

O/0148/25

TRADE MARKS ACT 1994

CONSOLIDATED PROCEEDINGS

IN THE MATTER OF UK REGISTRATION NOS. UK00003860655 AND
UK00003857970

BY PANGAIA MATERIALS SCIENCE LIMITED

TO REGISTER:

HIGH-TECH NATURALISTS CLUB

AND

HIGH-TECH NATURALIST CLUB

HI-TECH NATURALIST CLUB

AS TRADE MARKS IN CLASS 25

AND

IN THE MATTER OF THE

OPPOSITIONS THERETO

UNDER NOS. 440080 AND 439904

BY

HI-INT S.A.

BACKGROUND AND PLEADINGS

1. On 9 December 2022, Pangaia Materials Science Limited (“the applicant”) applied to register HIGH-TECH NATURALIST CLUB and HI-TECH NATURALIST CLUB as a series of two trade marks in the United Kingdom. On 19 December 2022, the applicant applied to register HIGH-TECH NATURALISTS CLUB as a trade mark in the United Kingdom. The applicant applied to register all of the marks in respect of the following goods:

Class 25: *Clothing; footwear; headgear.*

2. On 23 March 2023 and 6 April 2023 respectively, the applications were opposed by HI-INT S.A. (“the opponent”). The oppositions are based on section 5(4)(a) of the Trade Marks Act 1994 (“the Act”) and concerns all the goods applied for.

3. Under section 5(4)(a), the opponent claims to have used the sign ‘HIGH-TECH’ throughout the UK since 3 December 2009 for the goods ‘Clothing’ in class 25.¹ It also claims to have used the sign ‘HIGH TECH’ throughout the UK since 3 December 2009 for the goods ‘Clothing’.² It claims to have acquired goodwill such that the public will associate the applicant’s mark with the opponent. It argues that the similarity between the marks and the goods will deceive the public into believing that the applicant’s goods originate from the opponent, or an undertaking economically linked to the opponent, constituting a misrepresentation to the public. Economic and reputational damage is likely to result, and there is also a risk of dilution of the opponent’s brand. The requirements of passing off are, according to the opponent, met, and registration should be refused under section 5(4)(a) of the Act.

4. The applicant denies that the opponent has acquired goodwill, that use of the contested mark would constitute a misrepresentation, and that any damage would occur.

¹ Opposition number 439904

² Opposition number 440080

5. In these proceedings, the opponent is represented by Wynne-Jones IP Limited and the applicant by Bonum IP Limited. Both parties filed evidence. The opponent filed submissions in reply. No hearing was requested and both parties filed written submissions in lieu on 20 December 2024. I make this decision having taken full account of all the papers, referring to them below as necessary.

EVIDENCE

6. The opponent's evidence in chief comes from Alessandro Cavalieri, dated 4 September 2023. Mr Cavalieri is the Director General of Interfashion SpA, a position he has held since March 2023. Mr Cavalieri explains that Interfashion SpA is the exclusive licensee of the opponent for the HIGH TECH brand. The evidence goes to the use made of the signs and the claims of goodwill.

7. The applicant's evidence comes from Jennifer Kathryn Good, dated 3 November 2023. Ms Good is a Chartered Trade Mark Attorney and is instructed to represent the opponent in these proceedings. The evidence goes to the definition of 'high-tech' and its descriptive nature in relation to clothing.

8. The opponent's evidence in reply comes in the form of the second witness statement of Mr Cavalieri, dated 30 January 2024. He states that the opponent's products are made from common place materials in the fashion industry, not innovative materials.

9. I do not intend to summarise the parties' evidence in full here. However, I confirm that I have taken all filed documents into account and will summarise them to the extent that I deem necessary below.

DECISION

Section 5(4)(a)

10. Section 5(4)(a) of the Act is as follows:

“(4)A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented—

(a)by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, where the condition in subsection (4A) is met

aa) [...]

b) [...]

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of “an earlier right” in relation to the trade mark”.

11. Subsection 4(A) of Section 5 states:

“(4A) The condition mentioned in subsection (4)(a) is that the rights to the unregistered trade mark or other sign were acquired prior to the date of application for registration of the trade mark or date of the priority claimed for that application.”

