

O/0310/25

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. 3973184

**IN THE NAME OF SHENZHEN YIZE INNOVATION TECHNOLOGY CO. LTD
TO REGISTER THE FOLLOWING TRADE MARK:**

YOGES

IN CLASS 9

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 445656**

BY

LENOVO (BEIJING) LIMITED

Background and pleadings

1. Shenzhen Yize Innovation Technology Co. Ltd (“the applicant”) applied to register the trade mark ‘YOGES’ (application number: UK00003973184) in the UK on 30 October 2023. It was accepted and published in the Trade Marks Journal on 1 December 2023 in respect of the following goods:

Class 9 - Battery chargers; Wireless battery chargers; Wireless chargers; USB chargers; Virtual reality headsets; Headsets for virtual reality games; Virtual reality glasses; Virtual reality headsets adapted for use in playing video games; Joysticks for use with computers, other than for video games; Apparatus for measuring the speed of golf swing; Computer joysticks; Dust protective goggles.

2. On 2 February 2024, Lenovo (Beijing) Limited (“the opponent”) opposed the contested mark on the basis of Section 5(2)(b)¹ of the Trade Marks Act 1994 (“the Act”). The opponent relies upon UK trade mark no. 911229085: ‘YOGA’ (“the earlier mark”) which has a filing date of 1 October 2012, claiming a priority from 30 March 2012 (USA) and a registration date of 30 January 2013. The following goods are relied upon in this opposition:

Class 9 - Computers, namely portable computers and tablet computers, including software and peripherals for use therewith.

3. Under section 5(2)(b) of the Act, the opponent claims that there is a likelihood of confusion on the basis that the marks are similar, and the goods are either identical or highly similar leading to a likelihood of confusion, including a likelihood of association, and that the contested mark should be refused registration.

4. The applicant filed a counterstatement denying the claims made and the fact that there is a similarity between the contested mark and the earlier mark. The applicant

¹ The opponent also initially sought to rely upon s5(3) of the Act, however, the section 5(3) ground was struck out on 8 July 2024 as no evidence had been filed. The opponent later confirmed on 24 October 2024 that they did not intend to pursue this ground for reasons of “procedural economy”.

claims no similarity between the marks considering the assessment of distinctive and dominant elements of the marks.

5. Only the opponent filed submissions in lieu of a hearing, which will not be summarised but will be referred to as and where appropriate during this decision. No hearing was requested and so this decision is taken following a careful perusal of the papers. No evidence has been filed by either party.

6. The mark relied upon is deemed an earlier mark in accordance with section 6 of the Act. Given that it has been registered for more than five years from the date of the application, ordinarily it would be subject to the proof of use requirements under section 6A of the Act. However, the applicant did not put the opponent to proof of use of its mark and consequently it may rely upon all of its goods as identified.

Representation

7. The opponent is represented by HGF Limited and the applicant is represented by Marcin Ociepka.

Relevance of EU LAW

8. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

Decision

Section 5(2)(b)

9. Section 5(2)(b) of the Act is as follows:

“5(2) A trade mark shall not be registered if because-

(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”.

10. 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.”

Relevant law

11. The following principles are gleaned from the decisions of the Court of Justice of the European Union (“CJEU”) in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C120/04, *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

12. The competing goods are shown in the table below:

The earlier mark	The contested mark
Class 9 - <i>Computers, namely portable computers and tablet computers, including software and peripherals for use therewith.</i>	Class 9 - <i>Battery chargers; Wireless battery chargers; Wireless chargers; USB chargers; Virtual reality headsets; Headsets for virtual reality games; Virtual reality glasses; Virtual reality headsets adapted for use in playing video games; Joysticks for use with computers, other than for video games; Apparatus for measuring the speed of golf swing; Computer joysticks; Dust protective goggles.</i>

13. The opponent submits that “the Contested Goods are identical and closely similar to the goods protected by the earlier registration. In particular, the Opponent’s goods encompass the Contested Goods, and vice versa”. The opponent has not identified with any precision which goods are alleged to be similar² and therefore I will draw my own conclusions.

14. The applicant contests the similarity of the goods within the two marks. The applicant submits that “the earlier trade mark covers goods in class 9, whereas the challenged mark also covers goods in class 9. Although these goods belong to the same class according to the Nice Classification, i.e. Class 9, it cannot be considered that goods in class 9 such as *Computers, namely portable computers and tablet computers, including software and peripherals for use therewith* are similar to goods covered by the Sign in Class 9 such as *Apparatus for measuring the speed of golf swing, Dust protective goggles, Wireless chargers, USB charger*”.

