o/0291/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. WO0000001786409

BY SHANGHAI AUTOFLIGHT CO., LTD

TO REGISTER THE TRADE MARK:

IN CLASSES 7, 9, 12, 39, 40, 42

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. 600003472

BY GEORGE SANTOS

Background and pleadings

1. International trade mark no.1786409 ("the contested mark") shown on the cover page of this decision was registered by Shanghai Autoflight Co., Ltd ('the holder') with effect from 2 January 2024. The holder designated the UK as a territory in which it seeks to protect the contested mark under the terms of the Protocol to the Madrid Agreement on the same date. The mark has a priority date of 4 July 2023 from the EUIPO. The holder seeks protection for the following goods:

> Class 7: Aviation drive trains; electric motors for aircraft.
>
> Class 9: Computer hardware and software for aircraft; electricity storage apparatus for aircraft.
>
> Class 12: Motor vehicles by land, air, water or rail; air vehicles; the aircraft; military drones; civilian drones; aerial drone (not toy); photo drones; small remote-controlled camera drones; delivery drones; aeronautical installations, machinery and equipment; space vehicles.
>
> Class 39: Transport of persons and goods by means of aircraft; transportation and delivery services by air; rental of aircraft.
>
> Class 40: Custom manufacturing of aircraft; custom construction of machines in the field of aircraft.
>
> Class 42: Software as a service [SaaS] in the aviation sector.

2. The request to protect the mark was published on 26 July 2024. On 25 October 2024 George Santos ("the opponent") opposed the protection of the contested mark in the UK based upon sections 5(1) and 5(2)(b) of the Trade Marks Act 1994 ("the Act") against all applied for goods and services.

3. The opponent relies on the following trade mark:

UK3336360

Autoflight

Filing date: 05 September 2018
Registration date: 14 December 2018

Relying on all of their goods as follows:

> Class 9: Computer Databases, Computer Digital Maps, Computer Programs, Computer Software Programs, Software, Computer Software, Mobile Apps, Tablet Apps, Software Development, Airborne Data Acquisition Instruments, Apparatus and Instruments for Geolocation, Auto-pilots, Automatic Pilots, Global Positioning Instruments, Global Positioning Apparatus, Electronic Tags, GPS Navigation Device, GPS Navigation Devices, GPS Navigation Systems.

4. The opponent claims that the marks are similar or identical and that the goods and services are also similar or identical and that this leads to a likelihood of confusion.

5. The holder filed a counterstatement in which it denied the claims made by the opponent.

6. Rule 6 of the Trade Marks (Fast Track Opposition) (Amendment) Rules 2013, S.I. 2013 No. 2235, disapplies paragraphs 1-3 of Rule 20 of the Trade Mark Rules 2008, but 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."

7. The net effect of these changes is to require the parties to seek leave in order to file evidence in fast track oppositions. Neither party sought leave to file any evidence.

8. 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. A hearing was neither requested nor considered necessary. The opponent filed further submissions. This decision is taken following a careful consideration of the papers.

9. The holder is represented by ip21 Limited and the opponent represents themselves.

10. 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.

Preliminary Issue

11. I note that the holder has made reference within an email to the earlier mark being cancelled.[1] I note that there is an undefended decision dated 20 May 2025 to cancellation action CA000508346 which revokes the earlier mark with effect from 15 December 2023. The relevant date for consideration of the section 5(1) and 5(2)(b) grounds is the priority date of the contested mark, being 4 July 2023. As this predates the date from which the earlier mark has been revoked, the earlier mark would still have been a valid registration at the priority date and can therefore be relied upon for the purpose of these proceedings.

<u>Decision</u>

Sections 5(1) and 5(2)(b)

12. Section 5(1) of the Act is as follows:

[1] Email dated 23 July 2025 from ip21 Limited

"(1) A trade mark shall not be registered if it is identical with an earlier trade mark and the goods or services for which the trade mark is applied for are identical with the goods or services for which the earlier trade mark is protected."

13. Section 5(2)(b) of the Act is 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".

14. The opponent's mark qualifies as an earlier mark, in accordance with section 6 of the Act. As the earlier mark has not been registered for five years or more before the priority date of the contested mark, it is not subject to proof of use requirements. Therefore, the opponent can rely upon all of the goods identified in its Form TM7F.

