

O-0591-25

TRADE MARKS ACT 1994

IN THE MATTER OF

TRADE MARK APPLICATION NO 3945792

IN THE NAME OF PIONEER TEX LTD

FOR THE FOLLOWING MARK:



IN CLASS 25

AND

OPPOSITION THERETO (UNDER NO. 443926)

BY

CASTLE CLOTHING LIMITED

BACKGROUND

1) On 15 August 2023, PIONEER TEX LTD ('the applicant') applied to register the trade mark shown on the cover page of this decision in respect of the following goods in class 25: Work wears, Work Jackets, T-shirts, Polo Shirts, Hoodies, Work Wear Clothing; Mens Fashion Clothing; Womens Fashion Clothing.

2) The application was published in the Trade Marks Journal for opposition purposes on 01 September 2023 and opposition was later filed by Castle Clothing Limited ('the opponent'). The opponent claims that the application offends under Sections 5(2)(b) and 5(4)(a) of the Trade Marks Act 1994 ('the Act').

3) Under section 5(2)(b) of the Act, the opponent relies upon the following two trade mark registrations:

- **UKTM 3821754 ('754)**

TUFFSTUFF

Class 9: Protective work clothing; but not including protective footwear.

Class 25: Work clothing, including work jackets, work trousers, work shorts, work hosiery, work shirts, overalls, hooded tops and body warmers; but not including footwear.

Filing date: 19 August 2022

Date of entry in register: 18 November 2022

- UKTM 3277303 ('303)



(Series of 2 marks)

Class 9: Protective work clothing; but not including protective footwear.

Class 25: Work clothing, including work jackets, work trousers, work shorts, work hosiery, work shirts, overalls, hooded tops and body warmers; but not including footwear.

Filing date: 14 December 2017

Date of entry in register: 23 March 2018

4) It is claimed that the respective goods are identical¹ or at least highly similar² and the respective marks are similar such that there exists a likelihood of confusion under section 5(2)(b) of the Act.

5) The trade marks relied upon by the opponent are 'earlier marks' in accordance with section 6 of the Act. As mark '303 completed its registration procedure more than five years prior to the date on which the contested application was filed, it is, in principle, subject to the proof of use conditions, as per section 6A of the Act. The opponent made a statement of use in relation to all goods relied upon for that mark. Mark '754 is not subject to proof of use.

¹ As per the statement of grounds, [7]

² As per the opponent's submissions of 19 June 2024, [17]

6) The opponent also claims to have acquired goodwill under the following sign:



The sign shown above is said to have been used throughout the UK since 2020 in relation to the same goods as those covered by class 25 of earlier marks '754 & '303. The opponent claims that there will be a misrepresentation causing damage to its goodwill.

7) The applicant filed a counterstatement. It does not put the opponent to proof of use³. It says nothing about the claimed similarity/identity between the respective goods. It denies, with explanation, the opponent's other claims. I will not set out here all of the applicant's arguments, but I have borne them in mind and may refer to certain of them during the course of this decision.

8) The opponent is represented by Novagraaf UK; the applicant is without legal representation. The opponent filed evidence in the form of a witness statement in the name of Robert John Ansell with seven exhibits. The applicant filed written submissions⁴. Neither party requested a hearing; both filed submissions in lieu⁵. I now make this decision based on the papers before me.

DECISION

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. Hence, this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

³ As per Q7 on Form TM8 where the applicant has ticked 'No'.

⁴ Dated 14 May 2024

⁵ The opponent's submissions are dated 19 June 2024; the applicant's are dated 24 June 2024

Section 5(2)(b)

10) This section of the Act states:

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

(a)....

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.

5A 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.”

11) The leading authorities which guide me are from the Court of Justice of the European Union ('CJEU'): *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 C-120/04, *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 goods to be compared are:

Opponent's goods	Applicant's goods
<p>Class 9: Protective work clothing; but not including protective footwear.</p> <p>Class 25: Work clothing, including work jackets, work trousers, work shorts, work hosiery, work shirts, overalls, hooded tops and body warmers; but not including footwear.</p>	<p>Class 25: Work wears, Work Jackets, T-shirts, Polo Shirts, Hoodies, Work Wear Clothing; Mens Fashion Clothing; Womens Fashion Clothing.</p>

13) The applicant has said nothing about the claimed identity/high degree of similarity between the respective goods. Accordingly, it is taken to have admitted the opponent's claim in that respect⁶. I therefore proceed on the basis that the respective goods in class 25 are identical or at least highly similar. In any event, I would have come to the same conclusion myself, had I been required to assess the degree of similarity between the goods. The overlapping nature, purpose, methods of use, users and trade channels means that the respective goods are highly similar, if not identical.

