

BL O/0667/25

TRADE MARKS ACT 1994

**IN THE MATTER OF
TRADE MARK APPLICATION NO. 3931062
BY FIXFIRM LIMITED TO REGISTER AS A TRADE MARK:**

Tektite

IN CLASS 6

AND

**IN THE MATTER OF OPPOSITION THERETO UNDER NO. 443825
BY ROLAND KEMMER**

BACKGROUND AND PLEADINGS

1. On 07 July 2023, Fixfirm Limited (“the Applicant”) applied to register the trade mark displayed on the cover page of this decision, under number 3931062 (“the Applicant’s mark”). It was accepted and published in the Trade Marks Journal on 28 July 2023 in respect of the following goods:

Class 6: Screws, nails, fastenings and fixings for use principally with metal, and all made of metal; Metal building materials; common metals and their alloys; ironmongery, small items of metal hardware; Fastening parts for building; fastening materials of metal, not included in other classes; goods of common metal not included in other classes; Winged screws (fastenings); Bolts; fastening and anchoring devices and parts and fittings therefor; wall tiles, nuts, washers, studs, and screws; all being in the nature of bolts or for use with bolts and all made wholly or principally of common metal; all included in Class 6.
2. On 26 October 2023, the Applicant’s mark was opposed by Roland Kemmer (“the opponent”). The opposition is brought under section 5(2)(b) of the Trade Marks Act 1994 (“the Act”) and is directed against all of the Applicant’s goods.
3. The Opponent relies upon the following International Registration:

TecTake

International Registration designating the UK no. WO0000001328369

UK designation date: 19 September 2018

Protection conferred date: 26 March 2019

International Registration Date: 07 April 2016

Relying on the following goods only:

Class 6: Common metals and their alloys; metal building materials; transportable buildings of metal; materials of metal for railway tracks; non-electric cables and wires of common metal; ironmongery, small items of metal hardware; pipes and tubes of metal; safes; ores; gutter pipes of metal; bicycle parking installations of metal; branching pipes of metal; aluminium; aluminium wire; aluminium foil; anvils; anchors; mooring buoys of metal; tie plates; jets of metal; fittings of metal for compressed air ducts; reinforcing materials of metal for machine belts; reinforcing materials of metal for building; outdoor blinds of metal; cabanas of metal; beacons of metal, non-luminous; girders of metal; joists of metal; hoop iron; bindings of metal; wrapping or binding bands of metal; hoop steel; ingots of common metal; building or furniture fittings of nickel-silver; fittings of metal for building; metal building materials; tree protectors of metal; building boards of metal; buildings of metal; clips of metal for cables and pipes; containers of metal for compressed gas or liquid air; tanks of metal; closures of metal for containers; beryllium [glucinium]; broom handles of metal; shuttering of metal for concrete; fittings of metal for beds; bed casters of metal; thread of metal for tying-up purposes; binding thread of metal for agricultural purposes; sheets and plates of metal; lead, unwrought or semi-wrought; lead seals; bolts of metal; vats of metal; iron slabs; letter boxes of metal; bronze; bronzes for tombstones; bronzes [works of art]; letters and numerals of common metal, except type; busts of common metal; cermets; chromium; chrome ores; containers of metal [storage, transport]; roof coverings of metal; roofing of metal; tiles of metal; roof gutters of metal; mooring bollards of metal; monuments of metal; box fasteners of metal; wire of common metal; wire of common metal alloys, except fuse wire; wire cloth; wire rope; telpher cables; ropes of metal; drain pipes of metal; turnstiles of metal; turntables [railways]; window fasteners of metal; penstock pipes of metal; pegs of metal; wall plugs of metal; nozzles of metal; brackets of metal for building; iron, unwrought or semi-wrought; ironmongery; railroad ties of metal; railway points; iron wire; iron ores; ice moulds of