15. 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."

Case law

16. The following standard summary of the principles applicable to the assessment of the likelihood of confusion was approved by the Supreme Court in *Iconix Luxembourg Holdings SARL v Dream Paris Europe Inc & Anor*, [2025] UKSC 25:

> (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.

Identity of the marks

17. It is a prerequisite of section 5(1) of the Act that the marks at issue be identical. In considering whether marks are identical, I refer to the case *of S.A. Société LTJ Diffusion v. Sadas Vertbaudet SA*, Case C-291/00, wherein the Court of Justice of the European Union ("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."

18. Whilst I note that registration of a word mark gives protection irrespective of the typeface or colour for that matter (see *Bentley Motors Limited v Bentley 1962 Limited*)[2], the device, in particular, would not go unnoticed by the average consumer. Therefore,

[2] BL O/158/17.

I find that the marks are not identical and the opposition under section 5(1) fails here. I will now continue with the section 5(2)(b) ground.

Comparison of Goods and Services

19. In the judgment of the Court of Justice of the European Union ("CJEU") in *Canon*, Case C-39/97, the court stated at paragraph 23 that:

> "In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary".

20. 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.

21. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods (or services). In *Boston Scientific Ltd v OHIM*, Case T-325/06, the General Court ("GC") stated that 'complementary' means:

> "[...] there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking".

22. In *Gérard Meric v OHIM* ('Meric'), Case T-133/05, the 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 für 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".

23. 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 *Separode Trade Mark* (BL O/399/10) and *BVBA Management, Training en Consultancy v. Benelux-Merkenbureau* [2007] ETMR 35 at paragraphs 30 to 38).

24. The goods and services at issue are as follows:

Contested goods and services	**Earlier goods and services**
Class 7: Aviation drive trains; electric motors for aircraft.	Class 9: Computer Databases, Computer Digital Maps, Computer

Class 9: Computer hardware and software for aircraft; electricity storage apparatus for aircraft. Class 12: Motor vehicles by land, air, water or rail; air vehicles; the aircraft; military drones; civilian drones; aerial drone (not toy); photo drones; small remote-controlled camera drones; delivery drones; aeronautical installations, machinery and equipment; space vehicles. Class 39: Transport of persons and goods by means of aircraft; transportation and delivery services by air; rental of aircraft. Class 40: Custom manufacturing of aircraft; custom construction of machines in the field of aircraft. Class 42: Software as a service [SaaS] in the aviation sector.	Programs, Computer Software Programs, Software, Computer Software, Mobile Apps, Tablet Apps, Software Development, Airborne Data Acquisition Instruments, Apparatus and Instruments for Geolocation, Auto-pilots, Automatic Pilots, Global Positioning Instruments, Global Positioning Apparatus, Electronic Tags, GPS Navigation Device, GPS Navigation Devices, GPS Navigation Systems.

25. The opponent has not provided me with any submissions regarding the similarities between the goods and services at issue. Therefore, I will only consider similarities where it is obvious to do so; otherwise, the goods and services will be found to be dissimilar.

Class 7

Aviation drive trains; electric motors for aircraft

26. It is my understanding that both of the above goods are parts that power aircraft. The opponent's goods, broadly speaking, are software/platforms and GPS related goods. The nature and purpose differ, they are not in competition and there is no evidence that the goods are used together. Although both parties' goods may be parts of aircraft, the goods of the earlier mark are information technology, whereas the holder's goods are mechanical. They are unlikely to share trade channels and I have no evidence that they do so. I can see no obvious overlap between the goods and therefore, I find them to be dissimilar.

Class 9

Computer hardware for aircraft

27. I note that the opponent has 'Computer software' within their specification which is integral to computers and therefore, often shares the same trade channels with the opponent's goods and could also be complementary (although I note that the holder's goods are specifically aimed at aircraft). The goods differ in nature, however, they share end users and trade channels. There is some shared purpose because the computer hardware and software assist in navigating and controlling the flight path, take-off and landing. The goods are not in competition. Therefore, I find the goods to be similar to a medium degree.

Computer software for aircraft

28. I consider that the above term will fall within the opponent's 'computer software' and therefore I find them to be identical under the *Meric* principle.

Electricity storage apparatus for aircraft

29. I can see no overlap with the opponent's goods as set out in the above principles and therefore find these goods to be dissimilar.

