

**O/0603/26**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION NO. UK00004048314**

**BY UWATCH LTD**

**TO REGISTER THE FOLLOWING TRADE MARK:**



**IN CLASS 9**

**AND**

**AN OPPOSITION THERETO UNDER NO. 449262**

**BY RING AUTOMOTIVE LIMITED**

## BACKGROUND AND PLEADINGS

1. On 7 May 2024, uWatch Ltd (“the applicant”) applied to register the trade mark shown on the cover page of this decision, in the UK. The application was published for opposition purposes on 24 May 2024 and protection is sought for the following goods:

Class 9      Electronic security systems for home network; Personal security alarms; Home automation systems; Security cameras; Security alarms; Home automation software; Home automation hubs; Security software; Home remote controls; Security alarm systems [other than for vehicles]; Security surveillance apparatus; Smart home hubs; Safety, security, protection and signalling devices.

2. On 23 August 2024, the application was opposed by Ring Automotive Limited (“the opponent”) based upon section 5(2)(b) of the Trade Marks Act 1994 (“the Act”).<sup>1</sup> Under section 5(2)(b) of the Act, the opponent relies upon the following trade marks:

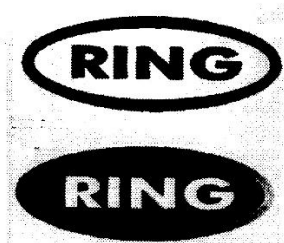
RING

UKTM no. 917995321

Filing date: 3 December 2018

Registration date: 19 September 2019

(“the First Earlier Mark”)



UKTM no. 1578344

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<sup>1</sup> The opponent also originally relied upon section 5(4)(a) of the Act. That ground was deemed withdrawn due to the opponent’s failure to file evidence. The opponent was given an opportunity to challenge that preliminary view but did not do so. Indeed, in its written submissions, it confirmed that it was proceeding on the basis of section 5(2)(b) only.

(series of 2)

Filing date: 13 July 1994

Registration date: 13 October 1995

("the Second Earlier Mark")



UKTM no. 902990141

Filing date: 20 December 2002

Registration date: 19 January 2005

("the Third Earlier Mark")



UKTM no. 918037430

Filing date: 18 March 2019

Registration date: 7 August 2019

("the Fourth Earlier Mark")

(together "the earlier marks")

3. Under section 5(2)(b) of the Act, the opponent relies upon some of the goods for which the earlier marks are registered, as set out in the Annex to this decision. The opponent claims that the marks are similar, and the goods are similar, with the result that there is a likelihood of confusion.

4. The applicant filed a counterstatement denying the ground of opposition.

5. Neither party requested a hearing, and only the opponent filed written submissions in lieu. This decision is taken following careful consideration of the papers filed.

## **REPRESENTATION**

6. The applicant is represented by Robertson IP Limited.

7. The opponent is represented by HGF Limited.

## **EVIDENCE AND SUBMISSIONS**

8. The applicant filed evidence in the form of the witness statement of Christopher John Robertson dated 24 March 2025, which is accompanied by 6 exhibits (CJR1 to CJR6). Mr Robertson is an intellectual property consultant and director of the applicant's representative firm.

9. The opponent filed written submissions in lieu of a hearing on 16 June 2025.

## **RELEVANCE OF EU LAW**

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

## **DECISION**

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

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

(a)...

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

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

12. Section 5A of the Act is as follows:

“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.”

13. Given their earlier filing dates, the trade marks upon which the opponent relies qualify as earlier trade marks pursuant to section 6 of the Act. As the Second, Third and Fourth Earlier Marks had been registered for more than 5 years at the filing date of the application in issue they are subject to the use provisions in section 6A of the Act. However, the applicant did not request proof of use, and so the opponent can rely upon all of the earlier marks and the goods identified within their specifications.

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

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

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

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

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

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

(f) and beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite 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 greater 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; and

(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. 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 of its judgment that:

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

16. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, for assessing similarity were:

- (a) The respective uses of the respective goods or services;
- (b) The respective users of the respective goods or services;
- (c) The physical nature of the goods or acts of service;
- (d) The respective trade channels through which the goods or services reach the market;
- (e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be, found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;
- (f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance

whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

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

“29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 *Institut for Lernsysteme v OHIM – Educational Services* (ELS) [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark.”