⁶ See, for example, the decision of the Appointed Person in *Skyclub*, BL O/044/21, [11] –[29]

Average consumer and the purchasing process

14) It is necessary to determine who the average consumer is for the respective goods and the manner in which they are likely to be selected. 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 words “average” denotes that the person is typical. The term “average” does not denote some form of numerical mean, mode or median.”

15) The average consumer for respective goods in class 25 is the general public. The purchasing act will be primarily visual because the goods will be selected after perusal of racks/shelves in high-street stores or from photographs/images on Internet websites or in catalogues. That is not to say, though, that the aural aspect should be ignored since the goods may sometimes be the subject of discussions with sales representatives, for example. The cost of the goods is likely to vary. However, factors such as size, material, comfort/fit, aesthetics and/or suitability for purpose are likely to be taken into account by the consumer regardless of cost. Generally speaking, I find that a medium degree of attention is likely to be paid during the purchase.

Comparison of marks



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

CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

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

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

17) Insofar as the opponent’s series of two marks is concerned, if the opponent fails on the basis of the mark with the black rectangular background, it would also, obviously, fail based upon the other mark in the series. I will, therefore, only assess the likelihood of confusion between the former mark in the series and the contested mark. The marks to be compared are, therefore, as follows:

Opponent’s marks	Applicant’s mark
<p data-bbox="204 1570 363 1603">Mark ‘303:</p>  The logo for 'TUFF STUFF WORKWEAR' features the words 'TUFF STUFF' in a bold, red, italicized font with a white outline. Above the 'U' in 'STUFF' is a red circular emblem containing a white silhouette of a hand holding a tool. Below 'TUFF STUFF' is the word 'WORKWEAR' in a smaller, white, sans-serif font. The entire logo is set against a black rectangular background.	 The logo for 'TUFF WORX' features the words 'TUFF WORX' in a bold, red, italicized font with a white outline. The 'X' is significantly larger and more stylized than the other letters. The logo is set against a black rectangular background with two horizontal orange lines above and below the text.

Mark '754:	
TUFFSTUFF	

Overall impressions

18) The applicant's mark consists of the words 'TUFF' and 'WORX' where the letter 'X' is larger than the other letters in the mark and presented in red. The letters 'WOR' are presented in white and the letters 'TUFF' are in orange. Above and below those words are parallel orange lines. All those elements are presented on a black rectangular background. None of the elements of the mark are negligible. However, it is the words 'TUFF WORX' which dominate the overall impression; all the other elements, including the stylisation and colours, play a lesser role.

19) Turning to the opponent's marks, mark '303 consists of the words 'TUFF', presented in white, and 'STUFF', presented in red. The initial 'S' of 'STUFF' is elongated so that it extends above the rest of the word 'STUFF' and underneath the preceding word, 'TUFF'. Above the word 'STUFF' is the image of, what appears to be, a castle turret within a semi-circle (also presented in red). Underneath the word 'STUFF', in smaller font is the word 'WORKWEAR', presented in white. All of those elements are presented on a black rectangular background. None of the elements in the mark are negligible. I find that it is the words 'TUFFSTUFF' which dominate the overall impression; the other elements, including the stylisation and colours, play a lesser role. Of all the elements, the word 'WORKWEAR' carries the least weight owing to its entirely descriptive nature and subordinate positioning. Insofar as mark '754 is concerned, this consists of the plain words 'TUFFSTUFF'. I find that the overall impression of that mark lies in the mark as a whole.

Comparison between the contested mark and mark '303

20) Visually, both marks include the word 'TUFF' at the beginning. The word 'Worx'

and the parallel lines in the contested mark are not present in the earlier mark. The word 'Stuff' (with the elongated 'S') in the earlier mark is not present in the contested mark and neither is the castle turret within the semi-circle or the word 'WORKWEAR'. Both marks contain a black rectangular background. The fact that both marks make use of the colours red and white (albeit in different ways) also creates some degree of visual similarity between them; the use of orange in the applicant's mark is a point of difference. I find a medium degree of visual similarity between the marks.

21) Aurally, the contested mark is likely to be pronounced in the same way as the words 'tough works'. The earlier mark is likely to be pronounced in the same way as the words 'tough stuff'. I consider it unlikely that the 'workwear' element will be vocalised. However, even allowing for vocalisation of the latter word, I still consider the marks to have around a medium degree of aural similarity, bearing in mind the general rule of thumb that it is usually the first part of marks that will have the greatest impact on the perception and the first part of the marks is aurally identical.