<u>Class 12</u>

Motor vehicles by land, air, water or rail; air vehicles; the aircraft; military drones; civilian drones; aerial drone (not toy); photo drones; small remote-controlled camera drones; delivery drones; space vehicles

30. The above goods are all types of vehicles or drones. Whereas the opponent's goods are types of software and GPS goods. I remind myself of *Les Éditions Albert René v OHIM*, Case T-336/03, where the GC found that:

> "61... The mere fact that a particular good is used as a part, element or component of another does not suffice in itself to show that the finished goods containing those components are similar since, in particular, their nature, intended purpose and the customers for those goods may be completely different."

It is possible that some of the opponent's goods might be used as a component of the above goods, and I consider that there might be an overlap in trade channels (as the company manufacturing the above goods could supply software to update the finished goods). I have not been provided with any evidence of any overlap of the remaining *Treat* factors and I can see no obvious areas of overlap and therefore find these goods to be similar to a low degree.

Aeronautical installations, machinery and equipment

31. Aeronautical installations are the physical infrastructure needed to ensure aircraft can fly, navigate, land, communicate, and operate safely. I consider that the same findings I have made in paragraph 30 apply here also. Therefore, I find them to be similar to a low degree.

Class 39

Transport of persons and goods by means of aircraft; transportation and delivery services by air; rental of aircraft.

32. I can see no overlap with the opponent's goods as set out in the above principles and therefore find these services to be dissimilar.

Class 40

Custom manufacturing of aircraft; custom construction of machines in the field of aircraft.

33. I believe that the *Les Éditions* caselaw mentioned in paragraph 30 above applies here also. I also believe there to be a trade channel overlap for these services as a company manufacturing bespoke plane orders could supply software to update what they've built to order. I cannot see any other overlaps of the *Treat* factors and therefore find these services to be similar to a low degree.

Class 42

Software as a service [SaaS] in the aviation sector

34. I consider that there is some overlap between the above service and the opponent's 'computer software' in user, purpose and trade channels. There may be differences in the nature and method of use given the opponent's goods are the physical software goods and the holder's are services. They are not complementary but they are in competition. I therefore find these goods and services to be similar to at least a medium degree.

35. In *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA, Lady Justice Arden stated that:

"49........... I do not find any threshold condition in the jurisprudence of the Court of Justice cited to us. Moreover I consider that no useful purpose is served by holding that there is some minimum threshold level of similarity that has to be shown. If there is no similarity at all, there is no likelihood of confusion to be considered. If there is some similarity, then the likelihood of confusion has to be considered but it is unnecessary to interpose a need to find a minimum level of similarity."

36. As I have found no similarity for the following goods and services, the opposition in relation to them fails here:

Class 7: Aviation drive trains; electric motors for aircraft

Class 9: Electricity storage apparatus for aircraft

Class 39: Transport of persons and goods by means of aircraft; transportation and delivery services by air; rental of aircraft.

37. I shall continue considering the opposition in relation to:

Class 9: Computer hardware and software for aircraft

Class 12: Motor vehicles by land, air, water or rail; air vehicles; the aircraft; military drones; civilian drones; aerial drone (not toy); photo drones; small remote-controlled camera drones; delivery drones; space vehicles; aeronautical installations, machinery and equipment

Class 40: Custom manufacturing of aircraft; custom construction of machines in the field of aircraft.

Class 42: Software as a service [SaaS] in the aviation sector

Average consumer and the purchasing act

38. 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: *Lloyd Schuhfabrik Meyer*, Case C-342/97.

39. In *Iconix Luxembourg Holdings SARL v Dream Paris Europe Inc & Anor*, [2025] UKSC 25, the Supreme Court approved the comments of Arnold LJ in *Lidl Great Britain Ltd & Anor v Tesco Stores Ltd & Anor (Rev1)* [2024] EWCA Civ 262, where he pointed out that:

