

O/0100/25

**TRADE MARKS ACT 1994
IN THE MATTER OF
APPLICATION NO. 3969774
IN THE NAME OF ANHUI EAGOAL NEW ENERGY GROUP CO., LTD.
TO REGISTER**



**AS A TRADE MARK IN CLASSES 7, 9
AND
OPPOSITION THERETO UNDER NO. 600003190
BY
RITTAL GMBH & CO. KG**

Background and pleadings

1. On 20 October 2023, Anhui Eagoal New Energy Group Co., Ltd. (“***the Applicant***”) applied to register in the UK the trade mark shown on the cover page of this decision, under number UK00003969774 (“***the Contested Mark***”). Details of the application were published for opposition purposes on 3 November 2023. Registration is sought for the following goods:

Class 7 Bicycle assembling machines; Power supply apparatus [generators]; Steam engines; Spark plugs for vehicle engines; Machines for the preparation of surfaces for electrical and electronic components; Electronic starters for engines; Dynamos; Radiators for vehicles; Water pumps for land vehicles; Valves [parts of machines].

Class 9 Photovoltaic installations for generating electricity [photovoltaic power plants]; Burglar alarms; Batteries; Charging stations for electric vehicles; Chargers for electric accumulators; Batteries, electric, for vehicles; Power banks; Photovoltaic cells; Battery charging devices for motor vehicles; Car batteries.

2. Rittal GmbH & Co. KG (“***the Opponent***”) opposed the application in full under the fast track opposition procedure, under section 5(2)(b) of the Trade Marks Act 1994 (“***the Act***”)¹. For the purposes of this opposition, the Opponent relies upon the trade mark registration number UK00917969221 and some of the goods for which the mark is registered as set out in the Annex to this decision (“***the Earlier Mark***”).

3. The Earlier Mark is a comparable mark (EU)² and by virtue of its earlier filing date, the registration set out in the Annex constitutes an earlier mark within the meaning of section 6 of the Act.

4. Given the registration date of the Earlier Mark (as indicated in the Annex), it had not completed its registration process more than five years before the filing date of

¹ The original Form TM7F was filed on 1 February 2024, then subsequently amended and re-filed on 9 February 2024.

² Following the end of the transition period of the UK’s withdrawal from the EU, all EU trade marks (“EUTM”) registered before 1 January 2021 were recorded as comparable trade marks in the UK trade mark register (and as a consequence, have the same legal status as if they had been applied for and registered under UK law). A ‘comparable trade mark (EU)’ retains the same filing date, priority date (if applicable) and registration date of the EUTM from which it derives.

the application in issue. Thus, it is not subject to proof of use pursuant to section 6A of the Act. The Opponent can, therefore, rely upon all of the goods it has identified (as indicated in the Annex) without having to demonstrate use.

5. In the notice of opposition, the Opponent contends that exists confusing similarity under section 5(2)(b) of the Act between the competing marks, as they share the same letter 'X' at the beginning of each mark, and that the contested goods are partly identical and partly similar to the Opponent's goods.
6. The Applicant subsequently filed its defence and counterstatement³, denying the grounds of opposition and asking for the opposition to be dismissed. More specifically, the Applicant submitted that some of the competing goods are clearly dissimilar, the respective marks are visually and aurally dissimilar, and a conceptual comparison between the respective marks is not possible.
7. The Opponent is represented by BOEHMERT & BOEHMERT Anwaltspartnerschaft mbB. The Applicant is represented by Paweł Wowra.
8. 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.”
9. The effect of the above is to require parties to seek leave in order to file evidence in fast track oppositions. Further, 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.
10. In this case, during the evidence rounds, neither party elected to file written submissions nor sought leave to file evidence. The Opponent filed submissions in

³ Dated 13 April 2024.

lieu.⁴ I have taken the submissions into account in reaching my decision and will refer to them below where necessary.

Relevance of EU law

11. 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.

Decision

The law

12. The relevant parts of section 5 of the Act are as follows:

“5(1) [...]

(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.”

13. Section 5A reads:

“5A 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.”

Case law

14. The leading authorities which guide me are from the Court of Justice of the European Union (“CJEU”): *Sabel BV v Puma AG*, Case C-251/95, *Canon*

⁴ Dated 15 May 2024.