metal; badges of metal for vehicles; locks of metal for vehicles; traps for wild animals; paint spraying booths, of metal; casks of metal; barrels of metal; taps for casks, of metal; springs [metal hardware]; filings of metal; windows of metal; lintels of metal; ironwork for windows; fittings of metal for windows; window stops of metal; shutters of metal; window frames of metal; window casement bolts; sash pulleys; chrome iron; ferrotitanium; tungsten iron; prefabricated houses [kits] of metal; firedogs [andirons]; refractory construction materials of metal; furnace fireguards; statuettes of common metal; flanges of metal [collars]; bottle caps of metal; bottle closures of metal; insect screens of metal; foils of metal for wrapping and packaging; handling pallets of metal; hoppers of metal, non-mechanical; door scrapers; floors of metal; galena [ore]; sheaf binders of metal; hooks of metal for clothes rails; memorial plates of metal; cashboxes of metal; safes; germanium; framework of metal for building; scaffolding of metal; cornices of metal; greenhouses of metal, transportable; greenhouse frames of metal; foundry molds [moulds] of metal; trellis of metal; bars for metal railings; bells; gold solder; monuments of metal for tombs; enclosures of metal for tombs; tombs of metal; vaults of metal [burial]; tomb slabs of metal; tombstone stelae of metal; tombstone plaques of metal; knobs of metal; ferrules of metal for handles; cast iron, unwrought or semi-wrought; celtium [hafnium]; hooks [metal hardware]; anvils [portable]; handcuffs; towel dispensers, fixed, of metal; brazing alloys; house numbers of metal, non-luminous; slings of metal for handling loads; beak-irons [bick-irons]; horseshoe nails; chicken-houses, of metal; identity plates of metal; indium; jalousies of metal; binding screws of metal for cables; cable joints of metal, non-electric; tiles of metal for building; cadmium; platforms, prefabricated, of metal; chimney pots of metal; chimney cowls of metal; boxes of common metal; rope thimbles of metal; flashing of metal, for building; angle irons; roof flashing of metal; couplings of metal for chains; bins of metal; crampons of metal [cramps]; drain traps [valves] of metal; water-pipe valves of metal; clothes hooks of metal; vice claws of metal; pitons of metal [mountaineering equipment]; chill-molds [foundry]; tin cans; baskets of metal; skating rinks [structures of metal]; works of art of common metal;

copper, unwrought or semi-wrought; copper wire, not insulated; copper rings; loading pallets, of metal; loading gauge rods, of metal, for railway wagons; cask stands of metal; anti-friction metal; belts of metal for handling loads; laths of metal; arbours [structures of metal]; duckboards of metal; alloys of common metal; crash barriers of metal for roads; guard rails of metal; ducts of metal for ventilating and air conditioning installations; reinforcing materials of metal for pipes; limonite; rods of metal for brazing; rods of metal for welding; blooms [metallurgy]; magnesium; manganese; porches of metal [building]; masts of metal; wall claddings of metal [building]; knife handles of metal; brass, unwrought or semi-wrought; reinforcing materials, of metal, for concrete; ores of metal; bottles [metal containers] for compressed gas or liquid air; grilles of metal; metal cages for wild animals; chains of metal; metals in powder form; frames of metal for building; rings of metal; rods of metal for brazing and welding; fittings of metal for furniture; furniture casters of metal; mobile boarding stairs of metal for passengers; molybdenum; molybdenum iron; troughs of metal for mixing mortar; sleeves [metal hardware]; nails; identification bracelets of metal, for hospitals; german silver; cables of metal, non-electric; nickel; rivets of metal; niobium; numberplates, of metal; casement windows of metal; furnace screens; materials of metal for funicular railway permanent ways; armour plate; armour plating; posts of metal; palings of metal; paving blocks of metal; advertisement columns of metal; floor tiles, of metal; tile floorings of metal; stops of metal; pyrophoric metals; wheel clamps [boots]; rocket launching platforms of metal; moldings of metal for cornices; bolts, flat; lock bolts; cobalt, raw; pipes of metal; elbows of metal for pipes; pipework of metal; pipe muffs of metal; clips of metal for pipes; junctions of metal for pipes; roller blinds of steel; locks of metal for bags; fittings of metal for coffins; pillars of metal for buildings; containers of metal for storing acids; tubing of metal; manhole covers of metal; strap-hinges of metal; hinges of metal; washers of metal; hooks for slate [metal hardware]; rails of metal; materials of metal for railway tracks; fish plates [rails]; signboards of metal; reels of metal, non-mechanical, for flexible hoses; winding spools of metal, non-mechanical, for flexible hoses; locks

