

BL O/0093/25

TRADE MARKS ACT 1994

**IN THE MATTER OF
TRADE MARK APPLICATION NO. 3832010
BY SHENZHEN HUIPENGCHENG TECHNOLOGY CO. LTD TO REGISTER AS A
TRADE MARK:**

Edasion

IN CLASSES 7, 9 & 11

AND

**IN THE MATTER OF OPPOSITION THERETO UNDER NO. 438464
BY FRED NAMUTULO**

BACKGROUND AND PLEADINGS

1. On 22 September 2022, ShenZhen HuiPengCheng Technology Co. LTD (“the applicant”) applied to register the trade mark displayed on the cover page of this decision, under number 3832010 (“the applicant’s mark”). It was accepted and published in the Trade Marks Journal on 07 October 2022 in respect of the following goods:

Class 7: Juice extracting machines; Soldering irons, electric; Air drills; Electrically heated soldering irons; Hot air welding machines; Hand-held tools, other than hand-operated; Electric food blenders; Air spray guns; Electrical pumps; Electrical welding apparatus; Kitchen machines, electric; Electrical hand tools; Ironing machines; Hot melt glue guns; Horticultural implements [machines].

Class 9: Power adapters; Electrical sockets; Voltmeters; Battery chargers; Travel adaptors for electric plugs; Electrical adapters; Scanners [data processing equipment]; Communications apparatus for vehicles; Multimeters; Converters for electric plugs; Testing apparatus not for medical purposes; Alarm systems; Digital electronic controllers; Audio adaptors; Engine diagnostic apparatus.

Class 11: Decorative lights; Handheld spotlights; Cooking appliances; Electric torches; Bath fittings; Floodlights; Lighting apparatus; Drip irrigation systems; Lamps; Outdoor lighting; Flashlights utilising electric rechargeable devices; Lights for vehicles; Hot air blowers; Garden lighting; Desk lamps.

2. On 09 January 2023, the applicant's mark was opposed by Fred Namutulo ("the opponent"). The opposition is brought under section 5(2)(b) of the Trade Marks Act 1994 ("the Act") and is directed against the following goods in class 09 only:

Class 9: Power adapters; Electrical sockets; Voltmeters; Battery chargers; Travel adaptors for electric plugs; Electrical adapters; Scanners [data processing equipment]; Communications apparatus for vehicles; Multimeters; Converters for electric plugs; Testing apparatus not for medical purposes; Alarm systems; Digital electronic controllers; Audio adaptors; Engine diagnostic apparatus.

3. The opponent relies upon the following registration:

UK trade mark registration no. UK00003707364

EDASION

Filing date: 06 October 2021.

Registration date: 07 January 2022.

Relying upon all of the goods for which its mark is registered, namely:

Class 8: Hand tools and implements, hand-operated; Cutlery; Side arms, except firearms; Razors.

Class 9: Scientific, research, navigation, surveying, photographic, cinematographic, audiovisual, optical, weighing, measuring, signalling, detecting, testing, inspecting, life-saving and teaching apparatus and instruments; Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling the distribution or use of electricity; Apparatus and instruments for recording, transmitting, reproducing or processing sound, images or data; Recorded and downloadable media, computer software, blank digital or analogue

recording and storage media; Mechanisms for coin-operated apparatus; Cash registers, calculating devices; Computers and computer peripheral devices; Diving suits, divers' masks, ear plugs for divers, nose clips for divers and swimmers, gloves for divers, breathing apparatus for underwater swimming; Fire-extinguishing apparatus.