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.

The Principles

- (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

15. 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 1975.”

16. When making the comparison, all relevant factors relating to the goods in the specification should be taken into account. In *Canon*, the CJEU stated at paragraph 23 of its judgment:

“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”.

17. 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 users of the respective goods or services;
- b) The physical nature of the goods or acts of services;
- c) The respective trade channels through which the goods or services reach the market;
- d) 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;
- e) 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.

18. The General Court (“GC”) confirmed in *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T-133/05, that, even if goods 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”.

19. The competing goods are as follows:

Applicant’s goods	Opponent’s goods
<u>Class 7</u>	

<p>Bicycle assembling machines; Power supply apparatus [generators]; Steam engines; Spark plugs for vehicle engines; Machines for the preparation of surfaces for electrical and electronic components; Electronic starters for engines; Dynamos; Radiators for vehicles; Water pumps for land vehicles; Valves [parts of machines].</p>	
<p><u>Class 9</u></p>	<p><u>Class 9</u></p>
<p>Photovoltaic installations for generating electricity [photovoltaic power plants]; Burglar alarms; Batteries; Charging stations for electric vehicles; Chargers for electric accumulators; Batteries, electric, for vehicles; Power banks; Photovoltaic cells; Battery charging devices for motor vehicles; Car batteries.</p>	<p>Electric switch cabinets and adapted cabinets of metal and/or plastic for electrical apparatus, including racks, housings and consoles for use in industry, installation, electronics, computers, interactive terminal systems and data transmission, including in connection with support arm systems, including air-conditioned and/or earthquake-proof and/or vandal-proof and/or explosion-proof; Switch cabinets and switch desks consisting of metal and/or plastic, for use in industry, installation, electronics, telecommunications, data processing, interactive terminal systems and data transmission; (electric) cable carrying bracket systems of metal and/or plastic, consisting of load bearing profiles and wall fixings and/or floor fixings and/or housing fixings and/or wall, connection and/or intermediate joints and/or couplings and/or tilting and/or connecting adapters and/or elbows; Including all the aforesaid goods</p>

	<p>being earthquake and/or vandal and/or explosion-proof; Signalling devices for monitoring and safeguarding switch cupboards; Current distribution components, included in class 9, in particular adaptors for connectors and devices, and load-breakers; Modules and system components for energy sub-distribution, power supplies, namely power supply units, power-supplying apparatus, including uninterruptible power-supplying apparatus, including in modular form; Power converters; Power inverters; Overload protection devices for sensitive electronic apparatus and computers, namely fuses and monitoring units; Alarm installations, in particular fire alarms, extinguishing apparatus and systems constructed therefrom; Water warning apparatus and installations constructed thereof; Computer control stations; Electronic control stations; Electric power units; Electric and/or electronic access control apparatus and installations constructed therefrom, access control apparatus and installations constructed therefrom; Electric and electronic control apparatus and installations constructed thereof, electric and electronic apparatus and instruments (included in class 9), namely for control stations, control rooms, console workstations, CAD workstations; Electric apparatus for cupboard and system</p>
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	<p>monitoring, control and regulation, monitoring, including in connection with building monitoring; Configuration and monitoring software for security areas for information technology; Auxiliary cabling devices for electrical purposes, of metal or plastic, namely cable management modules consisting of cable guide channels, cable rerouting channels and/or cable fasteners, namely cable support rails, cable entries; Cable bushings for housings for electric fittings; Rubber clamping sections, inscription panels adapted for housings for electric fittings; Plug-in units for sub-racks, namely plug-in cards, bus boards, cassettes, pin and socket connectors; Mains supply circuit, namely power supply units; Electronic devices for monitoring gas pipelines; parts for all the aforesaid goods; Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; Apparatus for recording, transmission or reproduction of sound or images; Data-processing equipment and computers; Fire-extinguishing apparatus; Data processing equipment; Computers; Computer software; Components for</p>
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	<p>electric switch cabinets, namely rack frames, profiles, support bases, guide rails, support rails, shelves, cable glands of metal; Components of metal for computer control stations; Housings of metal for electric apparatus; Casings for CPUs; Housings of metal for electric apparatus, computer housings.</p>
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20. In its statement of grounds, the Opponent provided a table grouping the competing goods into various categories. No further clarification was provided on this regard. The Opponent also submitted that:

“The goods of both trademarks in class 09 are overlapping. They both include electric power generating and storing units of electricity in general and thus for specific purposes. The power supply units and apparatus are all part of the electric power units and apparatus, such as batteries of the contested trademark.

