

O/0441/25

TRADE MARKS ACT 1994

IN THE MATTER OF INTERNATIONAL REGISTRATION DESIGNATING THE UK
NO. 1771630

IN THE NAME OF JIANGXI KELAI ELECTRONICS CO., LTD
TO REGISTER THE FOLLOWING TRADE MARK:



IN CLASS 9

AND

IN THE MATTER OF FAST TRACK OPPOSITION THERETO
UNDER NO. 60003314

BY
MOHAMMED ZAFRAN LIAQAT

Background and pleadings

1. Jiangxi Kelai Electronics Co., Ltd (“the holder”) applied to protect the following International Trade Mark in the UK on 12 December 2023:



Application no: WO0000001771630

The International Registration (“IR”) was registered on 12 December 2023, and with effect from the same date the holder designated the UK as a territory in which it seeks to protect the IR under the terms of the Protocol of the Madrid Agreement. The IR was accepted and published in the Trade Marks Journal on 19 April 2024 in respect of the following goods:

Class 9 - Touchscreens; flexible flat panel displays for computers; digital signage display panels; thin film transistor liquid crystal display [TFT-LCD] panels; video screens; Liquid Crystal Display [LCD] screens.

2. On 21 May 2024 Mohammed Zafran Liaqat (“the opponent”) partially opposes the protection of the IR in the UK under Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). For its claim under section 5(2)(b) of the Act the opponent opposes only some of the IR’s goods, including the following:

Class 9 - Touchscreens; thin film transistor liquid crystal display [TFT-LCD] panels; Liquid Crystal Display [LCD] screens.

3. The opponent relies upon UK trade mark number 3908498: JK (“the earlier mark”). This trade mark was filed on 05 May 2023 and registered on 04 August 2023. The following goods are relied upon in this opposition:

Class 9 - Mobile Phone LCD (Liquid Crystal Display); Smart Phone LCD (Liquid Crystal Display); Displays for mobile phones; Display modules for mobile phones; Displays for smart phones.

4. 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 IR should be refused protection.

5. The holder filed a defence and counterstatement denying the grounds of opposition and submitting that the IR contains stylisation which distinguishes it from the opponent's mark and makes the mark visually different, and that the opponent's goods specifically concern mobile phone screens, whereas the holder's goods are display screens for various products, including mobile phones.

6. In accordance with section 6 of the Act, the mark relied upon by the opponent is considered an earlier mark. The mark has not been registered for five years at the date of application for the contested mark and so, in accordance with section 6A of the Act, it is not subject to proof of use; the opponent may rely upon all the goods as identified.

7. Rule 6 of the Trade Marks (Fast Track Opposition (Amendment) Rules 2013, S.I. 2013 2235 disapplies paragraphs 1-3 of Rule 20 of the Trade Mark Rules 2008, but it provides that Rule 20(4) shall continue to apply. Rule 20(4) states that:

“(4) The registrar may, at any time, give leave to either party to file evidence upon such terms as the registrar thinks fit.”

8. The effect of the above is to require parties to seek leave in order to file evidence in fast track oppositions. Further, Rule 62(5) (as amended) states that arguments in fast track proceedings shall be heard orally only if (i) the Office requests it, or (ii) either party to the proceedings requests it and the registrar considers that oral proceedings are necessary to deal with the case justly and at proportionate cost; otherwise, written arguments will be taken.

9. In this case, neither party sought leave to file evidence. A hearing was neither requested nor was it considered necessary. The opponent did however elect to file written submissions in lieu, dated 29 October 2024, which I do not propose to summarise but shall refer to them as and where appropriate during this decision. This decision is taken following a careful consideration of all papers on file.

Representation

10. The holder is represented by Wilson Gunn and the opponent is self-represented.

Relevance of EU LAW

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

Decision

Section 5(2)(b)

12. 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”.

13. 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

14. 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

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

The earlier mark	The IR
Class 9 - Mobile Phone LCD (Liquid Crystal Display); Smart Phone LCD (Liquid Crystal Display); Displays for mobile phones; Display modules for mobile phones; Displays for smart phones.	Class 9 - Touchscreens; thin film transistor liquid crystal display [TFT-LCD] panels; Liquid Crystal Display [LCD] screens.