12. In *Reckitt & Colman Products Limited v Borden Inc. & Ors* [1990] RPC 341, HL, Lord Oliver of Aylmerton described the ‘classical trinity’ that must be proved in order to reach a finding of passing off at [406]:

“First, he must establish a goodwill or reputation attached to the goods or services which he supplies in the mind of the purchasing public by association with the identifying ‘get-up’ (whether it consists simply of a brand name or a trade description, or the individual features of labelling or packaging) under which his

particular goods or services are offered to the public, such that the get-up is recognised by the public as distinctive specifically of the plaintiff's goods or services. Secondly, he must demonstrate a misrepresentation by the defendant to the public (whether or not intentional) leading or likely to lead the public to believe that the goods or services offered by him are the goods or services of the plaintiff. Thirdly, he must demonstrate that he suffers or, in a quia timet action, that he is likely to suffer damage by reason of the erroneous belief engendered by the defendant's misrepresentation that the source of the defendant's goods or services is the same as the source of those offered by the plaintiff."

13. Halsbury's Laws of England Vol. 97A (2021 reissue) provides further guidance with regard to establishing the likelihood of deception. In paragraph 636 it is noted (with footnotes omitted) that:

"Establishing a likelihood of deception generally requires the presence of two factual elements:

1. that a name, mark or other distinctive indicium used by the claimant has acquired a reputation among a relevant class of persons; and
2. that members of that class will mistakenly infer from the defendant's use of a name, mark or other indicium which is the same or sufficiently similar that the defendant's goods or business are from the same source or are connected.

While it is helpful to think of these two factual elements as two successive hurdles which the claimant must surmount, consideration of these two aspects cannot be completely separated from each other.

The question whether deception is likely is one for the court, which will have regard to:

- (a) the nature and extent of the reputation relied upon,
- (b) the closeness or otherwise of the respective fields of activity in which the claimant and the defendant carry on business;

(c) the similarity of the mark, name etc. used by the defendant to that of the claimant;

(d) the manner in which the defendant makes use of the name, mark etc. complained of and collateral factors; and

(e) the manner in which the particular trade is carried on, the class of persons who it is alleged are likely to be deceived and all other surrounding circumstances.

In assessing whether deception is likely, the court attaches importance to the question whether the defendant can be shown to have acted with a fraudulent intent, although a fraudulent intent is not a necessary part of the cause of action.”

Relevant date

14. Whether there has been passing off must be judged at a particular point (or points) in time.

15. In *Advanced Perimeter Systems v Keycorp Limited* (MULTISYS), BL O-410-11, Mr Daniel Alexander QC, sitting as the Appointed Person, quoted with approval the summary made by Mr Allan James, acting for the Registrar, in *SWORDERS Trade Mark*, BL O/212/06:

“43. In *SWORDERS TM O-212-06* Mr Alan James acting for the Registrar well summarised the position in s.5(4)(a) proceedings as follows:

‘Strictly, the relevant date for assessing whether s.5(4)(a) applies is always the date of the application for registration or, if there is a priority date, that date: see Article 4 of Directive 89/104. However, where the applicant has used the mark before the date of the application it is necessary to consider what the position would have been

at the date of the start of the behaviour complained about, and then to assess whether the position would have been any different at the later date when the application was made.”³

16. The applicant’s marks do not have priority dates and neither is there any evidence of earlier use by the applicant that is capable of being considered the start of the behaviour complained about. As a result, the relevant date for assessment of the opponent’s claims under section 5(4)(a) of the Act is the date on which the applicant’s marks were applied for, being 9 December 2022 and 19 December 2022, respectively.

Goodwill

17. The first hurdle for the applicant is that it needs to show that, at the relevant date, it had the necessary goodwill in its business and that the signs it relies on were distinctive and/or associated with that goodwill. The opponent must show that it had goodwill in a business at the relevant date and that the sign relied upon, HIGH TECH, is associated with, or distinctive of, that business.