4. By virtue of its earlier filing date, the above registration constitutes an earlier mark within the meaning of section 6 of the Act. However, as it had not been protected for five years or more at the filing date of the application, it is not subject to the proof of use requirements specified within Section 6A of the Act.
5. In its notice of opposition, the opponent submits that the applicant's mark is visually, conceptually and phonetically highly similar to its mark, for identical or highly similar services.¹
6. The applicant filed a counterstatement denying that the two marks are visually the same, stating that "The applicant's mark is "Edasion" with uppercase letter "E" and lowercase letters "dasion", which indicates that the applicant mainly specializes in electronics products. And the opponent's mark is "EDASION" with all upper case. So, the visual disparity between them comes into being, which indicates the applicant's mark is not the complete reproduction of the opponent's mark." Additionally, the applicant denies that the contested goods are the same.
7. The opponent is unrepresented, and the applicant is represented by Axis Professionals LTD. Neither party requested a hearing and only the applicant filed evidence. I therefore make this decision having taken full account of all the papers, referring to them as necessary.

RELEVANCE OF EU LAW

¹ I understand this as an error and that the opponent meant goods.

8. 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

9. The applicant's evidence consists of the witness statement of Junpeng Li dated 05 March 2024. Mr Li is the director of the applicant, and his statement is accompanied by 1 exhibit (JS1). Exhibit JS1 consists of screenshots of the applicant's Amazon page showing a range of goods for sale, as well as images of a number of products sold with the trade mark appearing on them. I have taken all of the evidence, as well as the parties' submissions, into consideration in reaching my decision and will refer to them where necessary below.

DECISION

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

10. The opposition is based upon section 5(2)(b) of the Act which 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”

11. 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.”

12. The following principles are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P:

(a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;

(f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

(g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;

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

(i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;

(j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;

(k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically linked undertakings, there is a likelihood of confusion.

Comparison of goods

13. Section 60A of the Act provides:

“(1) For the purpose of this Act goods and services-

(a) are not to be regarded as being similar to each other on the ground that they appear in the same class under the Nice Classification.

(b) are not to be regarded as being dissimilar from each other on the ground that they appear in different classes under the Nice Classification.

(2) In subsection (1), the “Nice Classification” means the system of classification under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, which was last amended on 28 September 1979.”

14. 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.”

15. 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.

16. For the purposes of considering the issue of similarity of goods and services, it is permissible to consider groups of terms collectively where they are sufficiently comparable to be assessed in essentially the same way and for the same reasons (see *Albingia SA v Axis Bank Limited*, BL O/253/18, a decision of the Appointed Person, Professor Phillip Johnson, at paragraph 42).

17. 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.”

18. The goods to be compared are:

The opponent's goods	The applicant's opposed goods
<p>Class 8: Hand tools and implements, hand-operated; Cutlery; Side arms, except firearms; Razors.</p> <p>Class 9: Scientific, research, navigation, surveying, photographic, cinematographic, audiovisual, optical, weighing, measuring, signalling, detecting, testing, inspecting, life-saving and teaching apparatus and instruments; Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling the distribution or use of electricity; Apparatus and instruments for recording, transmitting, reproducing or processing sound, images or data; Recorded and downloadable media, computer software, blank digital or analogue recording and storage media; Mechanisms for coin-operated apparatus; Cash registers, calculating devices; Computers and computer peripheral devices; Diving suits, divers' masks, ear plugs for divers, nose clips for divers and swimmers, gloves for divers, breathing apparatus for underwater swimming; Fire-extinguishing apparatus.</p>	<p>Class 9: Power adapters; Electrical sockets; Voltmeters; Battery chargers; Travel adaptors for electric plugs; Electrical adapters; Scanners [data processing equipment]; Communications apparatus for vehicles; Multimeters; Converters for electric plugs; Testing apparatus not for medical purposes; Alarm systems; Digital electronic controllers; Audio adaptors; Engine diagnostic apparatus</p>

19. The opponent in its notice of opposition argued that “the nature and the intended purpose of the services of the Applicant are identical to that of the Opponent. Both Marks are to be used in respect of above-mentioned goods

and any related services in connection with such goods. As they are both providing the same goods & services, the Applicant and the Opponent are in direct competition with each other and have the same relevant public. As the Applicant's Mark will be in direct competition with the Opponent, this magnifies the identical or high similar nature of the goods and services, and raises the likelihood of confusion." Again, I note the opponent's reference to services and understand this as an error in wording.