of metal, other than electric; keys; rings of common metal for keys; grease nipples; buckles of common metal [hardware]; spring locks; chimneys of metal; chimney shafts of metal; screws of metal; nuts of metal; vice benches of metal; screw tops of metal for bottles; braces of metal for load handling; pigsties of metal; soldering wire of metal; sills of metal; eye bolts; swimming pools [metal structures]; floating containers of metal; floating docks of metal, for mooring boats; pulleys of metal, other than for machines; scythe handles of metal; safety cashboxes; safety chains of metal; signs, non-luminous and non-mechanical, of metal; signalling panels, non-luminous and non-mechanical, of metal; nickel-silver; silver solder; silicon iron; silos of metal; tension links; wire stretchers [tension links]; stretchers for iron bands [tension links]; stretchers for metal bands [tension links]; meat safes of metal; cotter pins of metal; spurs; ladders of metal; diving boards of metal; bungs of metal; pilings of metal; barbed wire; steel, unwrought or semi-wrought; steel sheets; steel wire; cast steel; steel buildings; balls of steel; steel alloys; steel masts; steel pipes; stables of metal; poles of metal; tinfoil; statues of common metal; steps [ladders] of metal; crampons [climbing irons]; pins [hardware]; ferrules of metal for walking sticks; street gutters of metal; signs, non-luminous and non-mechanical, of metal, for roads; posts of metal for electric lines; props of metal; trays of metal; wainscotting of metal; containers of metal for liquid fuel; tantalum [metal]; telephone boxes of metal; telegraph posts of metal; titanium; tombac; barrel hoops of metal; gates of metal; transportable buildings of metal; transport pallets of metal; machine belt fasteners of metal; belt stretchers of metal; partitions of metal; staircases of metal; stair treads [steps] of metal; stringers [parts of staircases] of metal; ironwork for doors; door fittings, of metal; door bolts of metal; doors of metal; door stops of metal; door panels of metal; door handles of metal; door bells of metal, non-electric; latch bars of metal; door knockers of metal; door openers, non-electric; door frames of metal; latches of metal; runners of metal for sliding doors; door closers, non-electric; common metals, unwrought or semi-wrought; shims; vanadium; valves of metal, other than parts of machines; cladding of metal for construction and building; tinplate

packings; packaging containers of metal; casings of metal for oilwells; sealing caps of metal; silver plated tin alloy; manifolds of metal for pipelines; bells for animals; cattle chains; bird baths [structures of metal]; aviaries of metal [structures]; padlocks; wall linings of metal [building]; water-pipes of metal; tinsplate; white metal; tool handles of metal; tool boxes of metal, empty; tool chests of metal, empty; wind vanes of metal; wind-driven bird-repelling devices made of metal; tungsten; pot hooks of metal; fences of metal; tent pegs of metal; ducts of metal, for central heating installations; ceilings of metal; zinc; tin; zirconium; brads; ferrules of metal.

4. By virtue of its earlier filing date, the above registration constitutes an earlier mark within the meaning of section 6 of the Act. However, as it had not been protected for five years or more at the filing date of the application, it is not subject to the use requirements specified within Section 6A of the Act.
5. In its Form TM7 notice of opposition, the Opponent submits that there is a very close visual and phonetic similarity between the marks, as well as identity, or at least high similarity, between the goods. The Opponent adds that the marks are of the exact same length, with phonetically identical, and visually highly similar respective prefixes 'Tec' and 'Tek'. Further, the Opponent submits that the respective equal length of the marks, that both begin with the phonetically dominant letter 'T', creates at least highly similar syllables in the marks as a whole.
6. The Applicant, in its counterstatement, submits that the marks are conceptually, phonetically and visually dissimilar. It does, though, accept that there is some overlap in the class 6 products due to the broad nature of the Opponent's specification.
7. The Opponent is represented by WP Thompson and the Applicant is unrepresented. Only the Applicant filed evidence and neither party requested a hearing. Both parties filed written submissions in lieu. I make this decision having taken full account of all the papers, referring to them as necessary.

RELEVANCE OF EU LAW

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

EVIDENCE

9. The Applicant's evidence consists of the witness statement of Timothy James Haughton and is accompanied by one exhibit (Appendix A). Mr Haughton is the director of Fixfirm Limited, the Applicant. The evidence consists of a screenshot from the Buildex website and attempts to give details of the use of the word 'Teks' in relation to products known as self-drilling screws.

PRELIMINARY ISSUE

10. At this juncture I find it relevant to comment on the evidence filed by the Applicant. Having considered Appendix A, it appears to me to be of limited use in the assessment of likelihood of confusion in this case, as it merely highlights the use of the word 'Teks' by an Australian company for the name of their own self-drilling screws. There is no information to show how the relevant consumer in these proceedings would understand the word 'Teks'. Additionally, neither the Applicant's, nor the Opponent's mark include the word 'Teks', and I therefore fail to see the relevance of the evidence in this case. Consequently, I will disregard the evidence.

Decision

Section 5(2)(b): legislation and case law

11. The opposition is based upon section 5(2)(b) of the Act which reads 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.”

12. 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.”

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

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

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

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

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

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

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

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

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

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

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

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

Comparison of goods

14. Section 60A of the Act provides:

“(1) For the purpose of this Act goods and services-

(a) are not to be regarded as being similar to each other on the ground that they appear in the same class under the Nice Classification.