The same is true in respect to the relevant goods of class 07. They are also power supplying devices.”

21. In its defence the Applicant rejects any similarity between the goods in class 7 and the Opponent’s goods in class 9 but accepts *“the possibility of certain goods being deemed similar to those of the Opponent”*. The Applicant did not provide further clarification on this potential similarity. I note both parties’ written submissions and I will proceed to make my own comparison as indicated below. I take guidance from Iain Purvis KC, sitting as Appointed Person in the *SmartX* trade mark decision⁵, where it was stated that in case of the Opponent’s failure to particularise the level of similarity in respect of long specifications, it cannot expect the Hearing Officer to do the job for it.

⁵ BL O/0911/24, [28].

22. Having carefully considered the respective specifications, I find that some of the terms are identical according to the principle outlined in *Meric*. I have provided below an example of such identical terms.

Class 9

- “*Burglar alarms*”

23. The use of the word ‘in particular’ in the Opponent’s term indicates that “[...] *fire alarms, extinguishing apparatus and systems constructed therefrom*” are included therein solely as examples of goods falling within the category of “*Alarm installations*”.⁶ Consequently, it is not necessary to examine the degree of concrete similarity of the Applicant’s term with those examples of goods (which would be considered dissimilar), but with the category of goods in respect of which registration has been applied for (i.e., “alarm installations”). Accordingly, I find the Applicant’s “*burglar alarms*” falls within the wider definition of the Opponent’s “*Alarm installations [...]*”. Therefore, they are identical according to *Meric*.

24. In light of these findings, and for reasons which will later become apparent, I will first assess the likelihood of confusion where the respective marks are used in relation to identical goods.

The average consumer and the nature of the purchasing act

25. It is necessary to determine who the average consumer is for the respective parties’ goods. The relevant goods are those for which I have found identity. I must then decide the manner in which these goods are likely to be selected by the average consumer in the course of trade. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

“60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively

⁶ *OHMI/Villiger Söhne GmbH*, C-494/13 P, [28]; *Streamserve/OHMI (STREAMSERVE)*, T-106/00, [45].

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”.

26. The average consumer of the category of goods concerned is deemed to be reasonably well-informed and reasonably observant and circumspect (see, to that effect, Case C-210/96, *Gut Springenheide and Tusky* [1998] ECR I-4657, paragraph 31).
27. For the purposes 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 in question.⁷
28. The average consumer for the goods in class 9 (i.e., alarms) will be a member of the general public as well as professionals. The former consists of users of the general public who will purchase the goods for personal use (i.e., for private use), while the latter consists of professionals required to use or install the goods as part of their profession (e.g., alarm installers or engineers).
29. The goods are likely to be sold through a range of retail outlets (and their online equivalents) such as specialist stores (e.g., DIY and home improvement retail stores) and online marketplaces, in which case they are available to all consumers; in other instances, the goods may be directed primarily at commercial consumers (e.g., alarm installation companies) for direct installing. Depending on the size of the goods, they are likely to be displayed on shelves or in dedicated display areas where they can be viewed and self-selected by the consumer. A similar process will apply online and with catalogues where the consumer will select the goods having viewed an image of the goods displayed on a webpage/page. The selection of the goods is therefore primarily visual, although I do not discount that aural considerations may play a part by way of word-of-mouth recommendations and advice from sales assistants. However, even where the goods are selected by making requests to staff, the selection process prior to purchase would be visual in nature. Accordingly, visual considerations dominate.

⁷ *Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel BV*, (Case C-342/97, para 26).



