O/0383/25

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00004025556
BY PAYLOAD AEROSPACE S.L.
TO REGISTER:

AS A TRADE MARK IN CLASSES 7, 9, 12, 13, 14, 21, 25, 35 & 42

AND

IN THE MATTER OF OPPOSITION THERETO
UNDER NO. OP600003341 BY
DUF LTD

BACKGROUND AND PLEADINGS

1. On 13 March 2024, PAYLOAD AEROSPACE S.L. ("the applicant") applied to register the trade mark on the cover page of this decision in the UK ("the applicant's mark"). The applicant's mark was published for opposition purposes on 29 March 2024 and registration is sought for the goods and services set out in the **Annex** of this decision.

2. On 18 June 2024, the applicant's mark was partially opposed under the fast track procedure by Duf Ltd ("the opponent"). The opposition is brought under section 5(2)(b) of the Trade Marks Act 1994 ("the Act") and is reliant upon the following trade marks:

SPACE
space
(Series of two)
UK registration no. 3495303
Filing date 31 May 2020; registration date 15 October 2021
Relying on all goods, namely:

Class 9: Optical apparatus and instruments; optical goods; spectacle and sunglass frames; spectacle and sunglass lenses; contact lenses; spectacle cases; spectacle cords and chains, including spectacles for cycling; goggles, lenses for goggles, all being in the nature of protective eyewear; face masks and face shields; helmets, including cycle helmets; protective eyewear, headgear and bodywear; protective clothing for cycling.

Class 14: Precious metals and their alloys; jewellery; ornaments; rings, earrings, ear clips, brooches, chokers, necklaces, pendants, chains, bracelets; precious stones, pearls; horological and chronometric instruments, in particular small clocks, wrist watches, parts for clocks and watches, clock faces, housing for clocks and watches, clockworks, parts for clockworks; parts and fittings for the aforesaid goods, included in class 14.

("the opponent's first registration"); and

UK registration no. 3877084

Filing date 12 February 2023; registration date 26 May 2023

Relying on all goods, namely:

Class 9: Sunglasses, sunglasses with lenses without any optical sight correction function, spectacles, spectacle frames, spectacle cases, including spectacles for cycling; goggles, lenses for goggles, all being in the nature of protective eyewear; face masks and face shields; helmets, including cycle helmets; protective eyewear, footwear, headgear and bodywear; protective clothing for cycling, including gloves. Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, supervision, life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; compact discs, DVDs and other digital recording media; automatic vending machines and mechanisms for coin operated apparatus; cash registers; calculating machines, data processing equipment and computers; fire-extinguishing apparatus; recorded media, computer hardware and firmware; computer software; software downloadable from the Internet; downloadable electronic publications; compact discs; digital music; telecommunications apparatus; computer games equipment adapted for use with an external display screen or monitor; mouse mats; mobile phone accessories; contact lenses, spectacles and

sunglasses; clothing for protection against injury, accident, irradiation or fire; furniture adapted for laboratory use. All downloadable media; computer programs and software regardless of recording media or means of dissemination, that is, software recorded on magnetic media or downloaded from a remote computer network. Computer application software for use in implementing the Internet of Things [IoT]; Internet of Things [IoT] gateways; downloadable software for providing advice and assistance in relation to fashion items including clothing, headgear, footwear, bags, jewellery, watches, glasses and sunglasses and producing simulation imagery; holograms; computer software for creating digital images, animations and special effects for use in the field of fashion; downloadable software, mainly skins for use in virtual reality games; artificial intelligence software, apparatus and instruments; computer games software; computer games programmes; augmented reality software; augmented reality games software; virtual reality software; virtual reality games software; wearable measuring devices comprising of sensors for measuring skin condition; multifunctional electronic devices for tracking and managing personal health and fitness information; facial recognition devices, apparatus and software; scanners for capturing images for analysis for use in the cosmetic, beauty and skincare fields; Internet of Things [IoT] sensors; wearable digital electronic devices; wearable computer peripherals. .

Class 25: Clothing, footwear, headgear; parts and accessories for the aforesaid goods, included in class 25.

("the opponent's second registration").

3. By virtue of relying on section 5(2)(b) of the Act, the opponent's case is that there is a likelihood of confusion on the basis that the parties' marks are similar, so too are the goods at issue.