(b) are not to be regarded as being dissimilar from each other on the ground that they appear in different classes under the Nice Classification.

(2) In subsection (1), the “Nice Classification” means the system of classification under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, which was last amended on 28 September 1979.”

15. For the purposes of considering the issue of similarity of goods, it is permissible to consider groups of terms collectively where they are sufficiently comparable to be assessed in essentially the same way and for the same reasons (see *Albingia SA v Axis Bank Limited*, BL O/253/18, a decision of the Appointed Person, Professor Phillip Johnson, at paragraph 42).

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

17. The goods to be compared are:

The Applicant’s goods	The Opponent’s goods
<p>Class 6 Screws, nails, fastenings and fixings for use principally with metal, and all made of metal; Metal building materials; common metals and their alloys; ironmongery, small items of metal hardware; Fastening parts for building; fastening materials of metal, not included in other classes; goods of common metal not included in other classes; Winged screws (fastenings); Bolts; fastening and anchoring devices and parts and fittings therefor; wall tiles, nuts, washers, studs, and screws; all being in the nature of bolts or for use with bolts and all made wholly or principally of common metal; all included in Class 6.</p>	<p>Class 6 Common metals and their alloys; metal building materials; transportable buildings of metal; materials of metal for railway tracks; non-electric cables and wires of common metal; ironmongery, small items of metal hardware; pipes and tubes of metal; safes; ores; gutter pipes of metal; bicycle parking installations of metal; branching pipes of metal; aluminium; aluminium wire; aluminium foil; anvils; anchors; mooring buoys of metal; tie plates; jets of metal; fittings of metal for compressed air ducts; reinforcing materials of metal for machine belts; reinforcing materials of metal for building; outdoor blinds of metal; cabanas of metal; beacons of metal, non-luminous; girders</p>

of metal; joists of metal; hoop iron; bindings of metal; wrapping or binding bands of metal; hoop steel; ingots of common metal; building or furniture fittings of nickel-silver; fittings of metal for building; metal building materials; tree protectors of metal; building boards of metal; buildings of metal; clips of metal for cables and pipes; containers of metal for compressed gas or liquid air; tanks of metal; closures of metal for containers; beryllium [glucinium]; broom handles of metal; shuttering of metal for concrete; fittings of metal for beds; bed casters of metal; thread of metal for tying-up purposes; binding thread of metal for agricultural purposes; sheets and plates of metal; lead, unwrought or semi-wrought; lead seals; bolts of metal; vats of metal; iron slabs; letter boxes of metal; bronze; bronzes for tombstones; bronzes [works of art]; letters and numerals of common metal, except type; busts of common metal; cermets; chromium; chrome ores; containers of metal [storage, transport]; roof coverings of metal; roofing of metal; tiles of metal; roof gutters of metal; mooring bollards of metal; monuments of metal; box fasteners of metal; wire of common metal; wire of common metal alloys, except fuse wire; wire cloth; wire rope; telpher cables; ropes of metal; drain pipes of metal; turnstiles of metal;

turntables [railways]; window fasteners of metal; penstock pipes of metal; pegs of metal; wall plugs of metal; nozzles of metal; brackets of metal for building; iron, unwrought or semi-wrought; ironmongery; railroad ties of metal; railway points; iron wire; iron ores; ice moulds of metal; badges of metal for vehicles; locks of metal for vehicles; traps for wild animals; paint spraying booths, of metal; casks of metal; barrels of metal; taps for casks, of metal; springs [metal hardware]; filings of metal; windows of metal; lintels of metal; ironwork for windows; fittings of metal for windows; window stops of metal; shutters of metal; window frames of metal; window casement bolts; sash pulleys; chrome iron; ferrotitanium; tungsten iron; prefabricated houses [kits] of metal; firedogs [andirons]; refractory construction materials of metal; furnace fireguards; statuettes of common metal; flanges of metal [collars]; bottle caps of metal; bottle closures of metal; insect screens of metal; foils of metal for wrapping and packaging; handling pallets of metal; hoppers of metal, non-mechanical; door scrapers; floors of metal; galena [ore]; sheaf binders of metal; hooks of metal for clothes rails; memorial plates of metal; cashboxes of metal; safes; germanium; framework of metal for building; scaffolding of metal; cornices of metal; greenhouses of metal,