18. Another factor in assessing similarity is to consider the extent to which the goods at issue may be regarded as “complementary”, which case law describes as meaning that “...there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think the responsibility for those goods lies with the same undertaking.”<sup>2</sup>

19. Specifications should be scrutinised carefully and terms should not be given a wide construction, but should be confined to the substance or core of their possible meanings.<sup>3</sup> For the purposes of assessing similarity, it is permissible to group specified terms together where they are sufficiently comparable in essentially the same way for essentially the same reasons.<sup>4</sup>

*Electronic security systems for home network; Security alarm systems [other than for vehicles].*

20. These terms both cover home security systems. These goods are likely to be sold through the same trade channels as “motion sensitive security lights” in the

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<sup>2</sup> *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06

<sup>3</sup> See, for instance, *Avnet Incorporated v Isoact Limited* [1998] FSR 16, Jacob J (as he then was) at [19].

<sup>4</sup> See *Separode Trade Mark* (BL O/399/10)

specifications of the First and Fourth Earlier Marks and “infrared detection and signalling apparatus” in the specifications of the earlier marks. This is because the same businesses are likely to sell both electronic security systems for use in the home, and various other security-related items such as infrared detectors or motion sensitive lights. The users will plainly be the same. The goods overlap in purpose as they are all intended to secure the home. The goods are likely to be in competition, as you may either choose to purchase a complete electronic system or purchase individual security items. In my view, these goods are similar to a medium degree.

*Personal security alarms.*

21. My understanding is that this terms refers to a small portable device which emits a loud noise when activated. The purpose of this device is protection/security for the user, which will overlap with the “motion sensitive security lights” in the specifications of the First and Fourth Earlier Marks and “infrared detection and signalling apparatus” in the specifications of the earlier marks. These goods fulfil the purpose of keeping the individuals within the property safe which overlaps in purpose with the applicant’s goods, although they also have the purpose of keeping the building (and its contents) safe, which is a point of difference. The method of use and nature of the goods differ. There may be an overlap in trade channels, and the users will plainly overlap. In my view, there is unlikely to be competition between these goods because the applicant’s goods are focused on protection of the individual only (often when they are outside of the home), which is not an alternative for the goods in the specifications of the earlier marks. In my view, the goods are similar to between a low and medium degree.

*Home automation systems; Home automation software; Home automation hubs; Smart home hubs.*

22. My understanding is that these terms relate to systems and software which enable individuals to monitor, control and automate devices within their home. In my view, these goods are identical to “lighting controls” in the specifications of the First and Fourth Earlier Marks on the principle outlined in *Meric*. If I am wrong in that finding, then there is a clear overlap in purpose as both are intended for controlling lighting in the home (amongst other things, in the case of the applicant’s goods), an overlap in

method of use as both could include software apps which enable lighting to be turned on and off and an overlap in user. There could also be an overlap in trade channels. The goods are similar to at least a high degree.

*Security cameras; security alarms.*

23. These goods are broad enough to encompass security cameras and alarms used in any setting (including those for motor vehicles). Consequently, I find these terms to be identical on the principle outlined in *Meriç* to “safety, security and protection devices for motor vehicles” in the specifications of the First and Fourth Earlier Marks.

*Security software.*

24. In my view, this term is broad enough to encompass “downloadable mobile application software in relation to vehicle safety” and “downloadable mobile software to enable users to track multiple vehicles within a fleet” in the specifications of the First and Fourth Earlier Marks. This is because both of these terms could include software used for ensuring the security of the vehicle itself. Consequently, I find them to be identical on the principle outlined in *Meriç*. If I am wrong in that finding, then the goods will overlap in nature, method of use, trade channels and user and will be highly similar.

*Home remote controls.*

25. To my mind, this term covers any remote controls that are used within the home. This would include remote dimmers for lighting. Consequently, I find these goods to be identical on the principle outlined in *Meriç* with “electric light dimmers” in the specification of the First and Fourth Earlier Marks.

*Security surveillance apparatus; Safety, security, protection and signalling devices.*

26. These goods are identical on the principle outlined in *Meriç* to “infrared detection and signalling apparatus” in the specifications of the earlier marks and “safety, security and protection devices for motor vehicles” in the specifications of the First and Fourth Earlier Marks.