4. As set out above, the opposition is partial and is aimed only at the applicant's class 9, 14 and 25 goods, which are as follows:

Class 9:	Heat regulating apparatus; thermal controls; thermal controls [thermostats]; missile trackers; guidance systems for missiles; flight path controls for projectiles; electronic timing apparatus; navigating apparatus (electronic -); electric control apparatus; electronic navigational and positioning apparatus and instruments.
Class 14:	Chronometric instruments; time instruments; key rings and key chains, and charms therefor; bracelets made of rubber or silicone with pattern or message; jewellery, including imitation jewellery and plastic jewellery.
Class 25:	Clothing; footwear; headgear; none of the aforementioned goods are for, or related to, golf or other sports.

5. The applicant filed a counterstatement wherein it made some concessions as to the identity and similarity of goods at issue but, generally, it denied the claims made against it.

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

8. The opponent is unrepresented and the applicant is represented by Mathisen & Macara LLP. 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 and I note that only the applicant filed written submissions in lieu. This decision is taken following a careful perusal of the papers.

9. 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): legislation and case law

10. Section 5(2)(b) of the Act reads as follows:

"(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 or association with the earlier trade mark."

11. Section 5A of the Act states as follows:

"Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only."

12. An earlier trade mark is defined in section 6 of the Act, the relevant parts of which state:

"(6)(1) In this Act an "earlier trade mark" means –

(a) a registered trade mark or international trade mark (UK) which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks.

13. The marks in the opponent's registrations qualify as earlier trade marks under the above provisions. As the opponent's registrations had not completed their registration processes more than five years before the filing date of the applicant's mark, they are not subject to proof of use pursuant to section 6A of the Act. Consequently, the opponent may rely on the goods highlighted in its notice of opposition.

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

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

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

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

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

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

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

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

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

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

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

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

Comparison of goods

15. The opposed goods in the applicant's specification are set out at paragraph 4 above whereas the opponent's goods are set out at paragraph 2.

16. When making the comparison, all relevant factors relating to the goods and services in the specifications should be taken into account. 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:

> "Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary".

17. 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.

18. 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 fur Lernsysteme v OHIM- Educational Services (ELS)* [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark."

19. I have submissions from the applicant in respect of the comparison of the goods at issue. As for the opponent, the only comments I have in respect of the present assessment is that the goods are associated. While I do not intend to reproduce the submissions of the applicant here, I do note that the submissions expand upon the various concessions of identity/similarity that the applicant made in its counterstatement. I will address these further below when considering the class 14 and 25 goods (being the classes of goods to which the concessions relate).

20. In considering the goods at issue, I remind myself that the opponent relies on both of its registrations in respect of the class 9 goods but only its first in respect of the class 14 goods and only its second in respect of the class 25 goods.

Class 9

Electric control apparatus.

21. The above term of the applicant is for an apparatus for the control of electricity. I consider that this term describes the same goods as "apparatus and instruments for […] controlling electricity" in the opponent's second registration's specification. These goods are, therefore, self-evidently identical.

Heat regulating apparatus; thermal controls; thermal controls [thermostats].

22. In considering the opponent's goods, I am of the view that the closest comparable to the above terms is "apparatus and instruments for […] regulating or controlling electricity" in its second registration's specification. While the terms at issue here relate to the regulation or control of something, one party's goods are for regulating or controlling heat, the others being for regulating or controlling electricity. I consider that such goods are somewhat specialised and I note that the opponent has not filed anything further in support of a finding of similarity between them. In considering the ordinary factors, I have nothing to suggest whether they share the same natures or methods of use. Additionally, I appreciate that there is some overlap in core purpose (i.e. to regulate or control), however, their actual purposes are ultimately different. Further, I consider that the trade channels are distinct and, on this point, I consider it reasonable to suggest that if they did overlap, the opponent should have filed evidence or further submissions to demonstrate as such. Lastly, I have nothing to suggest that someone looking to regulate or control electricity would also look to buy apparatus for regulating or controlling heat. Again, I remind myself that there is nothing before me that can support of such a finding. Taking all of this into account, I am of the view that these goods are dissimilar.

Electronic timing apparatus; navigating apparatus (electronic -); electronic navigational and positioning apparatus and instruments.