² SmartX O/0911/24

15. When making the comparison, all relevant factors relating to the goods and services in the specifications should be taken into account, as per *Canon*, where the CJEU stated at paragraph 23 of its judgement:

“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.”

16. 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.

17. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, the General Court 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.”

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

19. I bear in mind that it is permissible to group goods together for the purposes of the assessment³.

Class 9

Virtual reality headsets; Headsets for virtual reality games; Virtual reality glasses; Virtual reality headsets adapted for use in playing video games; Joysticks for use with computers, other than for video games; Apparatus for measuring the speed of golf swing; Computer joysticks;

20. The opponent’s goods include ‘Computer peripherals’ which relate to hardware devices that can be connected to a computer to expand its capabilities. Given that the specification of the earlier mark is related to portable computers, i.e. laptops, and tablets, I understand peripherals in this instance to mean items such as a computer mouse, headphones and similar, which would extend the capabilities of a portable computer device. The applicant’s goods are related to computer gaming and are

³ *Separode Trade Mark O/399/10*

dependent upon computers for their usage. Therefore, there is a connection between the products. It is common for undertakings to offer both computers and accompanying accessories, such as the applicants, and therefore I consider these goods to be complementary. Whilst the nature and uses of the goods differ, there will be some overlap in users. The competing goods are likely to be found under the same category online and in the same or adjacent aisles in stores and therefore coincide in trade channels. Consequently, I find these goods to be similar to a medium degree.

Battery chargers; Wireless battery chargers; Wireless chargers; USB chargers;

21. The contested goods “Battery chargers; Wireless battery chargers; Wireless chargers; USB chargers” are all various types of chargers and battery chargers, that could be used to charge a wide variety of electronic devices, including some of the opponent’s goods. An electronic device is dependent upon a charger to work, as are the majority of “computer peripherals”. Both portable computers and computer peripherals, such as wireless headphones for example, come with either a USB or normal charger to enable them to work. I therefore consider that there is a complementary connection between the products. As a result of this I consider that there will be an overlap in users, and that the competing goods are likely to be found under the same category online and in the same or adjacent aisles in stores and, therefore, coincide in trade channels. I find these goods to be similar to a medium degree.

Dust protective goggles.

22. Absent any submissions to the contrary, I do not find any obvious similarity between the applicant’s goods, listed above, and the opponent’s goods. Even if the goods at issue are sold in the same retail location, it is highly unlikely that these goods would be found in the same location or aisle. These goods fulfil a different need to the goods in the contested mark and originate from different providers and will have different trade channels. The goods are neither in competition nor are they complementary. I find that the above contested goods are dissimilar to the opponent’s goods.

23. As some degree of similarity between the goods is necessary to engage the test for likelihood of confusion, my findings above mean that the opposition aimed at those goods I have found to be dissimilar will fail⁴. For ease of reference, the opposition fails for the following goods:

Class 9: Dust protective goggles.

Average consumer and the purchasing act

24. It is necessary for me to determine who the average consumer is for the respective parties' goods. I must then determine the manner in which the goods are likely to be selected by the average consumer. 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. (as he then was) described the average consumer in these terms:

“60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The word “average” denotes that the person is typical. The term “average” does not denote some form of numerical mean, mode or median.”

25. The opponent has submitted that “the contested goods in Class 9 are ordinary, common goods intended for the general public at large and are not directed towards a specialist public. As such, the relevant public is likely to exhibit an average degree of attention”. The applicant has not made any submissions in respect of the average consumer.

26. I agree with the opponent that the goods are intended for the general public at large and not specialist individuals or businesses. However, I do consider that portable computers and tablet computers are relatively high value goods that will not be purchased frequently, suggesting that the average consumer will be taking an

⁴ *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA

above average (but not the highest) degree of care when making a selection. They will do this by choosing from a website or visiting a shop, and they may also have used review websites or magazines to assist their decision. They will consider the cost, capabilities and quality of the products within their selection process. The visual element will therefore be the most significant. However, I do not discount that there may also be an aural component to the purchase, given the potential for oral recommendations and advertising and discussions with sales assistants.