18. The concept of goodwill was considered by the House of Lords in *Inland Revenue Commissioners v Muller & Co’s Margarine Ltd* [1901] AC 217 (HOL):

“What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation and connection of a business. It is the attractive force which brings in customers. It is the one thing which distinguishes an old-established business from a new business at its first start.”

The opponent’s evidence

19. Goodwill arises as a result of trading activities. I note the applicant’s submissions include criticisms of the evidence filed. Whilst I have read the submissions in full and have taken them into account in reaching my decision, I do not intend to reproduce or even refer to the specific submissions in any great detail save to note

³ Quoted in paragraph 43 of BL O-410-11.

that, in short, the applicant's position is that the opponent has fallen short of establishing that there exists goodwill at the relevant dates.

20. By the relevant dates, the opponent has generated €2,573,559 between January 2017 to December 2022. In addition, the opponent generated €1,724,514 between 2013 and 2015. Together, this amounts to a total of €4,298,073 in revenue through sales of HIGH TECH goods to UK companies.⁴

21. The opponent has provided 41 different invoices for the sale of items of clothing. I note that the invoices provided are dated from 2009, 2013 to 2015 and 2019 to 2023. The invoices have been broken down by product and I note that one invoice has been provided after the relevant dates and is dated 11/1/2023. The applicant submitted that one of the invoices provided in exhibit AC02 has been provided twice. I agree that that is the case in relation to invoice 2022/02/10076 dated 13/1/2022 and accordingly have only accounted for it once. Exhibit AC02 contains invoices for 483 items of the following goods that fall in the 'HIGH TECH' collection (this figure does not include any item in the other collections listed i.e. the 'High Use' collection): pants, knitwear, dresses, jackets, t-shirts and skirts. The invoices provided by the opponent put the sales figures into context. The invoices are within the relevant date and the header of the invoices indicates that the orders were fulfilled by Interfashion S.p.A. The invoices were for sales throughout the UK, to the following locations: Shrewsbury, Northampton, Exeter, London, Bournemouth, Newcastle, Brighton, Newcastle under Tyne, West Midlands, Old Amersham, Birmingham, Cirencester, Glasgow, Bath, Rosendale, Worcestershire, Leicester, and Edinburgh.

Assessment of the evidence

22. In short, the issue I must consider is whether the opponent's business has accrued a protectable level of goodwill stemming from trading activities in the UK.

23. In assessing whether the evidence demonstrates protectable goodwill, I bear in mind the following case law. In *South Cone Incorporated v Jack Bessant*, Dominic

⁴⁴ witness statements of Mr Alessandro Cavalieri paragraph 6

Greensmith, Kenwyn House and Gary Stringer (a partnership) [2002] RPC 19 (HC), Pumfrey J. stated:

“27. There is one major problem in assessing a passing off claim on paper, as will normally happen in the Registry. This is the cogency of the evidence of reputation and its extent. It seems to me that in any case in which this ground of opposition is raised the registrar is entitled to be presented with evidence which at least raises a prima facie case that the opponent's reputation extends to the goods comprised in the applicant's specification of goods. The requirements of the objection itself are considerably more stringent than the enquiry under s.11 of the 1938 Act (see *Smith Hayden & Co. Ltd's Application (OVAX)* (1946) 63 R.P.C. 97 as qualified by *BALI Trade Mark* [1969] R.P.C. 472). Thus the evidence will include evidence from the trade as to reputation; evidence as to the manner in which the goods are traded or the services supplied; and so on.

