

O/0051/25

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00003879901
BY SHENZHEN RUIKE INNOVATION TECHNOLOGY CO., LTD
TO REGISTER:

Ruko

AS A TRADE MARK IN CLASS 9

AND

IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 442320 BY
RUCO-LICHT GMBH

BACKGROUND AND PLEADINGS

1. On 20 February 2023, Shenzhen Ruike Innovation Technology Co., Ltd (“the applicant”) applied to register the trade mark on the cover page of this decision in the UK (“the applicant’s mark”). The applicant’s mark was published for opposition purposes on 9 June 2023 and registration is sought for the following goods:

Class 9: Humanoid robots with artificial intelligence for use in scientific research; USB flash drives; video projectors; inverters [electricity]; solar panels for the production of electricity; power banks; solar batteries; battery chargers; accumulators, electric; animated cartoons; application software for mobile phones; solar-powered battery chargers; smartphone battery chargers; data cables; electric cables for the transmission of sounds and images.

2. On 4 August 2023, the applicant’s mark was partially opposed by Ruco-Licht GmbH (“the opponent”). The opposition is brought under section 5(2)(b) of the Trade Marks Act 1994 (“the Act”) and is reliant upon the following trade mark:

RUCO

UK registration no. 914482913¹

Filing date 19 August 2015; registration date 25 January 2016

Relying on some goods only, namely the following:

Class 9: Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; apparatus for recording, transmission or reproduction of sound or images; data processing hardware; computers; computer software.

(“the opponent’s mark”).

¹ The opponent’s mark is a comparable mark based upon an earlier EUTM. On 1 January 2021, in accordance with Article 54 of the Withdrawal Agreement between the UK and the European Union, the UK IPO created comparable UK trade marks for all right holders with existing EUTMs. As such, this comparable mark enjoys the same filing and registration dates as its European counterpart.

3. As above, the opponent only seeks to oppose some of the applicant's goods. These are as follows:

Class 9: USB flash drives; video projectors; inverters [electricity]; solar panels for the production of electricity; power banks; solar batteries; battery chargers; accumulators, electric; application software for mobile phones; solar-powered battery chargers; smartphone battery chargers; data cables; electric cables for the transmission of sounds and images.

4. The opponent claims that due to the similar nature of the marks and the identical or similar nature of the goods at issue, there is a clear likelihood of confusion. In bringing its claim, the opponent has provided a statement of use in respect of the goods relied upon.
5. The applicant filed a counterstatement wherein it denied the claims against it.
6. The opponent is represented by Baron Warren Redfern and the applicant is represented by Axis Professionals Ltd. The opponent filed written submissions during the evidence rounds and the applicant filed evidence in chief. No hearing was requested and only the opponent filed written submissions in lieu. This decision is taken following a careful consideration of the papers.
7. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

EVIDENCE

8. The applicant's evidence came in the form of the witness statement of Jing Lian dated 3 April 2024. Jing Lian is the director of the applicant and their evidence is accompanied by two exhibits, being those labelled JS1 and JS2. The purpose of Jing Lian's evidence was to explain the differences in the pronunciation of the marks and, further, to demonstrate the applicant's own use of its mark since 2017.
9. While I do not intend to reproduce the applicant's evidence or the opponent's submissions here, I have read and considered them in full and will, if necessary, refer to the relevant parts at appropriate points throughout my decision.