27. Computer peripherals such as headsets and chargers will have a lower retail value than computers but will also not be purchased regularly. When making a purchase, the average consumer will use similar methods to those above, with the visual element being most significant, but not discounting aural considerations for recommendations. Overall, I consider that the average consumer will pay an average to above average (but not the highest) degree of attention during the purchasing process.

Comparison of marks

28. 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 Court of Justice of the European Union 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.”

29. It would be wrong, therefore, to dissect the trade marks artificially, 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.

30. The respective trade marks are shown below:

Earlier trade mark	Contested trade mark
YOGA	YOGES

31. The opponent submits as follows:

“16. The Earlier Mark comprises of the word “YOGA” which will be perceived as a reference to a set of physical and mental exercises, originally from India, intended to give control over the body and mind.

17. The Contested Mark comprises of the word “YOGES” which, technically speaking, has no meaning. However, according to case-law, in principle, where a sign is composed of one verbal element, the relevant public will break it down into elements that suggest a concrete meaning or that resemble words that they already know (13/02/2007, T-256/04, RESPICUR / RESPICORT, EU:T:2007:46, § 57; 13/02/2008, T-146/06, ATURION / URION, EU:T:2008:33, § 58). In the present case, it is submitted that at least a significant proportion of the relevant public will perceive “YOGES” as a misspelling of “YOGAS” (e.g. in reference to various types of yogas or a collection of yogas), “YOGESH” (i.e. a Master of Yoga) or YOGIS (i.e. plural of “yogi”, being a person who practices yoga). Given that the Contested Mark closely resembles all of these words, in particular in view of it consisting of the root component “YOG”, there is a high likelihood that at least a significant proportion of the relevant public will interpret the mark as being a reference to one (or more) of these yoga-related terms.”

32. The applicant submits that “when assessing the similarity between the trade marks under comparison, it should be borne in mind that global appreciation of the visual, aural or conceptual similarity of the marks in question must be based on the overall impression given by them, bearing in mind their distinctive and dominant

components...bearing in mind the above the applicant claims no similarity between the marks”.

Overall impression

33. I note that both marks are word only marks and consist of ‘YOGA’ and ‘YOGES’ respectively. Both are presented in a plain typeface. There are no additional elements to either mark and therefore the overall impression lies in the words themselves.

Visual impression

34. Visually, the competing marks are similar because they each have one word and share the first three letters being ‘YOG’ at the beginning of the mark. The beginning of the mark is generally considered to have more impact⁵.

35. The difference in length of the marks, four letters versus five letters, is evident. A change at the end of the word is less likely to be noticed than at the beginning of the word. That remains true, albeit to a lesser degree, where the words are relatively short words like YOGA and YOGES. Although there is no specific test for short marks⁶, differences in short marks can be striking. However, I do consider that there is some visual similarity between the marks due to the overlapping characters at the beginning of the words. In my view, the respective marks are visually similar to a medium degree.

Aural impression

36. The opponent’s mark is an ordinary English dictionary word and will be pronounced in the normal way. The applicant’s mark is a made-up word and it is not clear how this will be pronounced.

37. I note that both marks have two syllables. The earlier mark will be pronounced as YOH-GAH whereas the contested mark is likely to be pronounced as YOH-GUESS or YOH-JESS. The point of aural overlap lies at the beginning of the word. This is the same in both marks and will be pronounced identically. However, the aural differences

⁵ *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

⁶ *Bosco Brands UK Limited vs Robert Bosch GmbH*, BL O/301/20

at the end of the marks are obvious, particularly as the marks are short. I find a medium degree of aural similarity between the marks.

Conceptual comparison

38. For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer, as highlighted in numerous judgments of the GC and the CJEU⁷.

39. It is commonly known that YOGA has a conceptual meaning, which the opponent submits “will be perceived as a reference to a set of physical and mental exercises, originally from India, intended to give control over the body and mind”. I accept this to be the case. I believe that YOGES will be considered to be a meaningless term by the average consumer, as the applicant has submitted, and I do not agree with the opponent’s contention that the applied for mark will be considered “a misspelling of “yogas”, “yogesh” and/or “yogis””. Therefore, I find that conceptually the marks are dissimilar.

Distinctive character of the earlier trade mark

40. 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

⁷ *Ruiz Picasso v OHIM* [2006] e.c.r.-I-643; [2006] E.T.M.R 29

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).”

41. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The opponent has made submissions regarding the distinctiveness of their mark, submitting as follows:

“The opponent has made extensive use of the earlier registration, which, as a result, enjoy an enhanced level of distinctive character. As such, there is a greater risk of confusion between the earlier mark and the contested sign”.

However, as no evidence has been filed in support of this, I only have the inherent position to consider.

42. The opponent’s mark consists of the word ‘YOGA’ in a standard typeface. As I have said above, the distinctiveness lies in the word itself. The word ‘YOGA’ is found in the dictionary, but it is not descriptive of the goods for which the opponent's mark is registered. Nor does it allude to any quality of those goods. I consider the mark to have a medium level of inherent distinctiveness.

Conclusions on Likelihood of Confusion

43. 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.

44. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle, i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the opponent's trade 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.

45. The difference between direct and indirect confusion was explained in *L.A. Sugar Limited v By Back Beat Inc*, BL O/375/10, where Mr Iain Purvis Q.C., as the Appointed Person, explained that:

“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)."

46. 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 Appeal⁸. 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 confusion⁹. The Court of Appeal has also emphasised that, where there is no direct confusion, there must be a "proper basis" for finding indirect confusion¹⁰.

47. I have found as follows:

- That the goods at issue are similar to a medium degree.
- I have identified that the average consumer will be members of the general public. They will select the goods primarily by visual means, although I do not discount an aural component;
- I have concluded that an average to above average (but not the highest) degree of attention will be paid;
- The contested mark is visually similar to the earlier mark to a medium degree;
- The contested mark is aurally similar to the earlier mark to a medium degree;

⁸ *Liverpool Gin Distillery and others v Sazerac Brands, LLC and others* [2021] EWCA Civ 1207

⁹ *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17

¹⁰ *Liverpool Gin Distillery*

- I have found the contested mark and the earlier mark to be conceptually dissimilar;
- I have found the earlier mark overall to be inherently distinctive to a medium degree;

48. I begin by considering a likelihood of direct confusion. The competing marks are both single word marks, 'YOGA' and 'YOGES' which share the first three letters, 'YOG'. In this instance, where the marks are both short, I consider that the differences in the marks are likely to be easily identified by the average consumer. I also take into consideration the conceptual differences between the marks and that the average consumer is likely to bring to mind different things upon considering the respective marks. Taking the above into account, it is my view that the differences between the competing marks are likely to be sufficient for consumers – paying an average to above average (but not the highest) level of attention – to distinguish between them and avoid mistaking them for one another. Accordingly, notwithstanding the principles of imperfect recollection and interdependency, it follows that there will be no direct confusion.

49. Moving on to indirect confusion, for this to arise the average consumer must consider that as a result of the common element, there is an economic connection between the respective marks, such that the good provided under one is regarded as a brand extension or sub brand of the other.

50. I appreciate that both marks share the overlapping element 'YOG' which sits at the beginning of each mark. However, I do not consider that this alone would lead consumers to believe that the marks originate from the same or economically linked undertaking. This is because both marks are short and are likely to be perceived as a whole, and whilst the overlapping element will be noted, the same can be said for the different word-endings. Conceptually, I believe 'YOGES' will be widely appreciated to be an invented word, whereas 'YOGA' is widely understood, but in this instance is not descriptive of the goods for which the opponent's mark is registered, which I believe will be the consumers main consideration when assessing the mark. Given the visual and aural differences in the marks, as well as the conceptual differences

described above, despite the similarity between the goods I do not consider the variations in the word endings are indicative of a logical brand extension.

51. Taking all of the above into account, I do not consider that there exists a likelihood of indirect confusion between the marks.

Conclusion

52. The opposition has failed entirely and, subject to any successful appeal, both of the applicant's marks will proceed to registration.

Costs

53. As the applicant has been successful it is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice 1/2023. In considering the costs award, I note that neither party filed any evidence. In the circumstances, I hereby award the applicant the sum of £450 calculated as follows:

Filing a Counterstatement and considering the Notice of Opposition	£250
Considering the submissions of the Opponent	£200
Total	£450

54. I therefore order Lenovo (Beijing) Limited to pay Shenzhen Yize Innovation Technology Co. Ltd. the sum of £450. 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 2nd day of April 2025

L Bailey

For the Registrar