22) Conceptually, the contested mark will be perceived as meaning the same as the words, 'tough works'. The earlier mark will be perceived in the same way as the words 'tough stuff'. Both marks therefore describe something 'tough', albeit that the subject in the earlier mark is 'stuff' whilst in the later mark it is 'works'. The word 'workwear' is entirely descriptive; as such, it has little role to play in differentiating the marks from a conceptual perspective. The device element in the earlier mark brings to mind the concept of a castle/castle turret, creating a degree of conceptual difference. Overall, bearing in mind the common reference to something which is 'tough', I find around a medium degree of conceptual similarity between the marks.

Comparison between the contested mark and mark '754

23) Visually, both marks include the word 'TUFF' at the beginning. The word 'Worx', the parallel lines and the black rectangular background in the contested mark are not present in the earlier mark. The word 'STUFF' in the earlier mark is not present in the contested mark. While the contested mark is presented in various colours and the earlier mark is not in colour, I bear in mind that the earlier mark is a plain word mark

which could notionally be used in colour (orange or red, for example). I find a medium degree of visual similarity between the marks.

24) Aurally, the contested mark will be pronounced as 'tough works'. The earlier mark will be pronounced as 'tough stuff'. I find the marks to have a medium degree of aural similarity.

25) Conceptually, the contested mark will be perceived as meaning the same as the words, 'tough works'. The earlier mark will be perceived in the same way as the words 'tough stuff'. Both marks therefore describe something 'tough', albeit that the subject in the earlier mark is 'stuff' whilst in the later mark it is 'works'. Overall, bearing in mind the common reference to something which is 'tough', I find a medium degree of conceptual similarity between the marks.

Distinctive character of the earlier marks

26) The distinctive character of the earlier marks must be considered. The more distinctive each of them is, either by inherent nature or by use, the greater the likelihood of confusion between each of them and the contested mark (*Sabel BV v Puma AG*). 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 *WindsurfingChiemsee 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).”

27) Mark ‘754 consists of the plain word ‘TUFFSTUFF’ which will immediately be recognised as two words, ‘TUFF’ and ‘STUFF’, and will be conceptualised as meaning ‘tough stuff’. That is not a particularly distinctive meaning in the context of the relevant goods because it will be perceived as a nod to the goods being hard-wearing. However, the misspelling of ‘tough’ as ‘TUFF’ does elevate the distinctiveness to some degree. I find that ‘TUFFSTUFF’ is inherently distinctive to a below-medium degree.

28) Turning to mark ‘303, the same considerations apply as regards the words ‘TUFFSTUFF’. Those words, of themselves, are inherently distinctive to a below-medium degree. The black rectangular background and the word ‘workwear’ do not elevate the mark’s distinctiveness because the former merely acts as a backdrop for the other elements and the latter is entirely descriptive. However, the stylised ‘S’ and the castle turret do elevate the mark’s distinctiveness somewhat. Overall, I find the earlier mark to have a medium degree of inherent distinctiveness. I do not consider that the particular colours used in the mark serve to elevate its distinctiveness to any greater degree than this.

29) I now turn to consider whether the inherent distinctiveness of either mark had been enhanced by the date on which the contested mark was filed i.e. 15 August 2023. Mr Ansell provides the following relevant evidence:

- The opponent has been using TUFFSTUFF since May 2007.
- The opponent’s goods are sold through various retailers throughout the UK such as Amazon, Best Workwear and Workwear Express. Prints are provided

showing use on some retailer websites prior to the relevant date in relation to various items of clothing (primarily workwear).⁷

- Various images of how the marks have been used on the goods themselves and marketing materials are provided.⁸ An example of use is shown below:



- Approximate sales figures are provided for the years 2007 – 2023. Sales in 2017 amounted to over £3 million. That figure increased each year over the following five years, resulting in sales of over £7.5 million in 2022.
- Examples of invoices are provided. Goods in the invoices are described as ‘TUFFSTUFF’ jackets, trousers etc. Pre-2021 invoices also show use of the following mark:



Invoices dated from 2021 show use of the following mark (in addition to goods listed as ‘TUFFSTUFF’ in the product descriptions):

⁷ Exhibit RJA2

⁸ Exhibit RJA3



- Examples of marketing activities are provided.⁹ These are in the nature of sponsorship of various sports individuals/teams, exhibition stands and advertisements in magazines/brochures. The latter are not clearly dated.
- The following table shows the marketing and advertising expenditure over recent years:¹⁰

Year	Cost of labels, letterheads, show cards, etc	Cost of advertising	Other costs
2015-2020	18000	418000	26000
2021	4700	130000	9500
2022	3700	190000	10000

- The opponent's Facebook and Instagram pages have 5.2k followers and 5.8k followers respectively. It is not clear whether these are current figures (as of the date of Mr Ansell's statement) or whether they represent the number of followers at the relevant date of 15 August 2023.¹¹
- Mr Ansell provides various 'reviews from stakeholders'.¹² These are in the form of letters which have been solicited for the purpose of these proceedings. They are from various retailers/distributors of the opponent's goods and a radio station who regularly advertises the opponent's goods, providing their views on the 'excellence' and high quality of the opponent's goods.