PRELIMINARY ISSUE

10. I note that the applicant has sought to file evidence of its use of its own mark. It has not pleaded why it has filed such evidence but it could be taken as though it was filed in order to demonstrate that it has a defence of honest concurrent use. In response to this evidence, the opponent appears to have put forward an argument that if it was the applicant's intention to rely on honest concurrent use then it was not pleaded. In addition, the opponent has pointed out several issues with the applicant's evidence in that it is not sufficient to demonstrate such an argument in any event. While the opponent's position in respect of the pleading point is noted, I am of the view that regardless of whether the argument was pleaded or not, the simple fact is that the evidence filed is wholly insufficient to prove any form of use in the UK. I say this because the applicant's evidence consists simply of printouts showing 'Ruko' branded solar panels as well as item listings on Amazon.² Firstly, the existence of product listings on Amazon or screenshots from the opponent's own website are, without anything demonstrating actual sales, not capable of pointing to any use in the UK. Secondly, the printouts are dated 11 March 2024 and where dates of the products first being listed on Amazon are shown, they are from after the relevant date for the proceedings (being 20 February 2023). As such, this evidence is of no assistance to the present proceedings. Lastly, outside of

² JS1 and JS2

these printouts, the applicant has failed to provide any turnover or sales figures and neither is there anything in respect of advertising spend or marketing efforts. As a result, the applicant's evidence is of no assistance to these proceedings and I will say no more about it.

DECISION

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

11. 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.”

12. 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.”

13. 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 or international trade mark (UK) 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.

14. The opponent's mark qualifies as an earlier trade mark under the above provisions.

The opponent's mark had completed its registration process more than five years prior to the filing date of the applicant's mark and was, therefore, open to a request for proof of use pursuant to section 6A of the Act. However, the applicant did not elect to put the opponent to proof of use. Therefore, the opponent may rely on the goods highlighted in its notice of opposition.

15. 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 the goods

16. The competing goods are as follows:

The opponent's goods	The applicant's goods
<u>Class 9</u> Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; apparatus for recording, transmission or reproduction of sound or images; data processing hardware; computers; computer software.	<u>Class 9</u> USB flash drives; video projectors; inverters [electricity]; solar panels for the production of electricity; power banks; solar batteries; battery chargers; accumulators, electric; application software for mobile phones; solar-powered battery chargers; smartphone battery chargers; data cables; electric cables for the transmission of sounds and images.

17. 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".

18. 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.

19. The General Court 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 fur 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”.

20. I have comments in respect of the goods comparison from the opponent in its notice of opposition.³ As for the applicant, I note that it has made a bare denial of

³ I note that the opponent did file written submissions but they simply referred to the comments made in the notice of opposition.

any similarity between the goods. While I do not intend to reproduce the comments of the parties here, I have taken them into account and will refer to them below, if necessary.

USB flash drives.

21. The opponent submits that the above term is identical to the terms “apparatus for recording, transmission or reproduction of sound or images” and “data processing hardware” in its own specification. While noted, I disagree. Firstly, a USB drive may store music or photographs and may be used to access those files on a computer, however, I am not convinced that it is for their recording, transmission or reproduction. Further, I do not consider that USB flash drives are hardware devices used for data processing. Instead, I consider that the above term is similar to “computers” in the opponent’s specification. While the natures, methods of use and purposes differ between such goods, they overlap in trade channels. I say this because while it may not always be the case, the goods are such that they will be produced and sold by the same undertakings. Further, both goods will be available via the same retailers, such as electronic hardware stores. Even in larger general retailers, they will likely be found in the same section. In addition, the users will be the same. Lastly, I appreciate that USB flash drives may be used with many devices, however, computers are important to the flash drives themselves. I say this because users looking to use USB flash drives will commonly load files on to them by using them with a computer. This relationship is such that, in my view, consumers will believe that the same undertaking is responsible for the goods.⁴ Taking all of this into account, I find that the goods are similar to a medium degree.

22. In the event that I am wrong as to complementarity between these goods, I consider that the aforementioned overlaps in user and trade channels are such that the goods would still be similar, albeit to a low degree.

⁴ *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06

Video projectors.

23. A video projector is a product that produces images in the form of videos. While it may not necessarily reproduce the sound of a video (this is commonly done via speakers hooked up to the projector), I find that the above term falls within the opponent's term of "“apparatus for recording, transmission or reproduction of [...] images”". As a result, I find that these goods are identical under the principle outlined in *Meric*.