transportable; greenhouse frames of metal; foundry molds [moulds] of metal; trellis of metal; bars for metal railings; bells; gold solder; monuments of metal for tombs; enclosures of metal for tombs; tombs of metal; vaults of metal [burial]; tomb slabs of metal; tombstone stelae of metal; tombstone plaques of metal; knobs of metal; ferrules of metal for handles; cast iron, unwrought or semi-wrought; cerium [hafnium]; hooks [metal hardware]; anvils [portable]; handcuffs; towel dispensers, fixed, of metal; brazing alloys; house numbers of metal, non-luminous; slings of metal for handling loads; beak-irons [bick-irons]; horseshoe nails; chicken-houses, of metal; identity plates of metal; indium; jalousies of metal; binding screws of metal for cables; cable joints of metal, non-electric; tiles of metal for building; cadmium; platforms, prefabricated, of metal; chimney pots of metal; chimney cowls of metal; boxes of common metal; rope thimbles of metal; flashing of metal, for building; angle irons; roof flashing of metal; couplings of metal for chains; bins of metal; crampons of metal [cramps]; drain traps [valves] of metal; water-pipe valves of metal; clothes hooks of metal; vice claws of metal; pitons of metal [mountaineering equipment]; chill-molds [foundry]; tin cans; baskets of metal; skating rinks [structures of metal]; works of

art of common metal; copper, unwrought or semi-wrought; copper wire, not insulated; copper rings; loading pallets, of metal; loading gauge rods, of metal, for railway wagons; cask stands of metal; anti-friction metal; belts of metal for handling loads; laths of metal; arbours [structures of metal]; duckboards of metal; alloys of common metal; crash barriers of metal for roads; guard rails of metal; ducts of metal for ventilating and air conditioning installations; reinforcing materials of metal for pipes; limonite; rods of metal for brazing; rods of metal for welding; blooms [metallurgy]; magnesium; manganese; porches of metal [building]; masts of metal; wall claddings of metal [building]; knife handles of metal; brass, unwrought or semi-wrought; reinforcing materials, of metal, for concrete; ores of metal; bottles [metal containers] for compressed gas or liquid air; grilles of metal; metal cages for wild animals; chains of metal; metals in powder form; frames of metal for building; rings of metal; rods of metal for brazing and welding; fittings of metal for furniture; furniture casters of metal; mobile boarding stairs of metal for passengers; molybdenum; molybdenum iron; troughs of metal for mixing mortar; sleeves [metal hardware]; nails; identification bracelets of metal, for hospitals; german silver; cables of metal, non-electric; nickel; rivets of

metal; niobium; numberplates, of metal; casement windows of metal; furnace screens; materials of metal for funicular railway permanent ways; armour plate; armour plating; posts of metal; palings of metal; paving blocks of metal; advertisement columns of metal; floor tiles, of metal; tile floorings of metal; stops of metal; pyrophoric metals; wheel clamps [boots]; rocket launching platforms of metal; moldings of metal for cornices; bolts, flat; lock bolts; cobalt, raw; pipes of metal; elbows of metal for pipes; pipework of metal; pipe muffs of metal; clips of metal for pipes; junctions of metal for pipes; roller blinds of steel; locks of metal for bags; fittings of metal for coffins; pillars of metal for buildings; containers of metal for storing acids; tubing of metal; manhole covers of metal; strap-hinges of metal; hinges of metal; washers of metal; hooks for slate [metal hardware]; rails of metal; materials of metal for railway tracks; fish plates [rails]; signboards of metal; reels of metal, non-mechanical, for flexible hoses; winding spools of metal, non-mechanical, for flexible hoses; locks of metal, other than electric; keys; rings of common metal for keys; grease nipples; buckles of common metal [hardware]; spring locks; chimneys of metal; chimney shafts of metal; screws of metal; nuts of metal; vice benches of metal; screw tops of metal for

bottles; braces of metal for load handling; pigsties of metal; soldering wire of metal; sills of metal; eye bolts; swimming pools [metal structures]; floating containers of metal; floating docks of metal, for mooring boats; pulleys of metal, other than for machines; scythe handles of metal; safety cashboxes; safety chains of metal; signs, non-luminous and non-mechanical, of metal; signalling panels, non-luminous and non-mechanical, of metal; nickel-silver; silver solder; silicon iron; silos of metal; tension links; wire stretchers [tension links]; stretchers for iron bands [tension links]; stretchers for metal bands [tension links]; meat safes of metal; cotter pins of metal; spurs; ladders of metal; diving boards of metal; bungs of metal; pilings of metal; barbed wire; steel, unwrought or semi-wrought; steel sheets; steel wire; cast steel; steel buildings; balls of steel; steel alloys; steel masts; steel pipes; stables of metal; poles of metal; tinfoil; statues of common metal; steps [ladders] of metal; crampons [climbing irons]; pins [hardware]; ferrules of metal for walking sticks; street gutters of metal; signs, non-luminous and non-mechanical, of metal, for roads; posts of metal for electric lines; props of metal; trays of metal; wainscoting of metal; containers of metal for liquid fuel; tantalum [metal]; telephone boxes of metal; telegraph posts