23. While the above goods are electronic in nature, I do not consider that this alone means that they share any degree of similarity with the opponent's term of

"apparatus and instruments for […] controlling electricity". I say this because, again, the above goods are somewhat specialised and without anything to suggest otherwise, I find that they differ in nature, method of use, purpose, trade channels and user with the opponent's goods. As a result, I find that these goods are dissimilar.

Missile trackers; guidance systems for missiles; flight path controls for projectiles.

24. I see no obvious reason why the above goods, being those that are highly specialised, share any degree of similarity with any of the goods of the opponent. Plainly, they have different natures, methods of use, purpose, trade channels and user. As such, I find that these goods are dissimilar.

Class 14

Chronometric instruments; time instruments; bracelets made of rubber or silicone with pattern or message; jewellery, including imitation jewellery and plastic jewellery.

25. The applicant concedes that the above terms are identical to the class 14 goods found in the opponent's first registration's specification. I agree and hereby find that the above terms are identical to the opponent's "horological and chronometric instruments, in particular small clocks, wrist watches" and "jewellery", be that either self-evidently or under the principle outlined in *Meric*.

Key rings and key chains, and charms therefor.

26. The applicant concedes that the above goods are similar to the class 14 goods for which the opponent's first registration is registered. While noted, it does not specify which goods it is similar with. While the concession as to similarity is noted, I am of the view that because the above goods are all types of jewellery, chains or pendants, I find that they are identical under the principle outlined in *Meric* with the opponent's "jewellery", "pendants" and "chains".

Class 25

Clothing; footwear; headgear; none of the aforementioned goods are for, or related to, golf or other sports.

27. The applicant has conceded that its class 25 goods are identical to the class 25 goods in the opponent's second registration's specification. I agree. While the limitation of the above terms means that they technically do not describe the same goods as the opponent's "clothing, footwear, headgear", which is present in its second registration, the applicant's terms all fall within the opponent's term. As such, I find that they are identical under the principle outlined in the case of *Meric*.

Conclusion in respect of the goods comparison

28. As some degree of similarity between goods is necessary to engage the test for likelihood of confusion under the present ground, my findings above mean that the opposition aimed against those goods I have found to be dissimilar will fail.[1] For ease of reference, these goods are as follows:

Class 9:	Heat regulating apparatus; thermal controls; thermal controls [thermostats]; missile trackers; guidance systems for missiles; flight path controls for projectiles; electronic timing apparatus; navigating apparatus (electronic -); electronic navigational and positioning apparatus and instruments.

The average consumer and the nature of the purchasing act

29. The case law, as set out earlier, requires that I determine who the average consumer is for the respective parties' goods. I must then decide the manner in which these goods are likely to be selected by the average consumer in the course of trade. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem*

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

Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited, [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

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

30. The goods are issue are both specialist goods for the control of electricity and ordinary consumer goods, being different types of jewellery/watches and clothing, footwear and headgear. The former goods will be selected by professional users whereas the latter goods will be selected my members of the general public at large. Despite their different user bases, the goods will all be available via physical retailers where they will be displayed on shelves, racks or in cabinets and self-selected by the consumer. Alternatively, they will also be available online where they will be selected after the consumer views an image of them on a website. As a result, I find that the goods at issue will be selected via predominantly visual means, though I do not discount the aural component playing a role via advice from sale assistants or word-of-mouth recommendations.

31. Some electricity controlling apparatus may be more expensive and used as part of large-scale electricity set ups, meaning that they will be selected less frequently. Additionally, some clothing and jewellery/watch goods will range in costs from cheaper goods such as socks and plastic jewellery to expensive goods such as leather jackets or jewellery made of precious metals, for example. However, all that being said, I am of the view that, for the most part, the average consumer will select the goods with a moderate degree of frequency and at a moderate cost. In respect of the attention paid, I find that, for the electronic controlling apparatus, the consumer will consider factors such as the compatibility of the product, the materials used and the actual degree of control the goods possess. For both the clothing and jewellery/watch goods, consumers will consider the materials used

(for clothing, this will involve consideration as to the type of cotton blend that the garment is made of, for example, whereas for jewellery, this will be in relation to the types of metals used), style and fit. For both sets of goods, I am of the view that the average consumer will pay a medium degree of attention.

Comparison of the marks

32. It is clear from *Sabel v Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the trade marks must be assessed by reference to the overall impressions created by the trade marks, bearing in mind their distinctive and dominant components.

33. 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."

34. 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.