20. The applicant has not made any substantive submissions relating to the similarity of the goods, other than stating the following: "the classes of trademark "Edasion" registered by the applicant is different for those of mark "EDASION" registered by the opponent. The categories of applicant's mark are class 7,9 and 11, while the opponent's are 8&9 classes. And in class 9 that both sides have chosen, the goods are also inconsistent after comparison."

Power adapters; Travel adaptors for electric plugs; Electrical adapters; Converters for electric plugs; Electrical sockets

21. I consider the opponent's term '*Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling the distribution or use of electricity*' broad enough to cover the above goods of the applicant. It is my view that the applicant's terms would be included in the more general categories contained within the opponent's specification. The above goods are all used for the purpose of controlling the use of electricity and therefore, bearing in mind the principals of *Merix*, are considered identical.

Battery chargers

22. Again, I consider the opponent's term '*Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling the distribution or use of electricity*' broad enough to cover 'battery chargers' in the applicant's specification. It is my view that the applicant's term would be included in the more general categories contained within the opponent's specification. The above goods are used for the purpose of controlling the use

or distribution of electricity and therefore, bearing in mind the principals of *Meric*, are considered identical.

Voltmeters; Multimeters

23. I consider the opponent's term '*[...] measuring [...] apparatus and instruments*' broad enough to cover the above goods of the applicant. It is my view that the applicant's terms would be included in the more general category identified above within the opponent's specification. The above goods are used to measure electrical voltage, resistance and/or current and therefore, bearing in mind the principals of *Meric*, are considered identical.

Scanners [data processing equipment]

24. I consider the opponent's term '*Computers and computer peripheral devices*' broad enough to cover the above goods of the applicant. Scanners are machines that make images of pictures and documents that are then stored on a computer system. Consequently, and bearing in mind the principals of *Meric*, scanners are considered to fall into the more general category of computer peripheral devices and therefore considered identical.

Communications apparatus for vehicles

25. I consider the opponent's term '*Apparatus and instruments for recording, transmitting, reproducing or processing sound, images [...]*' broad enough to cover the above goods of the applicant. It is my view that the applicant's term would be included in the more general category contained within the opponent's specification. The above goods are used for the purpose of reproducing or transmitting communications in the form of sound or images within vehicles and therefore, bearing in mind the principals of *Meric*, are considered identical.

Testing apparatus not for medical purposes

26. I consider the opponent's term '*[...] testing [...] apparatus and instruments*' broad enough to cover the above goods of the applicant. It is my view that the applicant's term would be included in the more general category identified above within the opponent's specification. Consequently, they are considered identical under the principals of *Meric*.

Alarm systems

27. I consider the opponent's term '*[...] signalling, detecting [...] apparatus and instruments*' broad enough to cover the above goods of the applicant. The purpose of an alarm system is to detect and/or signal in case of emergency and therefore is considered to fall into the above category of goods. As a result, I find the goods to be identical under the principals of *Meric*.

Digital electronic controllers

28. I consider the opponent's term '*Apparatus and instruments for [...] controlling the distribution or use of electricity*' broad enough to cover the above goods of the applicant. It is my view that the applicant's term would be included in the more general category identified above within the opponent's specification. Consequently, they are considered identical under the principals of *Meric*.

Audio adaptors

29. I consider the opponent's term '*[...] audiovisual [...] apparatus and instruments*' broad enough to cover the above goods of the applicant. It is my view that the applicant's term would be included in the more general category identified above within the opponent's specification. Consequently, they are considered identical under the principals of *Meric*.

Engine diagnostic apparatus

30. I consider the opponent's term '*[...] detecting, testing, inspecting [...] apparatus and instruments*' broad enough to cover the above goods of the applicant.

Engine diagnostic apparatus are used to detect faults or issues within engines so that the user can understand what is causing a particular problem. Consequently, they are considered identical under the principals of *Meric* to the wide term highlighted above.