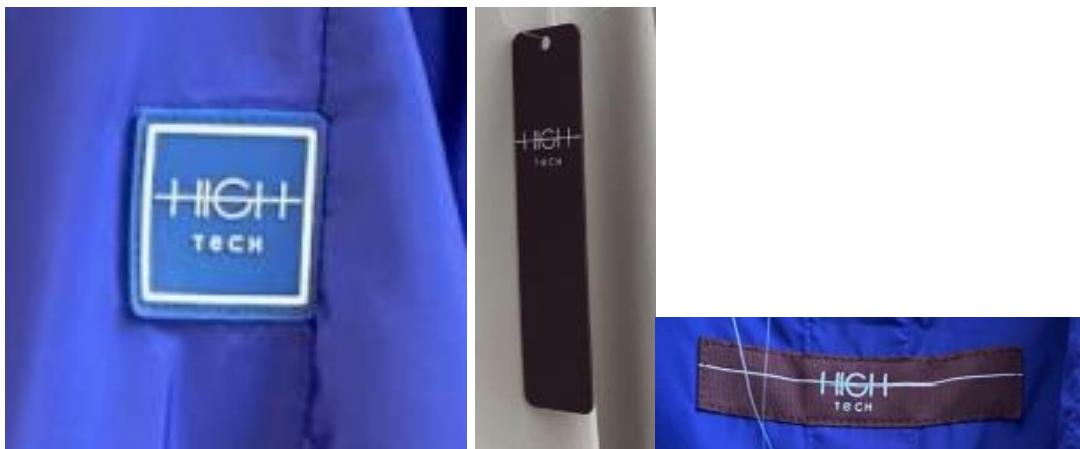
28. Evidence of reputation comes primarily from the trade and the public, and will be supported by evidence of the extent of use. To be useful, the evidence must be directed to the relevant date. Once raised, the applicant must rebut the prima facie case. Obviously, he does not need to show that passing off will not occur, but he must produce sufficient cogent evidence to satisfy the hearing officer that it is not shown on the balance of probabilities that passing off will occur.”

24. However, in *Minimax GmbH & Co KG v Chubb Fire Limited* [2008] EWHC 1960 (Pat) Floyd J. (as he then was) stated that:

“[The above] observations are obviously intended as helpful guidelines as to the way in which a person relying on section 5(4)(a) can raise a case to be answered of passing off. I do not understand Pumfrey J to be laying down any absolute requirements as to the nature of evidence which needs to be filed in every case. The essential is that the evidence should show, at least prima facie, that the opponent's reputation extends to the goods comprised in the application in the applicant's specification of goods. It must also do so as of the relevant date, which is, at least in the first instance, the date of application.”

25. In relation to the sign, I do not intend to repeat the evidence discussed above. In making my assessment of goodwill, I must bear in mind the evidence as a whole. I note that the invoices demonstrate sales of the opponent's goods. Further, I note that the invoices demonstrate that the mark is used in connection with various items of clothing. None of the items referenced on the invoices are items of footwear or headgear. For this reason alone, I find that the opponent is not able to prove that they enjoy goodwill with respect of the terms 'footwear' and 'headgear' that are relied upon.

26. However, assessing the goodwill in relation to clothing, the invoices cover goods that are relied upon, being various items of clothing listed above. I note that the invoices make reference to the sign 'High Tech' as a descriptor of the collection that the goods originated from which is present above the items that are sold on the invoices. In addition, the opponent has provided images at exhibit AC01 showing 'trousers' and 'jackets' that are shipped displaying the opponent's sign 'HIGH TECH' which can be seen below as follows:



27. I note that no other images have been provided of the goods. The applicant criticised the opponent's evidence, in its submissions in lieu, asserting that exhibit AC01 only shows images of trousers and a jacket and argues that *"clearly this is insufficient to show how the sign has been used across the range of goods claimed"*. Further, the applicant states that the opponent's claim that its sign was also used in connection with other clothing items has not been demonstrated as *"no evidence of such use is included in any of the exhibits to either of Mr Cavaliere's witness statements"* and that the burden of proof is on the opponent to substantiate a claim for

goodwill.⁵ These comments made by the applicant are noted, nonetheless, surprisingly these comments were first raised in the submissions in lieu of a hearing (very late in the proceedings). On this point, the Supreme Court has given guidance on the subject in *Tui v Griffiths*.⁶ Lord Hodge said that it is acceptable to reject the evidence of a witness if they have been given sufficient opportunity to respond to criticism of their evidence. In the present case, I note that these submissions were filed following the opponent filing its own submissions in lieu. This put the opponent and the Tribunal at a great disservice, as the opponent was not presented with the criticisms early enough to have been provided with an opportunity to respond to them. Whilst I recognise that images have not been provided of the remainder of the goods listed above bearing the opponent's mark, given the reference on the invoices to 'HIGH TECH', the accompanying witness statement stating that "HIGH TECH" is "*also used in connection with other clothing items [...]*"⁷ (which is accompanied by a statement of truth), and the images of the sign above in paragraph 26. These images are for goods that were also listed on the invoices and stated to have had the sign used in relation to them as per the witness statement. Consequently, I am content to infer that the goods also bore the opponent's sign.