Electric cables for the transmission of sounds and images.

24. Given its designation as covering electrical cables, I consider that the best comparison for the above term in the opponent's specification is "apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity". I do not consider that a cable is a type of apparatus or instrument and, therefore, I find that the natures and methods of use for these goods differ. That being said, the applicant's term, despite relating to sounds/images, covers goods that are used for conducting and controlling electricity. Therefore, I consider that there is some overlap in purpose between these goods. In addition, I consider that the producer of an instrument or apparatus for conducting and controlling electricity is also likely to produce and sell the cables for the same. As such, I find that the trade channels overlap. As for user, I am of the view that when looking to operate a larger and more complex set up for the transmission of sound, for example, the user is likely to seek apparatus for conducting or regulating the electricity. In this context, this could be surge protecting apparatus that are included in the set up to protect the speakers in the sound system. As a result, I consider that there is a medium degree of similarity between these goods.

Inverters [electricity]; solar panels for the production of electricity; accumulators, electric.

25. As far as I understand it, all of the above terms cover goods that can be said to be apparatus or instruments for the conducting, control or regulation of electricity. As

a result, I find that they all fall within the opponent's broader term of "apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity". These goods are, therefore, identical under the principle outlined in *Meric*.

Power banks; battery chargers; solar-powered battery chargers; smartphone battery chargers; solar batteries.

26. The above goods are all goods that store electricity in order to charge various types of devices. The goods then transform that stored electricity and pass it on to the device that they are designed to charge. These goods are, therefore, instruments for the transforming, control and conducting of electricity and, as such, fall within the opponent's term of "apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity". As a result, I find that these goods are identical under the principle outlined in *Meric*.

Application software for mobile phones.

27. The opponent's specification includes the term "computer software". It is my primary finding that computer software is not limited to that which is used on personal or desktop computers and, instead, covers any and all types of software, including that used on mobile phones. I say this because mobile phones, while smaller portable devices, are still technically devices that have computing functions. Therefore, I find that these goods are identical under the principle outlined in *Meric*.

28. Alternatively, if I am wrong to find identity on the basis that the opponent's term does not encompass the applicant's, they are still similar. I say this because while they may be used on different devices, they are both broad terms that cover software meaning that their natures overlap. Further, both goods can be used for any and all purposes as neither term is limited in any way. As such, there is an overlap in purpose. Further, I understand that it is common for producers of software to produce said software for many devices, being computers and mobile phones. Therefore, these goods overlap in trade channels. I also consider that the

user will be same as a user may look to download software on their mobile phones and on their personal computers. Taking all of this into account, I consider that if these goods are not identical, they are similar to a high degree.

Data cables.

29. Data cables are used to transfer data from one device to another. They are not used for the processing of the data itself meaning that there is no overlap in purpose between the above term and “data processing hardware” in the opponent’s specification. In addition, the goods are clearly not the same in nature and neither do they share the same method of use. That being said, the goods are likely to overlap in trade channels and user. I say this because an undertaking that produces data processing hardware is also likely to produce the cables that send the relevant data to the processing unit. In addition, the consumers of the hardware are also likely to require the data cables meaning that there is an overlap in user. Lastly, I consider that the use of a data cable is important to the opponents’ goods because in order to process data, a user needs to be able to transfer the relevant data to the device. Such a relationship will, in my view, lead consumers to believe that the responsibility for both goods lies with one undertaking. Taking all of this into account, I find that the goods are similar to a medium degree.

The average consumer and the nature of the purchasing act

30. The case law, as set out earlier, requires that I determine who the average consumer is for the respective parties’ services. I must then decide the manner in which these services 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.”