⁹ Exhibit RJA5

¹⁰ Ansell, [16]

¹¹ Exhibit RJA7

¹² Exhibit RJA6

30) Having reviewed all of Mr Ansell's evidence, I find that it is insufficient to show that either earlier mark's distinctiveness has been enhanced through use. In particular, the advertising/marketing spend appears to me to be reasonably modest and the examples of such marketing activities do not strike me as particularly extensive or wide-reaching. Some of it is also undated and therefore I cannot tell whether such examples are from before the relevant date. Further, although the annual sales figures have been healthy, they are not so large as to clearly indicate that the opponent occupies a significant part of the relevant market for such goods. Without more information in this regard, I cannot tell what the opponent's share is in that market. The followers for the opponent's social media pages also appear to be small and the stakeholder reviews do little to assist the opponent.

Likelihood of confusion

31) I must now feed all of my earlier findings into the global assessment of the likelihood of confusion, keeping in mind the following factors: i) the interdependency principle, whereby a lesser degree of similarity between the goods may be offset by a greater similarity between the marks, and vice versa (*Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*); ii) the principle that the more distinctive each of the earlier marks is, the greater the likelihood of confusion between each of them and the contested mark (*Sabel BV v Puma AG*), and; iii) the factor of imperfect recollection i.e. that consumers rarely have the opportunity to compare marks side by side but must rather rely on the imperfect picture that they have kept in their mind (*Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V.*).

Direct confusion

32) I will first consider the likelihood of direct confusion between each earlier mark and the contested mark. This type of confusion arises when the average consumer mistakes one mark for the other.

33) Dealing first with earlier mark '303, the respective goods are identical or, at least, highly similar. The marks are visually similar to a medium degree and aurally and conceptually similar to around a medium degree. The earlier mark is of medium

distinctiveness, with the common elements between the marks being of below-medium distinctiveness. Weighing all these factors, I find that an average consumer paying a medium degree of attention is unlikely to mistake one mark for the other, notwithstanding the potential for imperfect recollection. There is no likelihood of direct confusion.

34) As regards earlier mark '754, the respective goods are identical or, at least, highly similar. The marks are visually, aurally and conceptually similar to a medium degree. The earlier mark is of below-medium distinctiveness. Weighing all these factors, I find that an average consumer paying a medium degree of attention is unlikely to mistake one mark for the other, notwithstanding the potential for imperfect recollection. There is no likelihood of direct confusion.

Indirect confusion

35) I will now consider the likelihood of indirect confusion. In this connection, I bear in mind that in *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10 (*L.A. Sugar*), Mr Iain Purvis Q.C. (as he then was), sitting 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)".

36) I also keep in mind that in *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ referred to the comments of James Mellor QC (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at [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. Furthermore, it is not sufficient that a mark merely calls to mind another mark: *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17. This is mere association not indirect confusion.

37) I bear in mind that the categories listed above in *L.A. Sugar* are, of course, not an exhaustive list of all the ways in which indirect confusion can occur; they are merely examples of the way in which it tends to occur.

38) Having weighed all relevant factors, I find that a significant proportion of average consumers, when faced with the contested mark will believe that it is a brand extension of each of the earlier marks. In reaching this conclusion I have borne in mind that the most dominant element of both earlier marks is the words 'TUFFSTUFF' and the most dominant element of the contested mark is the words 'TUFF WORX'. It seems to me that the change of the word 'STUFF' to the word 'WORX' (which will be perceived as

indicating that the goods are for work purposes) and the different stylisation will be put down to the relevant marks denoting different ranges from the same/linked undertaking(s). There is a likelihood of indirect confusion in respect of both earlier marks. **The opposition under section 5(2)(b) of the Act succeeds.**

Section 5(4)(a)

39) I cannot see that the opponent is in any stronger position under this section of the Act. Bearing in mind the signs and goods relied upon under this ground, and that the opponent has already succeeded under section 5(2)(b) of the Act, I see no benefit in also considering the claim of passing off.

OVERALL OUTCOME

40) The opposition succeeds.

COSTS

41) The opponent has been successful and is entitled to an award of costs. Using the guidance in Tribunal Practice Notice 1/2023, I award the opponent costs on the following basis:

Official fee (Form TM7)	£200
Preparing a statement and considering the other side's statement	£250
Preparing and filing evidence	£600
Preparing submissions in lieu	£350
Total:	£1400

42) I order PIONEER TEX LTD to pay Castle Clothing Limited the sum of **£1400**. This sum is to be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 30th day of June 2025

**Beverley Hedley
For the Registrar**