35. The respective trade marks are shown below:

The opponent's registrations	The applicant's mark
SPACE space (series of two) ("the opponent's first registration") SPACE ("the opponent's second registration")	PLDSPACE

36. I have submissions from the applicant as to the similarity of the marks at issue. I do not intend to discuss these submissions here but can confirm that I have given them due consideration in making the following comparison. As for the opponent, I note that it appears to have simply claimed that the marks are identical or similar.[2]

Overall impression

37. The applicant's mark is a figurative mark that consists of the word element 'PLDSPACE'. The word is presented in black and in a somewhat stylised typeface. The letters 'PLD' are presented in bold whereas 'SPACE' is not. Before 'PLDSPACE' sits a red chevron on its side. I consider that the word element dominates and while presented as one word, the use of bold lettering for 'PLD' only will lead consumers to see it as the conjoining of two elements, being 'PLD' and 'SPACE'. Despite this, I consider that each of the letters/word elements which combine to make the whole will play an equal role in the overall impression of the mark. The device element and the stylisation used will play lesser roles.

38. The marks in the opponent's first registration are word only marks that consist solely of the word 'SPACE' presented in different cases. There are no other

[2] See the answer to Q12 of the notice of opposition.

elements that contribute to their overall impressions, which lies in the word 'SPACE'. On this point, I wish to point out that despite the use of different cases across these two marks, they are essentially identical marks as use of word marks covers their use in any case, be that upper case, lower case or any customary combination of the two.

39. The mark in the opponent's second registration is a figurative mark with the word 'SPACE' presented in a standard black typeface, with the horizontal line in the letter 'A' having been removed. The word sits on a white background and is surrounded by a thin black border. The word 'SPACE' will dominate the overall impression of the mark. As for the stylisation of the word, I appreciate it is standard, however, the removal of the horizonal line in the letter 'A' will be noticed and will play a lesser role. The other elements, being the border and the background, are banal so will, therefore, be overlooked.

Visual comparison

The opponent's first registration and the applicant's mark

40. Visually, these marks share the use of the word 'SPACE'. While word only marks, I do not consider that the marks in the opponent's first registration are capable of being presented in the same way as the word in the applicant's mark.[3] The marks differ in the presence of the letters 'PLD', which sits at the beginning of the applicant's mark. On this point, I remind myself that average consumers tend to focus on the beginnings of marks.[4] I appreciate that the remaining element in the applicant's mark (as well as the stylisation used) play lesser roles in the overall impression that mark. However, they are still points of visual difference. Taking all of this into account, I find that the marks are visually similar to a medium degree.

[3] I consider this to be the case due to the way in which the letters P and A in the applicant's mark are somewhat dissected.
[4] *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

The opponent's second registration and the applicant's mark

41. As was the case above, these marks share the word 'SPACE'. While presented differently in each mark, it is still a significant point of similarity. As was also the case above, the marks differ in the presence of the letters 'PLD', which sits at the beginning of the applicant's mark. As for the remaining elements and the stylisations used, I am of the view that while they all play lesser roles in the overall impression of their respective marks, they are all points of visual difference. Taking all of this into account, I find that the marks are visually similar to no more than a medium degree.

Aural comparison

42. The marks in the opponent's registrations all consist of the same aural element, being the word 'SPACE'. As such I will consider them together.

43. Aurally, the opponent's marks consist of one syllable which will be pronounced in the ordinary way. As for the applicant's mark, this consists of four syllables that will be pronounced as three letters, being 'P-L-D', followed by the ordinary word 'SPACE'. While the marks share one syllable, the letters 'PLD' have no aural counterpart in the opponent's mark. Further, these letters sit at the beginning of the applicant's mark which, as above, is where consumers tend to focus. Overall, I consider that the difference in length of these marks and their different beginnings is such that I find them to be aurally similar to a low degree.

Conceptual comparison

44. Much like the aural comparison above, the marks in the opponent's registrations share identical concepts, being that which lies in the word 'SPACE'. As such I will consider them together. The opponent's use of 'SPACE' across its marks will be viewed as the use of an ordinary dictionary word which will either be understood as a reference to 'outer space', a physical area (i.e. *a large space*) or an undefined measure of distance (i.e. *give me some space*). As for the applicant's mark, this will be broken up as 'PLD' and 'SPACE'. This will have no unitary meaning but will,

instead, be attributed the meaning of the individual elements within it. 'SPACE' will be attributed the same meaning as that of the opponent's mark. As for 'PLD' this will be viewed as an initialism, however, the consumer will not be aware of its specific meaning.