The average consumer and the nature of the purchasing act

31. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question (see *Lloyd Schuhfabrik Meyer*, Case C-342/97).

32. 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.”

33. I have no submissions from either the opponent or the applicant relating to the average consumer and nature of the purchasing act. The majority of the applicant's goods are considered to be general consumer goods and therefore the average consumer is the general public at large. However, some of the goods, for example voltmeters, multimeters, and engine diagnostic apparatus are also likely to be purchased by specialist tradespeople such as electricians

and mechanics. The cost of the goods in question is likely to vary due to their differing natures, as will the frequency of purchase. As a result, the consumer is likely to pay varying degrees of attention depending on the goods concerned. For the more everyday goods such as power adapters, electrical adapters or battery chargers, the average consumer is likely to pay between a low and medium degree of attention, whereas goods such as alarm systems or engine diagnostic apparatus are likely to be a more considered purchase, meaning the level attention paid during the purchasing process is likely to be between a medium and high degree. The average consumer will take various factors into consideration such as technical reviews of the goods, price, quality, ease of use, and suitability of the product. The selection process would be primarily visual whereby some consumers would seek information from written reviews and recommendations, particularly on the internet, however I do not discount that there will be an aural component to the purchase through advice sought from a sales assistant or representative, and word-of-mouth recommendations.

Comparison of trade marks

34. It is clear from *Sabel BV 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. The CJEU stated at paragraph 34 of its judgement 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”.

35. 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 trade marks and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the trade marks.

36. The trade marks to be compared are as follows:

The opponent's mark	The applicant's mark
EDASION	Edasion

37. In its notice of opposition, the opponent contends that visually the applicant's mark is highly similar to its mark. They state that the applicant's mark 'Edasion' is deceptively similar to its mark 'EDASION'. Further it is argued that the key element of the opponent's mark, namely the word 'EDASION' is reproduced in its entirety and due to this complete reproduction, the similarities are magnified. Additionally, the opponent submits that the applicant's mark contains no further visual elements which would distinguish it from its mark. As a result, and taking into account the average consumer's general imperfect recollection between two marks, it is submitted by the opponent that the applicant's mark is visually similar to its mark to a high degree. Next, the opponent argues that the applicant's mark is pronounced phonetically similar to its mark. Again, this is due to the complete reproduction of the opponent's mark 'EDASION' within the applicant's mark. Consequently, the opponent asserts that there can be no question that the applicant's mark is highly phonetically similar to its mark.

38. The applicant, on the other hand, states in their counterstatement that the two trade marks are not totally the same from a visual point of view. The applicant

submits that its "... mark is "Edasion" with uppercase letter "E" and lowercase letters "dasion", which indicates that the applicant mainly specializes in electronics products. And the opponent's mark is "EDASION" with all upper case. So, the visual disparity between them comes into being, which indicates the applicant's mark is not the complete reproduction of the opponent's mark."

Overall Impression

39. The opponent's mark consists of the single word 'EDASION'. There are no other elements in the mark to contribute to its overall impression, which lies in the word itself. Similarly, the applicant's mark consists of the single word 'Edasion'. There are no other elements in the mark to contribute to its overall impression, which again lies in the word itself.

Visual Comparison

40. Visually, both marks share the word EDASION, with the opponent's mark being wholly reproduced in the applicant's mark. The difference between the two marks is the fact that the letters 'dasion' in the applicant's mark are presented in lower case, whereas the opponent's mark is presented in all upper case. As a matter of law, it makes no difference that the letters are upper or lower case. Mr Iain Purvis QC (as he then was), sitting as the Appointed Person in *Groupement Des Cartes Bancaires v China Construction Bank Corporation*, case BL O/281/14, stated that:

"It is well established that a 'word mark' protects the word itself, not simply the word presented in the particular font or capitalization which appears in the Register of Trade Marks.....A word may therefore be presented in a different way (for example a different font, capitals as opposed to small letters, or handwriting as opposed to print) from that which appears in the Register whilst remaining 'identical' to the registered mark."