28. In addition to the above, I also note that the invoices are in the name of Interfashion SpA, which is, as explained in the opponent's witness statement, the exclusive licensee of HI-INT SA (the opponent).⁸ When assessing goodwill, I remind myself that absent any agreement to the contrary, the goodwill of a business is owned by the undertaking that customers perceive as being responsible for the trade. In the present case, the opponent states in its first witness statement that the terms of the licensee agreement between the opponent and its licensee state all of the goodwill is owned by the opponent,⁹ this statement is supported by a statement of truth. Therefore, the goodwill is owned by the opponent.

29. I turn now to discuss the actual level of sales covered by the invoice. I agree with the applicant that no breakdown has been provided of the sales figures associated

⁵ Applicant's submissions in lieu paragraph 16-17

⁶ [2023] UKSC 48, paragraph 67

⁷ Witness statement of Mr Alessandro Cavalieri, paragraph 4

⁸ Witness statement of Mr Alessandro Cavalieri paragraph 1

⁹ Witness statement of Mr Alessandro Cavalieri, paragraph 7

with the mark. However, in my view, the invoices would infer that at least a large proportion stems from the sales of those goods. In addition, I note that the period of time the sales are demonstrated over is prolonged and is not a short period of time. Whilst I note that no evidence or submissions have been provided to indicate the proportion of the size of the market, I believe the market to be substantial, and that it attracts significant levels of sales in a given year. In my view, €2,573,559 between January 2017 to December 2022 and €1,724,514 between 2013 and 2015 is fairly small in relation to clothing. It is not clear whether these are wholesale revenue from distributors or whether it reflects sales to end-consumers. The invoices from the opponent demonstrate repeat purchases from distributors and I am able to identify that the goods were purchased by distributors throughout the UK.

30. I remind myself of the case of the RECUP trade mark when assessing whether the volumes of sales are sufficient to establish goodwill. In *Smart Planet Technologies, Inc. v Rajinda Sharma* (Recup Trade Mark), BL O/304/20, Mr Thomas Mitcheson QC, sitting as the Appointed Person, reviewed the following authorities about the establishment of goodwill for the purposes of passing-off: *Starbucks (HK) Ltd v British Sky Broadcasting Group Plc* [2015] UKSC 31, paragraph 52, *Reckitt & Colman Product v Borden* [1990] RPC 341, HL and *Erven Warnink B.V. v. J. Townend & Sons (Hull) Ltd* [1980] R.P.C. 31. After doing so, he concluded that:

“34. ... a successful claimant in a passing off claim needs to demonstrate more than nominal goodwill. It needs to demonstrate significant or substantial goodwill and at the very least sufficient goodwill to be able to conclude that there would be substantial damage on the basis of the misrepresentation relied upon.”

31. I have already summarised what the evidence shows about use of these signs and do not intend to repeat it here. Taking all the above into account, I am of the view that use of the opponent's sign would fairly be recognised as relating to 'clothing.' I recognise that there are shortcomings with the evidence provided by the opponent, as mentioned above. Despite this, on the balance of the evidence before me, I am prepared to accept that the sign is distinctive of the goodwill. This is on the basis of the labels, swing tags and opponent's sign on jackets and trousers demonstrate the opponent's sign on its goods. This is further supported by the witness statement of Mr

Cavalieri (accompanied by a statement of truth) indicating use of the sign on various items of clothing. In addition, I note that there is a pattern of consistent sales over several years where the goods were sold throughout the UK to various consumers. I do recognise that the marks are stylised on the evidence provided but I still consider that the sign will be read as 'High Tech'. Therefore, my finding of goodwill extends to 'clothing.' In terms of the strength of this goodwill, I am of the view that there is a low level of goodwill in the opponent's business for 'Clothing' and that 'HIGH-TECH' is distinct and/or associated with that goodwill. I will now proceed to consider whether there is misrepresentation and damage.