of metal; titanium; tombac; barrel hoops of metal; gates of metal; transportable buildings of metal; transport pallets of metal; machine belt fasteners of metal; belt stretchers of metal; partitions of metal; staircases of metal; stair treads [steps] of metal; stringers [parts of staircases] of metal; ironwork for doors; door fittings, of metal; door bolts of metal; doors of metal; door stops of metal; door panels of metal; door handles of metal; door bells of metal, non-electric; latch bars of metal; door knockers of metal; door openers, non-electric; door frames of metal; latches of metal; runners of metal for sliding doors; door closers, non-electric; common metals, unwrought or semi-wrought; shims; vanadium; valves of metal, other than parts of machines; cladding of metal for construction and building; tinplate packings; packaging containers of metal; casings of metal for oilwells; sealing caps of metal; silver plated tin alloy; manifolds of metal for pipelines; bells for animals; cattle chains; bird baths [structures of metal]; aviaries of metal [structures]; padlocks; wall linings of metal [building]; water-pipes of metal; tinplate; white metal; tool handles of metal; tool boxes of metal, empty; tool chests of metal, empty; wind vanes of metal; wind-driven bird-repelling devices made of metal; tungsten; pot hooks of metal; fences of metal; tent pegs

	of metal; ducts of metal, for central heating installations; ceilings of metal; zinc; tin; zirconium; brads; ferrules of metal.
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18. The Opponent submits that the respective goods are identical, or in the alternative, similar, stating that the Applicant's goods are all contained within the broader categories of goods specified by its mark.

Screws, nails, fastenings and fixings for use principally with metal, and all made of metal; nuts, washers, studs, and screws.

19. I consider the Opponent's term '*ironmongery, small items of metal hardware*' broad enough to cover the above terms from the Applicant's specification. It is my view that the Applicant's terms would be included in the more general category contained within the Opponent's specification. The above goods are all types of ironmongery or are small items of metal hardware and therefore, bearing in mind the principles of *Merix*, are considered identical.

Metal building materials; common metals and their alloys; ironmongery, small items of metal hardware.

20. The terms listed above appear in both the Applicant's and the Opponent's specifications. They are identical.

Fastening parts for building; fastening materials of metal, not included in other classes; fastening [...] devices and parts and fittings therefor.

21. I consider the Applicant's terms above broad enough to cover the Opponent's '*Window fasteners of metal; box fasteners of metal; machine belt fasteners of metal*'. It is my view that the Opponent's terms would be included in the more general category contained within the Applicant's specification. The Opponent's

goods are all types of fastenings and therefore, bearing in mind the principles of *Meric*, are considered identical.

Winged screws (fastenings)

22. I consider the Opponent's term '*screws of metal*' broad enough to cover the above term from the Applicant's specification. It is my view that the Applicant's term would be included in the more general category contained within the Opponent's specification. The above goods are a type of screw, and by virtue of being class 6, are metal in nature. Therefore, bearing in mind the principles of *Meric*, they are considered identical.

Anchoring devices and parts and fittings therefor

23. I consider the Applicant's term above broad enough to cover the Opponent's '*Anchors*'. It is my view that the Opponent's term would be included in the more general category contained within the Applicant's specification. Therefore, bearing in mind the principles of *Meric*, they are considered identical.

Goods of common metal not included in other classes.

24. I consider the Applicant's term above broad enough to cover a large number of the Opponent's goods, such as 'metal building materials; ironmongery, small items of metal hardware,' amongst other things. It is my view that the Opponent's terms would be included in the more general category contained within the Applicant's specification. Therefore, bearing in mind the principles of *Meric*, they are considered identical.

Bolts

25. I consider the Applicant's term above broad enough to cover the Opponent's '*bolts of metal*'. It is my view that the Opponent's term would be included in the more general category contained within the Applicant's specification. Therefore, bearing in mind the principles of *Meric*, they are considered identical.

Wall tiles

26. I consider the Opponent's term '*tiles of metal*' broad enough to cover the above term from the Applicant's specification. It is my view that the Applicant's term would be included in the more general category contained within the Opponent's specification. The above goods are a type of tile, and by virtue of being class 6, are metal in nature. Therefore, bearing in mind the principles of *Meric*, they are considered identical.
27. In addition to the above goods comparison, I feel it necessary to comment on the limitation applied to the end of the Applicant's specification, namely, *all being in the nature of bolts or for use with bolts and all made wholly or principally of common metal; all included in Class 6*. It is my view that this limitation is considered to lack clarity and precision, rendering it vague in relation to some of the goods concerned. However, in considering it, it is my view that even if the limitation is construed as meaning all of the preceding terms are in the nature of bolts, or are for use with bolts, as well as being made wholly or principally of common metal, then it renders all of the Applicant's terms identical to the Opponent's '*ironmongery, small items of metal hardware*' under the principles of *Meric*.