16. The opponent submits “I am concerned about the vague nature of the pending application. The lack of specificity regarding the intended use of the TFT and LCD panels in the application could lead to significant confusion in the market, potentially diluting the distinctive character and reputation of my trade mark. It is essential that the application be clarified to explicitly state the range of products it intends to cover to ensure it does not overlap or infringe upon the scope of my existing trade mark rights”.

17. The holder submits “the opponent’s goods specifically concern mobile phone screens, whereas the applicant’s goods are display screens for various products including mobile phones and therefore their business scope is larger. This creates differences with not only the end user but also the products sold”.

18. The claim under section 5(2)(b) and the assessment as to a likelihood of confusion is one to be taken on a notional and fair basis in relation to the marks as registered/applied for and not in fact how they are being used in the marketplace¹. The commercial use of the IR may have relevance to a claim for damages under other grounds but such a claim is not being relied on in these proceedings. Therefore, I will only consider the goods as applied for / registered during this assessment.

19. 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.”

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:

¹ *Roger Maier and Another v ASOS*, [2015] EWCA Civ 220

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

22. I bear in mind that it is permissible to group goods together for the purposes of the assessment².

² *Separate Trade Mark O/399/10*

Thin film transistor liquid crystal display [TFT-LCD] panels; Liquid Crystal Display [LCD] screens.

23. A Liquid Crystal Display [LCD] is a type of display that uses thin-film-transistor technology to improve image qualities such as addressability and contrast. LCD's are component parts of different digital devices and are used in televisions, computer monitors, mobile phones, navigation systems and the like. I consider that the holder's LCD screens are wide-ranging and encompass the opponent's goods as aforesaid and vice versa. As such, they are self-evidently identical on the principles outlined in *Meric*.

Touchscreens;

24. The above relate to types of digital touchscreens for digital devices. These goods are component parts of different digital devices, such as computer tablets and mobile phones. The aforementioned goods are similar in nature to the opponent's goods, as both are types of screens and displays for mobile phone devices. The competing goods are similar in nature, purpose, end user and are likely to appear in the same or adjacent aisles in stores and will coincide in trade channels. The holder has conceded that their goods are "display screens for various products including mobile phones". In this instance they will be competitive. I do not find complementarity. I therefore find that the goods are similar to a high degree

The average consumer and the purchasing process

25. As the case law above indicates, 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. 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.”

26. Given that I have not been provided any evidence regarding the above goods, my analysis is based upon my own knowledge. I find that these goods are likely to be specialist goods that are used by professionals, such as repair shops for example. I also find that these are component parts that are used in order to create or assist a final set up. I do not discount the possibility of a member of the general public using these goods, however, they are likely to be ‘tech-savvy’ persons. I believe that the purchasing process is likely to be predominantly visual with the consumer needing to inspect the goods or view information online or from a catalogue. There may be an aural aspect of seeking advice regarding the purchase of the goods from a member of staff or other professional. The cost of goods may vary dependent upon size and specification. I consider that the average consumer (both professionals and members of the general public) will pay an above average level of attention.


Comparison of marks

27. 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.”

28. 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.

29. The respective trade marks are shown below:

Earlier trade mark	The IR
JK	

Overall impression

30. I note that the earlier mark is a word only two-letter mark, 'JK'. There are no additional elements to the mark and therefore the overall impression lies in the letters themselves.

31. The IR is a figurative two-letter mark, 'JK', written in a simple stylised font. Whilst the stylisation contributes to the mark, the overall impression lies in the letters themselves.

Visual comparison

32. Visually, the competing marks are similar to the extent that they share the same letters "JK". Whilst the opponent's mark is stylised, this difference in stylisation is minimal, factoring in that a word trade mark registration protects the word itself, irrespective of font, capitalisation or otherwise. Weighing up the differences as against the similarities, I consider there to be a high degree of visual similarity between the marks.

Aural comparison

33. Since no consideration will be given to the stylisation when the marks are pronounced, both marks comprise of the letters 'JK'. They will be given their ordinary pronunciation JAY-KAY. As they will be pronounced in the same way, they are aurally identical.

Conceptual comparison

34. The assessment must be made from the point of view of the average consumer.

35. Conceptually, both marks comprise of two letter words that have no clear or obvious meaning to consumers beyond the fact that they are letters of the alphabet. I note the holder's submission that the "mark is the initials of their company name, therefore acting as a badge of origin and association for the general public", however, I do not consider that the average consumer would make this link upon first impression. Given that the competing marks have no real semantic content I consider that the conceptual position is neutral.