30. I consider the costs of the goods to range from average (for home alarms) to possibly fairly high (e.g., for more sophisticated alarms). The average consumer will likely consider the specific features of the products to determine their suitability for the consumers' individual requirements such as, for example, durability, functionality, installation requirements, size, and other technical features. The professional public is likely to carry out further considerations on the specific features of the products and, hence, will pay a higher level of attention. I therefore find the degree of attention will vary from medium for the general public to above medium for the professionals. However, the likelihood of confusion must be assessed from the perspective of the former (the general public) since they are the group who will pay the lower degree of attention.⁸

Comparison of trade marks

31. In *S.A. Société LTJ Diffusion v. Sadas Vertbaudet SA*, Case C-291/00, the CJEU held that:

“54... a sign is identical with the trade mark where it reproduces, without any modification or addition, all the elements constituting the trade mark or where, viewed as a whole, it contains differences so insignificant that they may go unnoticed by an average consumer.”

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

Earlier trade mark	Contested trade mark
	

Overall impression

⁸ Case T-356/14, [25] – [26].

33. In their submissions, both parties recognise the stylised devices in both competing marks as representing the letter 'X'. I will carry out my assessment on this basis.
34. The Earlier Mark consists of the combination of two black chevrons: the right one is fully visible whilst the left one misses its central part. A white space where the two chevrons meet gives the impression the chevrons overlap in the centre, forming the letter 'X'. The mark's overall impression resides in the stylised 'X' symbol.
35. The Contested Mark features an 'X' symbol formed by two chevrons, the left one more geometric and the right one characterised by parallel lines protruding from the side and running along the whole right side from top to bottom. Next to the stylised 'X' the Contested Mark contains the letter combination "Eagoal". In its statement of grounds, the Opponent contends that "*the letter X of the contested trademark is the first element of the contested trademark and thus dominating the overall impression*". I disagree. As both elements composing the mark (the stylised 'X' and "Eagoal") have roughly the same size and are clearly visible, I believe they equally contribute to the overall impression of the mark.

Visual similarity

36. The Earlier Mark features two black chevrons overlapping (the right chevron is superimposed onto the left one) forming a stylised 'X'. The two chevrons do not meet in the centre leaving a space (white line) that runs along the mark's centre giving the impression that the right chevron is placed above the left chevron as only the right chevron's contour is fully visible (the left chevron is split into two halves). The two chevrons have the same size reinforcing the impression they contribute to form the letter 'X'.
37. The Contested Mark features a stylised device resembling the letter 'X' followed by the letter combination "Eagoal". The figurative device is comprised of a combination of two chevrons: the left one more geometric and the right one featuring a series of parallel lines running along the chevron's right side and prolonging away from it. The white space between the two 'X's halves is clearly visible and prolongs into the left chevron's centre.

38. The Opponent argued that the letters 'X' in the respective marks are identical.⁹ The Applicant submitted, in its defence, that: *"The 'X' in the opponent's mark is almost perfectly geometric, having arms are of equal length, and forming almost a perfect cross. On the other hand, the 'X' in the applicant's mark, as part of 'X EAGOAL,' is designed with a gradient of lines, diminishing from left to right, possibly creating a sense of movement"*.
39. I appreciate that the two 'X' devices share some level of similarity in their respective structures (i.e., a combination of two chevrons), however I agree with the Applicant that the respective devices in the competing marks present, overall, a fairly different stylisation. Additionally, the Contested Mark contains an invented word (or letter combination) which has no counterpart in the Earlier Mark, creating an obvious visual difference. Therefore, I find the marks have, overall, a low degree of visual similarity.

Aural similarity

40. As stated above, both parties agree that the relevant public will perceive (and read) the figurative devices as the letter 'X'. It follows that the relevant consumers will read the Earlier Mark as the monosyllabic letter 'x' and will voice the Contested Mark as 'x' followed by the two-syllable word (or letter combination) "eagoal". The relevant consumers are likely to voice the Contested Mark as "ex" / "e-gol". In its counterstatement, the Applicant argued that: *"The opponent's mark, consisting solely of the letter 'X', is monosyllabic. In contrast, the applicant's mark has two components: the 'X' and 'EAGOAL,' adding three syllables. The phonetic length of the applicant's mark, therefore is significantly longer (one versus seven letters), which can and will influence the recall of the marks by the relevant consumers"*. I agree with the Applicant. Whilst the relevant consumers are likely to read the letter 'X' in both marks, the addition of "eagoal" in the Contested Mark significantly lessens the marks' aural similarity. Therefore, I find the marks to have a below medium degree of aural similarity.