> (a) Consumers who are ill-informed or careless, or consumers with specialised knowledge or who are excessively careful are excluded from consideration;
>
> (b) The average consumer provides a standard which enables the courts to strike a balance between the competing interests involved, such as trade mark owners, their competitors and consumers;
>
> (c) The average consumer is neither a single hypothetical person nor a mathematical average; assessment from the perspective of the average consumer does not involve a statistical test. There is no single meaning rule and if, having regard to the perceptions and expectations of the average consumer, the court considers that a significant proportion of the relevant public is likely to be confused, a finding of infringement may properly be made;
>
> (d) Assessment from the perspective of the average consumer is intended to facilitate adjudication of trade mark disputes by providing an objective criterion, by promoting consistency of assessment and by and enabling courts and tribunals to determine such issues so far as possible without the need for evidence;

(e) The average consumer's level of attention varies according to the category of goods or services in question; and

(f) the average consumer rarely has the opportunity to make direct comparisons between trade marks (or between trade marks and signs) and must instead rely upon the imperfect picture of the trade mark they have kept in their mind.

40. I find that for the most part the relevant consumers of the goods and services at issue will likely be professional users.

41. The selection of the goods and services would be relatively important for professional consumers as they will wish to ensure that the products meet their professional requirements, i.e. on a large scale with high demands, and they would be alert to the potentially negative impacts of choosing the wrong product. Further, professional users are likely to assess the ease of use, speed and efficiency, as well as the reliability of the provider's offerings. In light of the above, I find that the level of attention of professional users would be higher than average. The goods and services are likely to be advertised at tradeshows or be purchased directly from the provider, or alternatively, purchased after viewing information in specialist magazines, brochures or on the internet. In these circumstances, visual considerations would dominate, however, I do not discount aural considerations entirely as it is possible that the purchasing of these kinds of goods and services would involve discussions with sales representatives (either in person or over the telephone), or word of mouth recommendations.

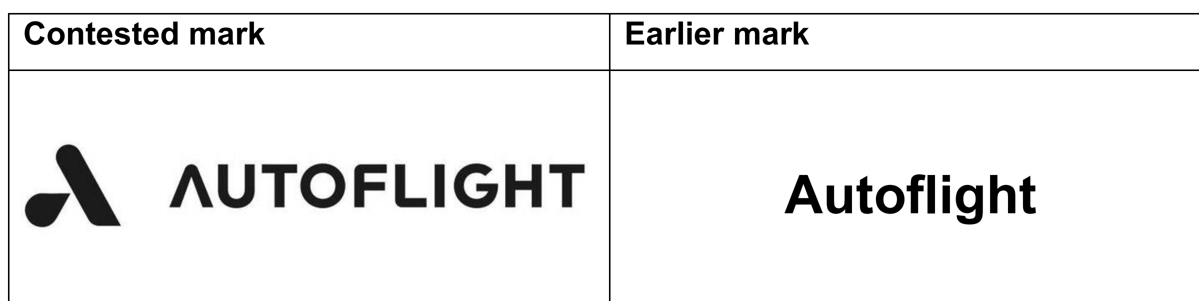
Comparison of the marks

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

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

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

44. The respective trade marks are shown below:



Contested mark	Earlier mark
AUTOFLIGHT	**Autoflight**

45. The earlier mark is a word mark comprising of one word and the overall impression therefore lies in that word.

46. The contested mark comprises a device and word. The word component is 'AUTOFLIGHT' in a slightly stylised font with the horizontal line in the middle of the 'A' missing. At the beginning of the mark, a device element that might be viewed by some as a highly stylised 'A' or might be viewed as simply an abstract device of a diagonal line with a teardrop attached. Even though the word might be allusive to some of the goods and services for which it I registered (I will discuss this further later), I still find the word element to be the dominant and distinctive element of the contested mark. Therefore, the device and stylisation play a lesser role in the overall impression.

47. Visually, both marks share the word ‘AUTOFLIGHT’ with the differences being the inclusion of the device element and the stylisation of the contested mark. I do note that the earlier mark is a word mark and that normal and fair use of a word marks means that they may be used in any standard typeface, singular colour and in upper and lower-case lettering. I therefore find that the marks are visually similar to a high degree.

48. I consider that the word ‘AUTOFLIGHT’ will be given its ordinary everyday pronunciation in both marks. I do not believe that the average consumer will attempt to articulate the device element in the contested mark, even where they might view it as an ‘A’. Therefore, the marks are aurally identical.

49. Conceptually, I consider that the word ‘autoflight’ will be viewed in its two constituent parts by the average consumer- ‘auto’ meaning either automated or automatic and ‘flight’ obviously relating to flying. The meaning will be seen as the same across both marks and therefore, the concepts are identical.