Misrepresentation and damage

32. In *Neutrogena Corporation and Another v Golden Limited and Another* [1996] RPC 473, Morritt L.J. stated that:

“There is no dispute as to what the correct legal principle is. As stated by Lord Oliver of Aylmerton in *Reckitt & Colman Products Ltd. v. Borden Inc.* [1990] R.P.C. 341 at page 407 the question on the issue of deception or confusion is

“is it, on a balance of probabilities, likely that, if the appellants are not restrained as they have been, a substantial number of members of the public will be misled into purchasing the defendants' [product] in the belief that it is the respondents' [product]”

The same proposition is stated in *Halsbury's Laws of England 4th Edition Vol.48 para 148*. The necessity for a substantial number is brought out also in *Saville Perfumery Ltd. v. June Perfect Ltd.* (1941) 58 R.P.C. 147 at page 175; and *Re Smith Hayden's Application* (1945) 63 R.P.C. 97 at page 101.”

33. And later in the same judgment:

“... for my part, I think that references, in this context, to “more than de minimis” and “above a trivial level” are best avoided notwithstanding this court's reference to the former in *University of London v. American University of London* (unreported 12

November 1993). It seems to me that such expressions are open to misinterpretation for they do not necessarily connote the opposite of substantial and their use may be thought to reverse the proper emphasis and concentrate on the quantitative to the exclusion of the qualitative aspect of confusion.”

34. In light of the case law above, it is not necessary for the opponent to show that there has been actual misrepresentation to the relevant public. Therefore, a notional assessment of the same may apply.

35. I have found that the opponent enjoys a low protectable level of goodwill for the sign ‘HIGH TECH’ in respect of ‘clothing.’ The applicant’s mark covers clothing, which encompasses the opponent’s goods and are identical on that basis. I perceive that the respective fields of activities in which the parties carry on business are close in relation to the marks and the sign. In relation to the marks and the sign, the opponent submits that they are highly similar, whereas the applicant submits that they are not similar. The applicant’s marks are ‘HIGH-TECH NATURALIST CLUB,’ ‘HI-TECH NATURALIST CLUB’ and ‘HIGH-TECH NATURALISTS CLUB.’ I note that the marks and the sign differ in the presence/absence of the hyphen between HIGH TECH and ‘NATURALIST(S) CLUB’ in the applicant’s marks, respectively. In relation to the applicant’s ‘HI-TECH NATURALIST CLUB’ mark, the marks also differ in the use of ‘HI-TECH’ rather than the opponent’s ‘HIGH TECH.’ Therefore, I consider that the marks and the sign are similar as I do accept that the word ‘HIGH-TECH’ in the opponent’s sign is identical or similar to the applicant’s marks.

36. The parties dispute whether the shared element ‘HIGH (-) TECH’/ ‘HI TECH’ in the marks/sign and whether it is descriptive/distinctive in relation to the goods at issue. On one hand, the applicant submits that *“‘high tech’ are an everyday descriptive term which is included in several dictionaries, and which must be assumed to be well known to the majority of the relevant public in the United Kingdom”*.¹⁰ In support of this, the applicant provided exhibits JKG2 and JKG3 where the term ‘high tech’ has been used to describe materials and clothing. In addition, the applicant filed dictionary definitions of the term ‘High-tech’ from the Cambridge, Oxford, and Collins dictionaries where both

¹⁰ Applicant’s submissions in lieu, paragraph 23

the Oxford and Cambridge dictionaries provided the definition of *“using the most advanced and developed machines and methods.”*