Conceptual similarity

⁹ See Opponent's statement of grounds (para. 1) and submissions in lieu dated 15 May 2024 (para. 3).

41. According to the parties' submissions, both stylised devices in the respective marks represent the letter 'x'. As a letter *per se* does not have a clear meaning as such,¹⁰ this does not give rise to conceptual similarity between the respective marks. The addition of the invented word "eagoal" in the Contested Mark does not add any meaning to the mark and, thus, the respective marks remain conceptually neutral.

Distinctive character of the Earlier Mark

42. 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)."

43. Registered trade marks possess varying degrees of inherent distinctive character. These range from the very low, such as those which are suggestive or allusive of

¹⁰ See, for example, *Honda Motor Europe Ltd v Seat SA*, T-363/06, [42]; *Poloplast v OHIM — Polypipe (P)*, Case T-189/09, [83].

the goods, to those with high inherent distinctive character, such as invented words.

44. Although the distinctiveness of a mark may be enhanced as a result of it having been used in the market, the Opponent has filed no evidence of use of its mark. Accordingly, I have only the inherent position to consider.
45. The Earlier Mark features a stylised 'X'. The distinctiveness of single letters as trade marks is only an issue when the letter is meaningful in respect of the goods. The Earlier Mark is an arbitrary letter of the alphabet represented in a stylised fashion and, absent further submissions from the Opponent, I find that the letter 'X', or the stylisation contained in the earlier mark, does not have any semantic correlation with the goods for which it is registered. However, whilst the overall presentation of the mark is noted, I am of the view that there is nothing especially striking or inventive about a single letter of the alphabet. Accordingly, I find the Earlier Mark to be inherently distinctive to a lower than medium degree.

Likelihood of confusion

46. There is no simple formula for determining whether there is a likelihood of confusion. The factors considered above have a degree of interdependency (*Canon* at [17]). I must make a global assessment of the competing factors (*Sabel* at [22]), considering the various factors from the perspective of the average consumer and deciding whether the average consumer is likely to be confused. In making my assessment, I must keep in mind 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 he has retained in his mind (*Lloyd Schuhfabrik* at [26]).
47. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other (*L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10).
48. I have already elected to proceed by considering the likelihood of confusion where the marks are used in relation to identical goods. The level of attention is medium for the general public and above medium for the professional public. The distinctiveness of the Earlier Mark is lower than medium. The purchase of the

contested goods is considered to be mainly visual but the potential for aural use is borne in mind. The degree of visual similarity is low, the aural similarity is below medium, and the marks are conceptually neutral. Weighing these factors, I find that the marks are unlikely to be mistakenly recalled or misremembered as each other and I do not consider there to be a likelihood of direct confusion.

49. It now falls to me to consider the likelihood of indirect confusion. The concept of indirect confusion was described in the following terms by Iain Purvis Q.C. sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10:

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

17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:

- (a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right ('26 RED TESCO' would no doubt be such a case).
- (b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as 'LITE', 'EXPRESS', 'WORLDWIDE', 'MINI' etc.).

(c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension ('FAT FACE' to 'BRAT FACE' for example)".

50. These three categories are not exhaustive; rather, they were intended to be illustrative of the general approach, as has been confirmed by the Court of Appeal.¹¹ I recognise that a finding of indirect confusion should not be made merely because the competing marks share a common element. In this connection, it is not sufficient that a mark merely calls to mind another mark: this is mere association not indirect confusion.¹² The Court of Appeal has also emphasised that, where there is no direct confusion, there must be a "proper basis" for finding indirect confusion.¹³

51. Following the considerations above, I do not believe the relevant consumers are likely to perceive the different stylisation of the letter 'X' in the Contested Mark as a natural variant or brand extension deriving from the Earlier Mark. Even if the Opponent's mark is brought to mind, this is mere association, not confusion.¹⁴ Furthermore, I do not see how the addition of the invented word "eagoal" in the Contested Mark could lead the relevant consumers to perceive the Contested Mark as being logical or consistent with a sub-brand or brand extension of the Earlier Mark. Therefore, I do not find that there is a likelihood of indirect confusion.