However, the opponent has not pleaded that the marks are identical; it has only pleaded that they are highly similar visually.² As a result, I find the two marks to be visually similar to a high degree.

Aural Comparison

41. Aurally, the opponent's mark consists of three syllables and will be articulated as "EE-DAY-SHUN", as would the applicant's. Again, the opponent has not pleaded that the marks are aurally identical; the pleading is that they are aurally highly similar. I find that the marks are aurally similar to a high degree.

Conceptual Comparison

42. The word 'EDASION' in the opponent's mark does not convey a concept. I consider that the relevant average UK consumer will ascribe no meaning to the word and instead conclude that 'EDASION' is an invented word or a word in a foreign language. The same is true of the applicant's mark 'Edasion'. To this extent, the marks are considered 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 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

² In addition to the statement of grounds pleading that the marks are visually and aurally highly similar, the opposition has been brought under section 5(2)(b), not under section 5(2)(a).

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, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctive character of a mark can be enhanced by virtue of the use that has been made of it. The opponent has not claimed that its mark has acquired an enhanced degree of distinctiveness and did not file any evidence to that effect. As such, I have only the inherent position to consider.
45. The earlier mark consists of the plain word ‘EDASION’ without any additional stylisation or figurative elements. As such, the inherent distinctive character rests solely in the word itself. Given that the mark consists of a word that is likely to be perceived as invented, or a word in a foreign language, which will be attributed no particular meaning, I consider it to be inherently distinctive to a high degree.

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.
47. 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 (see *Sabel*, C-251/95, para 22). 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 services and vice versa (see *Canon*, C-39/97, para 17). It is necessary for me to keep in mind the distinctive character of the earlier marks, 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.
48. Whilst conducting a global assessment of the likelihood of confusion I must be aware of the fact that not all aspects of the respective marks will necessarily have the same impact. For example, the importance of the respective visual, aural and conceptual aspects will be dependent on factors such as the way the goods at issue are marketed, and in which type of store/platform they are made available.
49. Throughout the course of this decision, I have determined that:
- The respective goods are identical.
 - The average consumers are both members of the general public at large who will demonstrate between a low and medium degree of attention when purchasing the goods, and specialist tradespeople who will demonstrate between and medium and high degree of attention.

- The purchasing process for the goods will be primarily visual in nature, though aural considerations have not been excluded.
- The opponent's mark possesses a high degree of inherent distinctive character.
- The marks at issue are visually similar to a high degree. The marks are aurally similar to a high degree. The marks are conceptually neutral.

50. Taking all of the above factors into account, particularly given the high similarity between the marks, I am satisfied that the average consumer would likely mistake the parties' marks for each other in relation to goods that have been found to be identical, even with consumers that would pay a high degree of attention. I therefore find there to be a likelihood of direct confusion between the parties' marks.

Conclusion

51. The opposition under Section 5(2)(b) of the Act has succeeded. Therefore, subject to any successful appeal, the application will be refused.

Costs

52. The opponent has been successful, and, in the ordinary course of these proceedings, would be entitled to a contribution towards its costs. However, the opponent is unrepresented meaning that, in order to claim its costs, it is required to file a completed costs pro-forma. It did not do so. I note that a blank costs pro-forma was provided to the opponent under the cover of a letter from the Tribunal dated 23 January 2025. I also note that this letter set out that:

“If the pro-forma is not completed and returned, costs, other than official fees arising from the action (excluding extensions of time), may not be awarded.”

As no costs pro-forma was filed, the opponent incurred only the official fee to file the opposition. Bearing this in mind I make the following award of costs:

Official Fee

£100

53. I therefore order ShenZhen HuiPengCheng Technology Co. LTD to pay Fred Namutulo the sum of **£100**. This sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 31st day of January 2025

Oliver Rose'Meyer

For the Registrar