45. In comparing the marks, the shared concept of 'SPACE' will be a significant point of similarity between them. As for the letters 'PLD', I appreciate that it carries no obvious meaning, however, the consumer will still notice it as something different between the marks. Therefore, 'PLD' will take away from the shared use of 'SPACE'. Overall, I consider that the marks are conceptually similar to a medium degree.

Distinctive character of the opponent's registrations

46. 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)."

47. 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 not pleaded that its mark has obtained an enhanced level of distinctiveness and, being fast track proceedings, no evidence has been filed to that effect. Therefore, I have only the inherent position to consider.

48. The marks in the opponent's registrations are different presentations of the word 'SPACE'. The marks in the first registration are word only whereas the mark in the second registration is figurative with 'SPACE' having been provided with slight stylisation by way of the removal of the horizontal line in the letter 'A'. Plainly, the distinctiveness of the marks in the first registration lies in the word 'SPACE'. As for the mark in the second registration, I appreciate that the stylisation will not be ignored, however, I do not consider that it has any material impact on the mark beyond that which is created by the word 'SPACE'. As such, I consider that the distinctiveness of the mark in the second registration also lies in the word 'SPACE'. As a result, I am of the view that I can consider the distinctiveness of the opponent's registrations together.

49. In considering the distinctiveness of the word 'SPACE', I appreciate that it is an ordinary dictionary word, the meaning of which will be immediately recognised by consumers in the ways I have set out above. While it does not describe or allude to the goods at issue, its use is not particularly remarkable from a trade mark perspective. As a result, I find that the marks in the opponent's registrations all enjoy a medium degree of inherent distinctive character.

Likelihood of confusion

50. 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. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the earlier registrations, 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 they have retained in their mind.

51. In respect of the goods at issue, I have found them to be identical. The average consumer base is formed of both members of the general public at large and professional users who will select the goods by primarily visual means, although I do not discount an aural component. I have concluded that regardless of the identity of the average consumer, they will pay a medium degree of attention when selecting the goods at issue. I have found the applicant's mark to be visually similar to a medium degree with the marks in the opponent's first registration and visually similar to no more than a medium degree to the mark in the second registration. I have found all marks at issue to be aurally similar to a low degree and conceptually similar to a medium degree. I have found the marks in the opponent's registrations to possess a medium degree of inherent distinctive character.

52. In considering the issue of confusion, I am of the view that when viewing the applicant's mark, consumers would not view it as a composite mark consisting of two or more signs meaning that neither 'PLD' or 'SPACE' would be seen as an element that carries its own distinctive significance which is independent of the significance of the whole.[5] I say this because 'PLD' and 'SPACE' are equally as important to the applicant's mark so the consumer will not consider the mark in any

[5] *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271 (Ch)

other way than as to view it as ‘PLDSPACE’. Further, to view the applicant’s mark as consisting of two or more signs would, in my view, be the result of an artificial dissection of the mark. This is something that, as I have set out above, the consumer would not do.

53. Taking all of the above factors into account and even bearing in mind the principle of imperfect recollection, I do not consider that any of the marks at issue will be misremembered or inaccurately recalled for one another. While the shared use of the word ‘SPACE’ will be noticed, the element ‘PLD’ will not be ignored. As such, I am of the view that when seeking to remember the marks, consumers will pin their recollection of the applicant’s mark on the entirety of its verbal element, being ‘PLDSPACE’. Lastly, I do not consider that the shared conceptual hook of a reference to ‘space’ will be something that consumers will see as remarkable to the point that they would be directly confused by its shared use. Consequently, I do not consider that there exists a likelihood of direct confusion between the marks, even when considered on identical goods.

54. I will now proceed to consider indirect confusion. In doing so, I remind myself of the case of *L.A. Sugar Limited v By Back Beat Inc*, BL O/375/10, wherein 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)".

55. While the above examples in *L.A. Sugar* are noted, they are not intended to be treated as an exhaustive list of the only instances wherein indirect confusion occurs.