52. Having reached that conclusion in respect of identical goods, the Opponent would be in no better position were I to assess the likelihood of confusion based on similar goods.

Conclusion

53. The opposition fails under section 5(2)(b) of the Act.

54. The Applicant has been successful. Subject to any successful appeal, the application by Anhui Eagoal New Energy Group Co., Ltd. may proceed to registration.

¹¹ *Liverpool Gin Distillery and others v Sazerac Brands, LLC and others* [2021] EWCA Civ 1207.

¹² *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17, [81].

¹³ *Liverpool Gin Distillery*.

¹⁴ *Duebros Limited*.

Costs

55. The Applicant is entitled to an award of costs. The relevant scale is contained in Tribunal Practice Notice (“TPN”) 1/2023. Bearing that scale in mind, I award costs to the Applicant as follows:

Considering the notice of opposition and preparing the counterstatement	£250
Total:	£250

56. I order Rittal GmbH & Co. KG to pay Anhui Eagoal New Energy Group Co., Ltd. the sum of **£250**. 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 4th day of February 2025

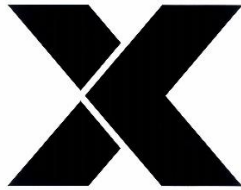
Andrea Rossi

For the Registrar

ANNEX

The Opponent's Earlier Mark

1) UK00917969221



Mark:

Goods relied upon for the opposition:

Class 9 Electric switch cabinets and adapted cabinets of metal and/or plastic for electrical apparatus, including racks, housings and consoles for use in industry, installation, electronics, computers, interactive terminal systems and data transmission, including in connection with support arm systems, including air-conditioned and/or earthquake-proof and/or vandal-proof and/or explosion-proof; Switch cabinets and switch desks consisting of metal and/or plastic, for use in industry, installation, electronics, telecommunications, data processing, interactive terminal systems and data transmission; (electric) cable carrying bracket systems of metal and/or plastic, consisting of load bearing profiles and wall fixings and/or floor fixings and/or housing fixings and/or wall, connection and/or intermediate joints and/or couplings and/or tilting and/or connecting adapters and/or elbows; Including all the aforesaid goods being earthquake and/or vandal and/or explosion-proof; Signalling devices for monitoring and safeguarding switch cupboards; Current distribution components, included in class 9, in particular adaptors for connectors and devices, and load-breakers; Modules and system components for energy sub-distribution, power supplies, namely power supply units, power-supplying apparatus, including uninterruptible power-supplying apparatus, including in modular form; Power converters; Power inverters; Overload protection devices for sensitive electronic apparatus and computers, namely fuses and monitoring units; Alarm installations, in particular fire alarms, extinguishing apparatus and systems

constructed therefrom; Water warning apparatus and installations constructed thereof; Computer control stations; Electronic control stations; Electric power units; Electric and/or electronic access control apparatus and installations constructed therefrom, access control apparatus and installations constructed therefrom; Electric and electronic control apparatus and installations constructed thereof, electric and electronic apparatus and instruments (included in class 9), namely for control stations, control rooms, console workstations, CAD workstations; Electric apparatus for cupboard and system monitoring, control and regulation, monitoring, including in connection with building monitoring; Configuration and monitoring software for security areas for information technology; Auxiliary cabling devices for electrical purposes, of metal or plastic, namely cable management modules consisting of cable guide channels, cable rerouting channels and/or cable fasteners, namely cable support rails, cable entries; Cable bushings for housings for electric fittings; Rubber clamping sections, inscription panels adapted for housings for electric fittings; Plug-in units for sub-racks, namely plug-in cards, bus boards, cassettes, pin and socket connectors; Mains supply circuit, namely power supply units; Electronic devices for monitoring gas pipelines; parts for all the aforesaid goods; Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; Apparatus for recording, transmission or reproduction of sound or images; Data-processing equipment and computers; Fire-extinguishing apparatus; Data processing equipment; Computers; Computer software; Components for electric switch cabinets, namely rack frames, profiles, support bases, guide rails, support rails, shelves, cable glands of metal; Components of metal for computer control stations; Housings of metal for electric apparatus; Casings for CPUs; Housings of metal for electric apparatus, computer housings.

Filed: 15/10/2018

Date of entry in the register: 15/02/2019