering, softening, sterilising, and vaporising water; Hair-dryers and adapters therefor; Microwave ovens; Diffusers (lighting); Lamps; Lighting apparatus</p>	
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<p>and installations; Luminous tubes for lighting; Ultraviolet ray lamps, not for medical purposes. Burners, boilers and heaters; Drying installations; Food and beverage cooking, heating, cooling and treatment equipment; Heating, ventilating, and air conditioning and purification equipment (ambient); Personal heating and drying implements.</p>	
<p><u>Class 12</u></p> <p>Vehicles, apparatus for locomotion by land, air or water; machines, apparatus and elements for transportation and general parts thereof and accessories therefor; parts included in class 12 of vehicles, aircraft and of watercraft, vehicle carbon composite brake discs.</p>	

24. The opponent considers the applicant's goods that relate to lighting to be identical or similar to its goods that relate to lighting or finds similarity in respect of its Class 12 vehicle-related goods and the applicant's automobile/vehicle lighting.

25. The opponent further argues that the applicant's "structural framework for ovens" is "incidental" or complementary to its "Ovens", such that they are of "high similarity".

26. The opponent also considers the applicant's "air deodorizing apparatus" to be highly similar to a number of its electrical goods.

27. In its counterstatement, the applicant notes that goods are not regarded as similar to or dissimilar from each other on the ground that they appear in the same or different classes under the Nice classification.
28. The applicant considers that its Class 11 goods “have no counterpart” in the opponent’s Class 8 and Class 12 goods. It also considers that its “ceiling lights, Chinese lanterns, aquarium lights, lights for automobile[s]” in Class 11 are not covered by the earlier mark which covers other lights not sold in the same marketplace and which are used differently by consumers. Overall, it is of the view that the goods to be compared are not similar or similar to a low degree and even if there was a higher level of similarity that higher level would not be sufficient to offset the differences between the signs.
29. I now compare the respective goods.
30. The applicant’s “lamps” is identical to the opponent’s “Lamps”.
31. The applicant’s “lighting apparatus and installations” is identical to the opponent’s “Lighting apparatus and installations”.
32. The applicant’s “lights, electric, for Christmas trees” and “electric lights for Christmas trees” is identical to the opponent’s “Electric lights for Christmas trees”.
33. The applicant’s “light-emitting diodes [LED] lighting apparatus” is identical to the opponent’s “LED lights”.
34. The applicant’s “air deodorizing apparatus” is identical to the opponent’s “ ... machines for ... deodorising air ... ”.
35. The applicant’s “electrical hair driers” is identical to the opponent’s “Hair dryers”.
36. The applicant’s “chandeliers”, “ceiling lights” and “aquarium lights” are *Meric* identical to the opponent’s “Lighting apparatus and installations” in that the

goods designated by the trade mark application are included in a more general category designated by the earlier mark.

37. I also consider the applicant's "headlights for automobiles", "direction indicators for vehicles (Lamps for -)", "lights for automobiles" and "automobile lights" to be *Merit* identical to the opponent's "Lighting apparatus and installations" in that the goods designated by the trade mark application are included in a more general category designated by the earlier mark. In any event, as indicated by the opponent, the applicant's goods are similar to the other car parts covered by the opponent's Class 12 goods.

38. The applicant's "Chinese lanterns" are *Merit* identical to the opponent's "Party and event lights and lighting" in that the goods designated by the trade mark application are included in a more general category designated by the earlier mark.

39. The applicant's "street lamps" is *Merit* identical to the opponent's "Electrical lamps for outdoor lighting" in that the goods designated by the trade mark application are included in a more general category designated by the earlier mark.

40. I now compare the applicant's "structural framework for ovens" with the opponent's "Ovens". Evidently, they both have the same overall purpose and would be available through the same trade channels. The structural framework being indispensable to the oven as a whole, there is complementarity such that consumers may think the responsibility for those goods lies with the same undertaking. Overall, I find these goods to be highly similar.

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

41. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties' goods. I must then determine the manner in which the goods and services are likely to be selected by the average consumer. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A.*

*Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J described the average consumer in these terms:

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

42. The goods in conflict in this case are lighting, ovens, deodorising appliances and hair dryers.
43. In the case of lighting, purchases by members of the public will necessitate a certain amount of attention given the need to study specifications such as the brightness level of the lights and consider any lighting infrastructure that may be part of the purchase. Despite the possibility that some domestic lighting can be expensive, as can purchasing lights for cars, the average purchase will require no more than a medium level of attention. At an organisational level, purchases of lighting can be large in terms of volumes, but can also be expensive when it comes to the procurement of things like street lighting. Consequently, I would put the level of attention needed for corporate purchases as medium in most cases and high, but not the highest, for large amounts of lighting infrastructure. While verbal enquiries as to specifications may play a part in the process, visual considerations will predominate during the purchasing process.
44. The level of attention required when purchasing an oven, or a deodorising appliance, whether by a member of the public or corporately, will be medium. The average consumer for hair dryers will be a member of the public and the purchase will necessitate no more than a medium level of attention. While there may be questions asked as to the characteristics of

these products, visual considerations will predominate during the purchasing process.