31. The average consumer for the goods at issue will include members of the general public at large as well as business users. The goods selected by members of the general public are generally going to be selected via general retailers or retailers specialising in electronic goods. In such retailers, the goods will be displayed on racks or shelves where they will be self-selected by consumers. The goods are also likely to be selected online via those retailers’ websites where the goods will be selected after the consumer views images of them. Additionally, some goods (such as solar panels, for example) as well as those goods selected by business users will be selected via specialist retailers, either at their physical premises or online. I consider that the selection process will, regardless of who the average consumer is, be primarily visual. That being said, I cannot ignore the fact that an aural component will play a role via word-of-mouth recommendations or discussions with sales staff. On this point, I consider that for the more specialist goods or those aimed at business users, the aural component will play an equal role as discussions with sales assistance are likely to be important factors.

32. While some goods selected by consumers (such as instruments for dealing with electricity as part of complex audio set ups or solar panels, for example) may be infrequent purchases that sit on the more expensive end of the scale, I am of the view that for the most part, the goods at issue will be relatively low cost goods that will be selected somewhat frequently (such as USB flash drives, data cables and battery chargers, for example). In terms of the level of attention paid, I consider that this will generally be at a level that sits just below medium as the electronic goods in question are likely to be relatively casual goods with consideration being paid to factors such as compatibility (for cables), capacity (for USB flash drives) or wattage (battery chargers). Such information is commonly emblazoned clearly on the goods’ packaging or webpages so seeking out this information will not require any detailed consideration whatsoever.

33. The above being said, I consider that some goods such as solar panels or those selected by business users will attract a greater degree of attention. For example, when selecting solar panels, the consumer is likely going to consider factors such as size, compatibility with current electricity systems, wattage, suitability (the direction of the user's roof, for example, will play a role), permissions (for listed buildings or if the property is in any conservation area, for example) and capacity of the panels. In my view, such considerations will attract a relatively high degree of attention.

Comparison of the marks

34. 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.

35. 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.”

36. 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.

37. The respective trade marks are shown below:

The opponent's mark	The applicant's mark
RUCO	Ruko

Overall impression

38. The opponent's mark is a word only mark consisting solely of the word 'RUCO'. There are no other elements that contribute to the overall impression of the mark, which lies in the word itself. As for the applicant's mark, this is a figurative mark that consists of a representation of the word 'Ruko' in a standard black typeface on a white rectangle background. Plainly, it is the word 'Ruko' that will dominate the overall impression of the mark. As for the typeface used and background, I consider that these will play negligible roles.

Visual comparison

39. Both marks include a four letters word. Visually, they share their first, second and fourth letters, being 'B-O-U', respectively. They differ in their third letters, being a 'C' in the opponent's mark and a 'K' in the applicant's. The opponent's mark, as a word only mark, can be presented in the same case and typeface as that used in the applicant's mark. Whilst it is not legitimate to perform a comparison between a word mark and a stylised word mark by considering specific ways in which the word might be presented, the point here is that the word mark is not limited to any particular script and therefore the script or font in which the figurative mark is written does not provide a point of distinction in itself.⁵

⁵ See the decision of the Appointed Person in *HERNO S.p.A. v Miss Sparrow Ltd*, BL O/954/22, paragraphs 23 and 34.

40. Taking all of the above into account whilst also bearing in mind that not only are the beginnings of the marks identical (being where consumers tend to focus),⁶ their last letters are the same too. Overall, I consider that the marks are similar to a high degree.

Aural comparison

41. In its evidence, the applicant argues that, in English, the word 'Ruko' will be pronounced like the word 'Ruiké' in Chinese Pinyin. While this may have been the applicant's intention and it may be how it is pronounced in China, there is nothing in the evidence to support the claim that this is how consumers in the UK would pronounce it. Without any evidence on this point, I am not willing to find that UK consumers would seek to pronounce the mark as 'Ruiké'. Instead, I consider that consumers would pronounce the mark as two syllables, being 'ROO-KOE'. As for the opponent's mark, I appreciate that it includes the letter 'C' instead of 'K', however, I am of the view that 'RUCO' will be pronounced in the same way, being 'ROO-KOE'. As a result, I find that the marks are aurally identical.