The average consumer and the nature of the purchasing act

28. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose 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 or services in question (see *Lloyd Schuhfabrik Meyer*, Case C-342/97).
29. 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 words “average” denotes that the person is typical. The term “average” does not denote some form of numerical mean, mode or median.”

30. The average consumer of goods at issue will include two groups. Firstly, there will be members of the general public purchasing the goods for home improvement projects. During the purchasing process, consideration will be taken of factors such as price, suitability and material. Consequently, I consider that this group of consumers will pay a medium level of attention during the purchasing act. The second group of average consumers are professional consumers, such as building contractors. These consumers would be particularly aware of the impact that using the correct materials would have on the outcome of their project. These specialised consumers are therefore likely to pay an above medium level of attention during the purchasing act.
31. The goods at issue will be purchased in DIY stores and via online retailers or, in the case of professional consumers, appropriate wholesalers. In all of these, visual considerations will play a dominant role, although aural considerations should not be discounted as advice may be sought from shop assistants, and particularly in the case of professionals, orders may be placed over the phone.

Comparison of trade marks

32. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the

visual, aural and conceptual similarities of the trade marks must be assessed by reference to the overall impressions created by the trade marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgement 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”.

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

34. The trade marks to be compared are as follows:

The Opponent's mark	The Applicant's mark
TecTake	Tektite

35. The Opponent submits that phonetically the marks share an identical prefix. It also argues that visually the marks are the same length and share four out of seven letters, with the letters 'T' and 'e' as the first and second letters of both marks, and 't' and 'e' as the fourth and last letters of both marks. Further, the Opponent argues that conceptually, the meaning of TEKTITE has no relationship with the goods, and its meaning is unlikely to be apparent to the

average consumer of the designated class 6 goods. Therefore, it argues that both parties' trade marks should be considered equally distinctive in relation to the goods concerned, and has no impact on the conceptual comparison of the trade marks.

36. The Applicant, on the other hand, submits that the term 'Tektite' is a scientific term that refers to natural glass formed from terrestrial debris during meteorite impacts, whereas the Opponent's mark 'tectake' has no apparent concept. Additionally, the Applicant argues that the letters 'Tec' at the beginning of the Opponent's mark would normally be associated with technology and therefore the dissimilarity in the core meaning or association of the two terms is fundamental to the argument against any potential confusion. The Applicant also states that the marks are pronounced in significantly different ways, with different stress patterns and vowel sounds, adding that 'Tektite' is pronounced with a hard 'k' sound followed by 'tite,' whereas 'tectake' starts with a soft 'c' sound followed by 'take.' Further, the Applicant argues that in written form, 'Tektite' and 'tectake' display clear visual differences. 'Tektite' contains the letter 'k' as the third letter, whereas 'tectake' has the letter 'c' which is sufficient to avoid visual confusion.

Overall Impression

37. The Opponent's mark is a word-only mark consisting of the word 'TecTake'. Whilst the word is conjoined, the fact that the two letter Ts are presented in capitals would lead the relevant public to perceive it as two separate elements: 'Tec' and 'Take'. The overall impression of the mark lies in the combination of these two elements which play an equally dominant role. In my view the mark is likely to be viewed by the average consumer as a conjoining of two separate words rather than a neologism. There are no other elements in the mark to contribute to its overall impression.
38. The Applicant's mark is again a word-only mark, though it consists of the word 'Tektite'. There are no other elements in the mark to contribute to its overall impression, which lies in the word itself.

Visual Comparison

39. Visually, both marks are of equal length, with both sharing four of the seven letters present ('T,' 'e,' 't,' and 'e') in the same positions within the respective words. The marks also share the letter 'k,' albeit in different positions in each mark. The Opponent's mark contains the Capital letter 'T' in the fourth position which visually gives the mark the impression of being two separate words, notwithstanding that they are combined. This acts as a visual point of difference. Bearing in mind my assessment of the overall impression of the marks, I consider there to be an average degree of visual similarity.

Aural Comparison

40. Aurally, both the Opponent's and the Applicant's marks contain two syllables, with the first of each ('Tec' & 'Tek') being articulated identically in the same way as the readily understood dictionary word 'Tech' would be. The second syllable of the Opponent's mark (Take) will be pronounced in accordance with its own dictionary definition. The second syllable of the Applicant's mark (tite) will be pronounced in the same way as the dictionary word 'tight'. Bearing in mind my assessment of the overall impression of the marks, I consider there to be a slightly higher than average degree of aural similarity.