56. Further, I note the case of *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, wherein Arnold LJ referred to the comments of James Mellor Q.C. (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at paragraph 16 that "a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion". Arnold LJ agreed, pointing out that there must be a "proper basis" for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

57. While all of the marks share the word 'SPACE', I do not consider this to be so strikingly distinctive that consumers would believe that only one undertaking would

use it. Additionally, a common reference to ‘space’ is not something that consumers would believe as indicating one undertaking only. Instead, it is an ordinary dictionary word so its shared use would not be viewed as surprising, even taking into account the fact it has no obvious association with the goods at issue here. Further, the addition of the letters ‘PLD at the beginning of the applicant’s mark is not a non-distinctive addition that could be said to point to a sub-brand or brand extension of the ‘SPACE’ brand. I say this because ‘PLD’ has no obvious meaning to consumers so would not be viewed as something that realistically points to a different type of business endeavour that would ordinarily point to a sub-brand. Lastly, I do not consider that consumers would consider it logical for an undertaking called ‘SPACE’ to add an equally distinctive element ‘PLD’ to its mark and to change the stylisation in such a way to indicate a brand extension. On a similar point, I do not consider that consumers would consider it logical for an undertaking referred to as ‘PLDSPACE’ to remove an equally distinct element, being ‘PLD’ so as to refer to itself only as the ordinary dictionary word, ‘SPACE’. I appreciate that these considerations are not the only examples wherein indirect confusion can occur, however, the opponent has not provided any specific examples as to why indirect confusion would occur. As such, I do not consider it appropriate (or fair to the applicant, for that matter) for me to seek to formulate the opponent’s case on its behalf. Consequently, taking all of this into account and also bearing in mind the comments referred to in the preceding paragraph, I find that there exists no likelihood of indirect confusion, even on identical goods.

CONCLUSION

58. The opposition fails in its entirety and, subject to any successful appeal, the applicant’s mark is permitted to proceed to registration for all of those goods that were subject to the present opposition. In addition, the unopposed goods and services may also proceed to registration, though I appreciate that this is not subject to appeal.

COSTS

59. As the applicant has been successful in defending the opposition against it, it is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice 1/2023 which governs costs in Fast Track proceedings issued after 1 February 2023. In the circumstances, I award the applicant the sum of £600 as a contribution towards the costs of proceedings. The sum is calculated as follows:

Filing a notice of opposition and considering the applicant's counterstatement:	£250
Written submissions in lieu:	£350
Total	**£600**

60. I therefore order Duf Ltd to pay PAYLOAD AEROSPACE S.L. the sum of £600. This sum should 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 24th day of 2025
A COOPER
For the Registrar

ANNEX

Class 7

Rocket motor propulsion apparatus for missiles; Rocket motor propulsion apparatus for weapons; Rocket propulsion engines for weapons; Rocket engines for the propulsion of missiles; Rocket engines for the propulsion of aircraft. .

Class 9

Heat regulating apparatus; Thermal controls; Thermal controls [thermostats]; Missile trackers; Guidance systems for missiles; Flight path controls for projectiles; Electronic timing apparatus; Navigating apparatus (Electronic -); Electric control apparatus; Electronic navigational and positioning apparatus and instruments. .

Class 12

Vehicles and conveyances. .

Class 13

Pyrotechnic missiles; Ballistic weapons; Air-to-air missiles; Air-to-surfaces missiles; Cruise missiles; Launchers for missiles [weapons]; Weapons for launching missiles; Launchers for missiles; Missiles; Guided missiles; Rocket-propelled ballistic missiles; Rockets; Sky rockets; Guided missiles; Rockets [projectiles]; Projectiles; Guided projectiles; Launchers for projectiles; Ammunition and projectiles. .

Class 14

Chronometric instruments; Time instruments; Key rings and key chains, and charms therefor; Bracelets made of rubber or silicone with pattern or message; Jewellery, including imitation jewellery and plastic jewellery. .

Class 21

Cups; Insulating flasks; Reusable bottles; Decanters; Tableware, other than knives, forks and spoons; Containers for household or kitchen use; Coin banks; Coasters (tableware); Trivets [table utensils]. .

Class 25

Clothing; Footwear; Headgear; None of the aforementioned goods are for, or related to, golf or other sports.

Class 35

Provision of business information; Business assistance, management and administrative services; Analysis of business information; Advertising, marketing and promotional services; Advertising, marketing and promotional services about rockets.

Class 42

Technical consultation in the field of aerospace engineering. .