### **Comparison of the trade marks**

45. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

“.....it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

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

47. The respective trade marks are shown below.

<b>Opponent's trade mark</b>	<b>Applicant's trade mark</b>
<b>ANSIO</b>	<b>ANWIO</b>

48. The opponent says that “the signs coincide in the same common letters, “AN-IO.”” It contends that the average consumer will recall the dominant common component of each mark, “namely the beginning and ending syllables AN-IO, which is visually identical to the Earlier Mark.”
49. The opponent also contends that the letters “S” and “W”, the only different letters in the marks, being next to each other on the “Qwerty” keyboard means that it is highly likely that the average consumer will mis-spell the sign when looking for the earlier mark, or vice versa. However, I do not consider the potential for mis-keying one of the letters to be a particularly relevant test in determining visual similarity, or indeed whether there exists a likelihood of confusion.
50. The opponent considers the marks to be aurally highly similar overall, with the first syllable “An” being identical (that being the dominant element, it argues). It contends that the average consumers for the goods at issue are highly likely to learn about the goods by oral recommendation, thereby easily believing that they have misheard one mark as the other.
51. Conceptually, the opponent states that the marks do not convey any meaning for the relevant public and therefore “the conceptual aspect does not influence the assessment of the similarity of the signs.”
52. In its counterstatement, the applicant contends that the marks are visually dissimilar or at least visually similar to a low degree, the different letter in its trade mark providing a “different visual impression”. It also considers that the marks “will sound different to the relevant public when pronounced.” However, the applicant misstates its mark as “ANKIO” in conducting its comparison.
53. The applicant also comments on conceptual comparison, stating that (the respective marks having no meaning) “the conceptual aspect does not influence the assessment of the similarity of the signs.”

54. I set out my analysis below.

55. The applicant's mark is a plain word mark, "ANWIO". The opponent's mark is a plain word mark, "ANSIO". There are no other elements that contribute to the overall impressions of the mark.

56. Visually, both marks are plain word marks. Both marks share the same first two and last two letters, the only difference being the middle letters "W" and "S" respectively. The marks are highly similar visually.

57. Aurally, the words "ANWIO" and "ANSIO" begin and end identically, only the middle part giving rise to a phonetic difference (and even that middle part ends identically), such that the respective words are pronounced "AN-WEE-OH" and "AN-SEE-OH". The words are highly similar aurally.

58. Conceptually, the words "ANWIO" and "ANSIO" do not give rise to a particular concept or meaning. The average consumer would consider both words to be invented words, not meaning anything. I consider the marks to be conceptually neutral, so there is neither a conceptual similarity nor difference.

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

59. 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).”

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

61. In its counterstatement, the applicant says that no evidence has been submitted by the opponent to prove any distinctive character of the opponent’s trade mark. It considers that, “Therefore, the distinctiveness of the earlier mark must be seen as average.”

62. I must make an assessment of the inherent distinctive character of the earlier mark, no use of the mark having been filed. It is a word mark, “ANSIO”, which I consider the average consumer would see as an invented word to which they would not ascribe a particular meaning. Consequently, it is not descriptive nor suggestive of the goods and services for which the mark is registered. As an invented word, I find the mark to be inherently distinctive to a high degree.

## Likelihood of confusion

63. 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 or services and 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 for the goods and services 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 they have retained in their mind.

64. I have found the parties' marks to be visually and aurally similar to a high degree. I regard the marks as conceptually neutral.

65. I have found the parties' goods to be identical or highly similar. I have identified the average consumer for these goods to be either a member of the public or an organisation. The member of the public will pay no more than a medium level of attention in the case of lighting and hair dryers and a medium level of attention in respect of ovens and deodorising appliances. The level of attention required by organisations would be medium in all cases, except for the purchase of large amounts of lighting infrastructure which would necessitate a high, but not the highest, level of attention. Visual considerations predominate in all cases.

66. I have found the opponent's mark to have a high degree of inherent distinctive character.

67. Notwithstanding that some of the goods may be selected with a high, but not the highest, level of attention, I consider that this is a case where direct confusion is likely, particularly when the principle of imperfect recollection is borne in mind. Imperfect recollection is emphasised in this case given the conceptual neutrality that exists between the marks, with the consequence that neither provides a conceptual hook on which to base future recall. This, together with the closeness of the marks as I have assessed them, leads me to the conclusion that there is a likelihood of direct confusion.

## **CONCLUSION**

68. The opposition has succeeded in full. Subject to appeal, the application will be refused.

## **COSTS**

69. The opponent has been successful in its opposition. In line with Tribunal Practice Notice 2 of 2015, relating to costs for fast track oppositions, I award the following:

Official fees:	£100
Filing a notice of opposition:	£100
Filing a written submission:	£300
<b>Total:</b>	<b>£500</b>

70. I order Shanghai Denglian Trading Co., Ltd. to pay Venkatesh Sivaraman the sum of £500. 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 5<sup>th</sup> day of October 2021**

**JOHN WILLIAMS**  
**For the Registrar**