Distinctive Character of the Earlier Mark

50. 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)."

51. Registered trade marks possess varying degrees of inherent distinctive character, being lower where they are allusive or suggestive of a characteristic of the goods and/or services, ranging up 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. I have been provided with no such evidence and, therefore, only have the inherent position to consider.

52. Despite the fact that 'AUTOFLIGHT' does not appear in the dictionary, I do not believe that the average consumer will see the mark as being an invented term as it is comprised of two dictionary words. There could be some allusiveness to the goods relied upon by the opponent (particularly in relation to the autopilot goods) being for use in relation to aircraft. Therefore, I find the earlier mark to be inherently distinctive to between a low and medium degree.

Likelihood of Confusion

53. 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 down to the responsible undertakings being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and vice versa. It is necessary for me to keep in mind the distinctive character of the earlier mark, the average consumer for the goods and the nature of the purchasing process. In doing so, I must be alive to

the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he has retained in his mind.

54. The following factors must be considered to determine if a likelihood of confusion can be established:

- I have found the marks to be visually similar to a high degree and aurally and conceptually identical.
- The earlier mark is a word mark comprising of a singular word and therefore, that is where the overall impression lies.
- The dominant and distinctive element of the contested mark is the word 'AUTOFLIGHT' with the stylisation and the device element playing lesser roles.
- I consider that the average consumer is likely to be professionals who will select the goods and services primarily by visual means, although I do not discount an aural component.
- I have concluded that a higher than average level of attention will be paid during the purchasing process.
- The remaining goods and services at issue are identical or similar to between a low and at least a medium degree.
- The earlier mark is inherently distinctive to between a low and medium degree.

55. Given I have found that the marks are highly similar visually and that they are aurally and conceptually identical, I am satisfied that the average consumer is unlikely to recall the marks accurately and may not remember that one of them is stylised and contains a device. They are likely to mistake one mark for the other even where the level of similarity between the goods is lower and the consumer is paying a higher than average degree of attention. Consequently, I find there to be a likelihood of direct confusion between the marks.

56. In the event that I am wrong in finding there to be a likelihood of direct confusion, I will now go on to consider whether there could be indirect confusion. Mr Iain Purvis Q.C. (as he then was) said further in *L.A. Sugar Limited v Back Beat Inc*:

"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)."

57. These examples are not exhaustive but provide helpful focus, as was confirmed by Arnold LJ in *Liverpool Gin Distillery Limited & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207:

"This is a helpful explanation of the concept of indirect confusion, which has frequently been cited subsequently, but as Mr Purvis made clear it was not intended to be and exhaustive definition."[3]

58. In the case of indirect confusion, the average consumer has noticed the differences between the marks but still believes them to be linked. The difference that the average consumer might notice in this case is the stylisation and inclusion of the device of the contested mark. The average consumer will view the additional device as a brand

[3] Paragraph 12

refresh, or variation, of the contested mark. Therefore, I find that indirect confusion is likely to occur.

Conclusion

59. The opposition has been partially successful and registration is refused, subject to any appeal for the following goods and services:

> Class 9: Computer hardware and software for aircraft
>
> Class 12: Motor vehicles by land, air, water or rail; air vehicles; the aircraft; military drones; civilian drones; aerial drone (not toy); photo drones; small remote-controlled camera drones; delivery drones; space vehicles; aeronautical installations, machinery and equipment
>
> Class 40: Custom manufacturing of aircraft; custom construction of machines in the field of aircraft.
>
> Class 42: Software as a service [SaaS] in the aviation sector

60. The opposition has failed and the contested mark may proceed to registration, subject to any appeal for the following goods and services:

> Class 7: Aviation drive trains; electric motors for aircraft
>
> Class 9: Electricity storage apparatus for aircraft
>
> Class 39: Transport of persons and goods by means of aircraft; transportation and delivery services by air; rental of aircraft.

Costs

61. The guidance for awards of costs are set out in TPN 1/2023.

62. On reviewing the matters at hand, I consider that both parties have had some level of success and some failure and therefore, I consider that the fairest basis to deal with costs is for each party to bear their own in this matter.

63. I therefore make no award of costs in this matter.

Dated this 31st day of March 2026

L Nicholas

For the Registrar