37. On the other hand, the opponent submits that the average consumer may *“typically associate the phrase HIGH TECH with industries that utilize particular advanced forms of technology especially in aerospace, computing, and medicine. It is unusual to refer to items of clothing as being “high tech” which makes the sign distinctive.”* The opponent goes on to submit that *“if goodwill was claimed in relation to fabrics for manufacturing clothing or manufacturing service relating to clothing then there may be an arguable case in that the sign HIGH TECH describes a characteristic of those goods and services. However, this does not make the sign descriptive of clothing since the link between and the meaning of the sign and the goods is not specific and direct hence it does not allow the relevant public to immediately identify a characteristic of the goods without further thought.”*

38. As seen above, both parties agree that high-tech pertains to advanced forms of technology. The sectors in which the advanced technology is applied, specifically, whether that includes clothing, is in dispute, consequently the parties have made submissions on the question of the descriptive/distinctive nature of the shared term ‘HIGH TECH’/HI TECH.’ I agree with the applicant that the term high-tech is a commonly understood term, this is not disputed by the opponent. I also agree with the opponent that there is an argument that some individuals may describe materials used to create clothing, for example waterproof clothing, as being high tech. Whilst I do not consider that the items of clothing will commonly be described as ‘HIGH-TECH’, I agree with the opponent and accept that the materials used to create the clothing would. Whilst I recognise the opponent’s point that *“the link between and the meaning of the sign and the goods is not specific and direct hence it does not allow the relevant public to immediately identify a characteristic of the goods without further thought”*, I consider that the step between clothing and the materials used to create the clothing is a small step for the consumer to make. Accordingly, I consider that the words ‘HIGH TECH’ are of a low distinctive character due to their allusive nature in relation to the opponent’s goods and the materials used to create the clothing. On this point, I bear in mind the case of *Office Cleaning Services Limited v Westminster Window & General Cleaners Limited* [1946] 63 RPC 39 wherein Lord Simonds found that the differences

between Office Cleaning Services and Office Cleaning Association were sufficient to preclude a finding of misrepresentation between those signs. In that case, the differences were 'Services' and 'Association,' which themselves are not particularly distinctive elements. In this present case, the point of difference between the signs and the marks are the words 'NATURALIST CLUB'/'NATURALISTS CLUB,' which I consider to be significantly more distinctive than the differentials discussed in *Office Cleaning*.

39. I remind myself that I am looking at the marks and the sign as a whole, to determine whether they are "*sufficiently similar*." I do not find that a consumer who is aware of the opponent's 'HIGH-TECH' for clothing, of which I have found the opponent has a low level of goodwill, would believe that any clothing produced by the applicant and sold under the marks 'HIGH-TECH NATURALIST CLUB' and 'HIGH-TECH NATURALISTS CLUB' would originate from the same undertaking, being the opponent. This is on the basis that, bearing in mind my finding of the low level of distinctive nature of the term 'HIGH TECH' and the low level of goodwill, I do not consider that the member of the class of relevant persons would infer from the opponent's use of its sign that the marks are '*sufficiently similar*' that the opponent's goods are connected, given the differences between the marks. In particular, the additional terms 'NATURALIST(S) CLUB' make up a large proportion of the applications. Further, applying the same reasoning, I consider that this finding extends to the applicant's mark 'HI-TECH NATURALIST CLUB.' I do not consider that there would be a misrepresentation for a substantial number of consumers, and they would be misled into purchasing the applicant's products in the belief that they are the opponent's. To conclude, there is no misrepresentation and accordingly no damage, so there would be no passing off, and the opposition accordingly fails.

CONCLUSION

40. The opposition fails in its entirety in respect of the 5(4)(a) ground and the contested marks may proceed to registration.

COSTS

41. The applicant has been successful and is entitled to a contribution towards its costs, as the opposition was filed on 23 March 2023 it will be based upon the scale published in Tribunal Practice Notice 1/2023. In the circumstances, I award the applicant the sum of £1050. as a contribution towards the costs of the proceedings. The sum is calculated as follows:

Preparing a statement and considering the other side’s statement	£250
Preparing evidence and considering the other side’s evidence	£600
Preparing and filing of submissions	£200
TOTAL	£1050

42. I therefore order HI-INT S.A. to pay Pangaia Materials Science Limited the sum of £1050. This sum is to 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 18th day of February 2025

A KLASS
For the Registrar