## **The average consumer and the nature of the purchasing act**

27. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purposes of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods and services in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97.

28. In *Iconix* the Supreme Court approved the comments of Arnold LJ in *Lidl Great Britain Ltd & Anor v Tesco Stores Ltd & Anor (Rev1)* [2024] EWCA Civ 262, where he pointed out that:

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

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

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

29. The average consumer for the goods will be either a member of the general public or a business user. The goods are likely to vary in cost (from remote controls and dimmers which might be very low cost, to home security systems which might be more expensive). The goods are unlikely to be particularly frequent purchases. The average consumer is likely to consider factors such as functionality, performance and/or compatibility with other systems. In my view, at least a medium degree of attention will be paid during the purchasing process, but where security is concerned, the level of attention paid may be higher.

30. The goods are likely to be selected following perusal of signage or product packaging on websites and in physical retail premises. Consequently, visual considerations will dominate the purchasing process. However, I do not discount an aural component to the purchase given that advice may be sought from retail assistants, and/or word of mouth recommendations may play a part.

### **Comparison of trade marks**

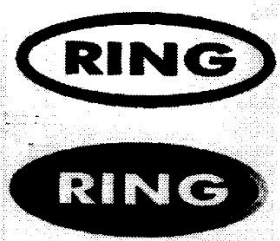
31. It is clear from *Sabel* that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the trade marks must be assessed by reference to the overall impression created by the trade 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.”

32. 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.

33. The respective trade marks are shown below:

| Opponent's trade marks                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Applicant's trade mark                                                              |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|
| <p data-bbox="336 913 655 1003">RING<br/>(the First Earlier Mark)</p>  <p data-bbox="312 1350 679 1440">(series of 2)<br/>(the Second Earlier Mark)</p>  <p data-bbox="330 1671 662 1704">(the Third Earlier Mark)</p>  <p data-bbox="320 1960 671 1993">(the Fourth Earlier Mark)</p> |  |

### Overall Impression

34. The First Earlier Mark consists of the word RING. There are no other elements to contribute to the overall impression which lies in the word itself.

35. The Second, Third and Fourth Earlier Marks all consist of the word RING in a border (oval in the Second and Third Earlier Marks and cloud-shaped in the Fourth Earlier Mark).<sup>5</sup> The eye is naturally drawn to the element of the mark that can be read. As such, the word RING plays the greatest role in the overall impression, with the borders playing a lesser role.

36. The applicant's mark consists of the word RING above the word FENCE. The first letter of each word is presented in white, and the remaining letters are in grey. Above the letters are a red dot and two curved red lines. All of these elements are presented within a green border on a black rectangular background. Again, the eye is naturally drawn to the elements of the mark that can be read, and so the words RING FENCE play the greatest role in the overall impression. The use of colour, the dot/line device and the border/background all play a lesser role.

### Visual Comparison

37. The word RING, which makes up the entirety of the First Earlier Mark, is replicated in the applicant's mark. The word FENCE and the various device elements in the applicant's marks all act as points of visual difference. As noted by the opponent, the common word RING will be understood as the first text element of the applicant's mark as it appears above the word FENCE, which is an important factor given that the average consumer tends to pay more attention to the beginning of the mark than the end.<sup>6</sup> I bear in mind that the First Earlier Mark is word only, and so could be used in any font and colour. In my view, the marks share between a low and medium degree of visual similarity.

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<sup>5</sup> I note that the Second Earlier Mark is a series of 2, but as nothing will turn on the individual marks within the series, I will proceed on the basis of the first of the two marks.

<sup>6</sup> *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

38. The Second, Third and Fourth Earlier Marks also coincide with the applicant's mark in the presence of the word RING. The word FENCE and the dot/line device in the applicant's mark are points of visual difference. All of these marks also have borders, albeit they are different shapes. I bear in mind that the Second, Third and Fourth Earlier Marks are registered in greyscale and so could be used in any colour. In my view, the marks are visually similar to a medium degree.

#### Aural Comparison

39. All of the earlier marks will be pronounced identically (i.e. as the dictionary word RING) and so the same comparison will apply to them all. The only point of aural difference with the applicant's mark is the word FENCE, which has no counterpart in the earlier marks. In my view, the marks are aurally similar to a medium degree.