Distinctive character of the earlier trade mark

36. 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).”

37. 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, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The opponent has made no submissions regarding the distinctiveness of their mark and therefore I only have the inherent position to consider.

38. In *Kunze Folien GmbH v Kartell UK Limited*³, Mr Iain Purvis KC sitting as the Appointed Person, referred with approval to the decision of *Alfa-Beta Vassilopoulos AE v Agro de Bazar*⁴, in which the Board of Appeal stated as follows:

“As to the distinctive character of the letter combination ‘AB’ in the earlier marks and of the contested mark, [...] it should be noted that letters or letter combinations of two or three letters are inherently weak, given the limited number of letters in the alphabet, the great number of meanings that acronyms and abbreviations may have and the fact that consumers frequently encounter abbreviations and letter combinations of all kinds in everyday life and business as generic abbreviations but not as marks.”

39. A registered trade mark must be assumed to have at least some distinctive character⁵. That being said, whilst the mark is neither allusive nor descriptive of the opponent’s goods, I find that the earlier mark is not particularly distinctive because the mark merely consists of the two-character alphabetical sequence ‘JK’. I therefore consider the distinctive character of the mark to be inherently low.

³ BL O/085/14, paragraph 29

⁴ Case R 82/2011-4 of the Board of Appeal of OHIM (now the EUIPO), paragraph 16

⁵ *Formula One Licensing BV v OHIM*, Case C-196/11P, paragraphs 41 - 44.

Conclusions on Likelihood of Confusion

40. 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 services 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.

41. I have found as follows:

- The goods at issue are identical or similar to a high degree;
- I have identified that the average consumer will primarily be professionals, and some 'tech-savvy' 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 above average degree of attention will be paid during the purchasing of goods.
- The IR is visually similar to the earlier mark to a high degree;
- The IR is aurally identical;
- I have found the IR and the earlier mark to be conceptually neutral;
- I have found the earlier mark to be inherently distinctive to a low degree;

42. Upon considering the above factors, and bearing in mind the principle of imperfect recollection, I consider the present case represents an example of direct confusion. Notwithstanding that I found the earlier mark to be inherently distinctive to a low degree this does not preclude a finding of a likelihood of confusion.⁶ I consider that the average consumer, upon seeing the IR, 'JK', albeit a stylised version, on goods that are either identical or highly similar, would be directly confused as to the trade origin of those goods. I consider that whilst the IR is stylised, this difference in stylisation is minimal factoring in that a word trade mark registration protects the word itself. I consider that the consumer would pin their recollection of the marks on the word elements, and not which mark was slightly stylised and which was not.

43. In my view, taking into account the principle of imperfect recollection, the similarities between the marks are such that the average consumer will mistakenly recall one for the other. Consequently, I consider there to be a likelihood of direct confusion.

Conclusion

44. The opposition has succeeded under section 5(2)(b) of the Act. Subject to any successful appeal, the application shall be refused for the following goods:

Class 9 - Touchscreens; thin film transistor liquid crystal display [TFT-LCD] panels; Liquid Crystal Display [LCD] screens.

45. No opposition having been brought in relation to the following goods which may proceed to registration:

Class 9 - flexible flat panel displays for computers; digital signage display panels; video screens;

COSTS

46. As the opponent has been successful in opposing the IR in respect of some of their goods, they are entitled to a contribution towards their costs. The opponent, being unrepresented, was invited by the tribunal to indicate whether they intended to make

⁶ *L'Oréal SA v OHIM*, Case C-235/05 P, paragraphs 42 and 45

a request for an award of costs, including providing accurate estimates of the number of hours spent on a range of given activities relating to the prosecution of the proceedings. It was made clear by letter dated 19 October 2024 that if the pro-forma was not completed, no costs arising from the action would be awarded. As the opponent has not provided such information, I therefore make no award as a contribution towards costs of the proceedings, other than to award the opposition fee of £100.

47. I therefore order Jiangxi Kelai Electronics Co., Ltd to pay Mohammed Zafran Liaqat the sum of £100. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 20th day of May 2025

Laura Bailey

For the Registrar