Conceptual comparison

42. I do not consider that 'RUKO' or 'RUCO' will have any immediately identifiable concept to the average consumer in the UK. As such, I find that the marks are not capable of being compared conceptually. They are, therefore, conceptually neutral.

Distinctive character of the opponent's mark

43. 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

⁶ *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

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).”

44. 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. The opponent has not filed any evidence of use and, therefore, I have only the inherent position to consider.

45. The opponent’s mark, being the word ‘RUCO’, will be understood as either a made-up or foreign language word by the average consumer in the UK. As such, the mark cannot be said to be either descriptive or allusive of the goods upon which the opponent relies. Given the lack of any known meaning, I find that the opponent’s mark enjoys a high degree of inherent distinctive character.

Likelihood of confusion

46. 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 vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the opponent's mark, the average consumer for the goods and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that they have retained in their minds.

47. I have found the goods at issue to be either identical or similar to varying degrees (with an alternative finding of a low similarity for some goods). I have found that the average consumer base is formed of members of the general public and business users who will select the goods via primarily visual means (although I do not discount an aural component playing a role. On this point, I remind myself that for some goods and for certain consumers, the aural component will play an equal role. I have concluded that the level of attention paid will either sit at just below a medium degree or it will be at a relatively high degree, depending on the goods at issue/identity of the consumer. I have found the marks at issue to be visually similar to a high degree, aurally identical and conceptually neutral. Lastly, I have found the opponent's mark to be inherently distinctive to a high degree.

48. Taking all of the above into account and bearing in mind the principle of imperfect recollection, I am of the view that the marks at issue are likely to be misremembered or inaccurately recalled for one another. I say this because not only are the first two letters across the marks identical but so too is the last letter.

On this point, I appreciate the presence of a different third letter, however, this point of difference is subsumed into the body of the marks (and has no impact aurally) and, therefore, is likely to be overlooked when consumers are looking to recall the parties' marks. Again, I reach this finding whilst bearing in mind the principle of imperfect recollection and the fact that consumers rarely have the opportunity to make direct comparisons between marks. Lastly, I remind myself of the aural identity between the marks, a point that further supports a finding of direct confusion, especially given the importance that the aural component will play in some circumstances. Consequently, I find that there exists a likelihood of direct confusion. For the avoidance of doubt, I find that the high level of visual similarity and aural identity between the marks are such that confusion exists regardless of the level of similarity between the goods at issue and the level of attention paid by the consumer.

CONCLUSION

49. The opposition has succeeded in full. Therefore, the applicant's mark is, subject to any successful appeal to my decision, hereby refused for all of the goods that were opposed, being:

Class 9: USB flash drives; video projectors; inverters [electricity]; solar panels for the production of electricity; power banks; solar batteries; battery chargers; accumulators, electric; application software for mobile phones; solar-powered battery chargers; smartphone battery chargers; data cables; electric cables for the transmission of sounds and images.

50. Given that the opposition was only partial, the applicant's mark may proceed to registration for those goods that the opponent did not seek to oppose. These are as follows:

Class 9: Humanoid robots with artificial intelligence for use in scientific research; animated cartoons.

COSTS

51. As the opposition has succeeded, the opponent is entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 1/2023. While the opponent did not file its own evidence, it was required to consider the applicant's evidence. As a result, I consider it appropriate to award the opponent some costs in respect of this task.

52. In the circumstances, I hereby award the opponent the sum of **£1,050** as a contribution towards its costs. The sum is calculated as follows:

Preparing a notice of opposition and considering the applicant's counterstatement:	£250
Considering the applicant's evidence:	£300
Preparing submissions:	£400
Official Fees:	£100
Total:	£1,050

53. I therefore order Shenzhen Ruike Innovation Technology Co., Ltd to pay Ruco-Licht GmbH the sum of £1,050. This sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 21st day of January 2025

A COOPER
For the Registrar