#### Conceptual Comparison

40. The earlier marks all consist of the word RING, with the Second, Third and Fourth Earlier Marks surrounded by borders of different shapes. The word RING will be attributed one of its various meanings in the English language (such as to call someone, a band to be placed on the finger or the sound a bell makes). By contrast, the words RING FENCE are, in my view, likely to be understood (particularly in the context of security related goods) as referring to the enclosure of a particular area of land.<sup>7</sup> Whilst I recognise that it also has a financial meaning, this seems less likely to be in the mind of the average consumer in the context of the particular goods in issue.<sup>8</sup> I recognise the opponent's submission that there is no hyphen between the words in the applicant's mark and that they appear one on top of the other (rather than side by side), but I do not consider that this will overcome the meaning of the two words together being apparent for the average consumer. The word RING qualifies the word FENCE. I recognise that in relation to the Fourth Earlier Mark which has a cloud-shaped border, this may also evoke the meaning of a cloud and so there is an

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<sup>7</sup> Exhibit CJR4

<sup>8</sup> See, for example, exhibit CJR2

additional point of conceptual difference. If the dot/line device in the applicant's mark is understood as being indicative of wireless communication, as suggested by the applicant, then that will be an additional point of difference. In my view, the marks are conceptually dissimilar.

41. In reaching this conclusion, I have borne in mind the applicant's position that the highlighting of the letters R and F in the applicant's mark will bring to mind the concept of "radio frequency". For the avoidance of doubt, I see no basis for that conclusion given that the letters will be understood as the first letter of the words RING and FENCE. Consequently, I dismiss that line of argument.

### **Distinctive character of the earlier trade marks**

42. 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-2779, 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).”

43. 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 distinctive character of a mark can be enhanced by virtue of the use that has been made of it.

44. I note that the applicant has filed evidence of other trade marks which are currently on the register in class 9 and which contain (or consist of) the word RING.<sup>9</sup> It is well-established that the mere presence of trade marks on the Register does not assist in demonstrating that the distinctive character of a particular mark is weakened. This is because, absent further evidence, it is impossible to know how or to what extent the average consumer has come into contact with those marks. In this regard, I also note a reference by the applicant to well known third parties that use the mark RING in this sector. However, no evidence has been filed to support that claim and I do not need to consider it any further.

45. The First Earlier Mark consists of the word RING. This is an ordinary dictionary word with which the average consumer will be familiar. In respect of the security-related goods, particularly alarms, this word will be understood as a reference to the sound that might be made when an alert is issued. In my view, it is distinctive to only a low degree. For any non-security related goods, I find it to be distinctive to a medium degree as it will not be descriptive or allusive for those goods. I do not find that the border/font used in the Second, Third and Fourth Earlier Marks materially increases their distinctiveness and so the same finding applies.

46. In relation to enhanced distinctiveness, the opponent has filed no evidence. In its written submissions in lieu, the opponent states:

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<sup>9</sup> Exhibit CJR6

“36. Secondly, the Opponent has used the “RING” trade mark throughout the UK since as early as 1974. Through such longstanding use, it has accrued a substantial amount of goodwill and reputation in the “RING” trade mark. The Opponent therefore submits that the Earlier Registrations enjoy an enhanced level of distinctiveness through the Opponent’s longstanding use of the same throughout the UK since 1974. This statement of longstanding use was not disputed by the Applicant, and must therefore be inferred as acceptance.”

47. I have reviewed the opponent’s statement of grounds and there is no reference to a pleading of enhanced distinctiveness. It is true, that under the section 5(4)(a) heading in the statement of grounds, the opponent claims to have used the sign relied upon since “as early as 1974” and claims to have “significant goodwill”. However, absent an actual claim for enhanced distinctiveness, I do not consider that the applicant can have been taken to have made any admission in that regard. Even if the applicant could be said to have admitted goodwill, that does not automatically equate to an admission of enhanced distinctiveness (which is an entirely different matter). Consequently, in the absence of evidence, I find there to be no enhanced distinctiveness.

### **Likelihood of confusion**

48. 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 them and the goods down to the responsible undertaking 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 goods may be offset by a greater degree of similarity between the marks, and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the earlier marks, 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.

49. I have found as follows:

- a. The goods vary from being similar to between a low and medium degree to identical.
- b. The average consumer for the goods will include members of the general public and business users, who will pay at least a medium degree of attention during the purchasing process (although it may be higher where security is concerned).
- c. The purchasing process is predominantly visual, although I do not discount an aural component.
- d. The First Earlier Mark and the applicant's mark are visually similar to between a low and medium degree, aurally similar to a medium degree and conceptually dissimilar.
- e. The Second, Third and Fourth Earlier Marks and the applicant's mark are visually and aurally similar to a medium degree and conceptually dissimilar.
- f. The earlier marks are inherently distinctive to either a low degree, or a medium degree, depending on the goods.

50. I have reviewed the decisions of this Tribunal referred to by the opponent in its written submissions in lieu. In my view, they can all be distinguished from the present case because none of the marks in those cases were found to have a unitary meaning, as is the case here for the words RING FENCE in the applicant's mark (as discussed above). Consequently, I do not consider that these cases assist the opponent.

51. Given the differences between the marks, I do not find it likely that they will be mistakenly recalled or misremembered as each other, even when used on identical

goods. This is because the high point of the similarity between them is medium; in my view, the additional word will not be overlooked, even when the marks are used on identical goods. This is particularly the case given the difference in conceptual meaning that is created by the addition of that word. I bear in mind that conceptual differences may counteract visual and aural similarities,<sup>10</sup> and in this case, where the visual and aural similarity is not strikingly high, the additional difference created by the conceptual meanings of the marks is a further factor pointing away from direct confusion. I find this to be the case even when only a medium (or average) level of attention is paid by the average consumer. In my view, there is no likelihood of direct confusion.

52. I will now consider whether there is a likelihood of indirect confusion. In *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, 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:

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<sup>10</sup> *The Picasso Estate v OHIM*, Case C-361/04 P

- (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)".

53. The common element, being the word RING, is not so strikingly distinctive that the average consumer will expect only one undertaking to be using it (it is distinctive to a medium degree, at best). I also do not consider that the addition of the word FENCE in the applicant's mark, which changes the meaning of the mark as a whole and means that RING no longer retains an independent distinctive role within the mark,<sup>11</sup> is a non-distinctive or descriptive addition as per category (b). It is also not consistent with a sub brand or brand extension as per category (c). Whilst I bear in mind that these categories are not exhaustive, I am unable to identify any other basis upon which indirect confusion would occur, even when the marks are used on identical goods and accounting for the interdependency principle. There is no likelihood of indirect confusion.

## CONCLUSION

54. The opposition fails and, subject to appeal, the application may proceed to registration.

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<sup>11</sup> *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271 (Ch)

## **COSTS**

55. The applicant has been successful and is, therefore, entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 1/2023. Whilst I bear in mind that the applicant filed evidence, it was of limited value and so I have award below the scale minimum. In the circumstances, I award the applicant the sum of **£600**, calculated as follows:

|                                                                          |             |
|--------------------------------------------------------------------------|-------------|
| Preparing a counterstatement and considering the<br>Notice of opposition | £300        |
| Preparing evidence                                                       | £300        |
| <b>Total</b>                                                             | <b>£600</b> |

56. I therefore order Ring Automotive Limited to pay uWatch Ltd the sum of **£600**. This sum is to be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

**Dated this 13<sup>th</sup> day of July 2026**

**S WILSON**

**For the Registrar**

## **ANNEX**

### **The First and Fourth Earlier Marks**

#### **Class 9**

Electrical and electronic apparatus and instruments for motor vehicles; infrared detection and signalling apparatus; safety, security and protection devices for motor vehicles; apparatus and instruments or switching, regulating or controlling electricity for vehicles; lighting controls; electric light dimmers; electric light switches; electric warning lights; helmet safety lights; motion sensitive security lights; security lights for outdoor use; fire extinguishers; protective and safety equipment; parts and fittings for the aforesaid goods; downloadable mobile application software in relation to vehicle safety; downloadable mobile software to enable users to track multiple vehicles within a fleet.

### **The Second Earlier Mark**

#### **Class 9**

Apparatus and instruments for automobiles; infra red detection and signalling apparatus; parts and fittings for the aforesaid goods.

### **The Third Earlier Mark**

#### **Class 9**

Electrical and electronic apparatus and instruments for motor vehicles; infrared detection and signalling apparatus; parts and fittings for all the aforesaid goods.