Conceptual Comparison

41. Conceptually, the Applicant's mark, in my view, does not convey an immediately identifiable concept. Whilst I appreciate the Applicant's submission that its mark 'Tektite' is a scientific term that refers to natural glass formed from terrestrial debris during meteorite impacts, I do not consider that the relevant consumer would be aware of such definition and would instead perceive the mark as an invented word. The Opponent's mark, on the other hand, would be perceived as a combination of the two elements 'Tec' and 'Take'. I note that the mark is combined with no space between these elements, however the use of

capital letter 'T' creates a natural break, resulting in the Opponent's mark being viewed as two separate elements. The first part of the mark 'Tec' would be perceived as an allusive reference to the words 'technology' or 'technical'. The second part of the mark would be perceived as the word 'Take' and understood by the relevant consumer in accordance with its ordinary dictionary meaning. Notwithstanding this, the combination of these two elements does not convey a clear concept in and of itself. However, the Opponent's mark on the whole would be perceived, in respect of the goods concerned, as having some sort of technical aspect due to the 'Tec' element of the mark. In this regard, I do not consider the same to be true of the Applicant's mark where there is no natural break and the mark would be perceived as an individual word. Consequently, I consider the marks to be conceptually dissimilar.

Distinctive character of the opponent's mark

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-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).”

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. The opponent has not claimed that its mark has acquired an enhanced degree of distinctiveness and has not filed any evidence to that effect. As such, I have only the inherent position to consider.
44. The earlier mark consists of the plain word ‘TecTake’ without any additional stylisation or figurative elements. As such, the inherent distinctive character rests solely in the word itself. I consider the combination of ‘Tec’ and ‘Take’ has no direct meaning when viewed in respect of the goods concerned. However, as stated above, the ‘Tec’ element of the mark alludes to the goods being technical in some way. Consequently, I consider the Opponent’s mark to be inherently distinctive to a medium degree.

Likelihood of confusion

45. 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 and services down to the responsible undertakings being the same or related.
46. 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 (see *Sabel*, C-251/95, para 22). 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 (see *Canon*, C-39/97, para 17). 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.

47. Whilst conducting a global assessment of the likelihood of confusion I must be aware of the fact that not all aspects of the respective marks will necessarily have the same impact. For example, the importance of the respective visual, aural and conceptual aspects will be dependent on factors such as the way the goods at issue are marketed, and in which type of store/platform they are made available.
48. Throughout the course of this decision, I have determined that:
 - The respective goods are identical.
 - The average consumers are both members of the general public and professional consumers such as building contractors. Members of the general public are likely to pay a medium level of attention during the purchasing process, whereas professional consumers are likely to pay an above medium level of attention.
 - The purchasing process for the goods will be primarily visual in nature, though aural considerations have not been excluded.
 - The opponent's mark possesses a medium degree of inherent distinctive character.

- The marks at issue are visually similar to an average degree. The marks are aurally similar to a slightly higher than average degree. The marks are conceptually dissimilar.

49. Whilst I appreciate that the marks share a number of the same letters, with some in the same positions, the overall levels of visual and aural similarity are not high. This, paired with the conceptual difference between the marks is, in my view, sufficient to enable consumers to differentiate between them. Further, I also remind myself that, as above, I have found that the visual component will play the greater role in the selection process for the goods at issue. On this point, I refer to the case of *In New Look Limited v OHIM*, joined cases T-117/03 to T-119/03 and T-171/03, the General Court stated that:

“49. However, it should be noted that in the global assessment of the likelihood of confusion, the visual, aural or conceptual aspects of the opposing signs do not always have the same weight. It is appropriate to examine the objective conditions under which the marks may be present on the market (*BUDMEN*, paragraph 57). The extent of the similarity or difference between the signs may depend, in particular, on the inherent qualities of the signs or the conditions under which the goods or services covered by the opposing signs are marketed. If the goods covered by the mark in question are usually sold in self-service stores where consumer choose the product themselves and must therefore rely primarily on the image of the trade mark applied to the product, the visual similarity between the signs will as a general rule be more important. If on the other hand the product covered is primarily sold orally, greater weight will usually be attributed to any aural similarity between the signs.”

And

“50..... Generally in clothes shops customers can themselves either choose the clothes they wish to buy or be assisted by the sales staff.

Whilst oral communication in respect of the product and the trade mark is not excluded, the choice of the item of clothing is generally made visually. Therefore, the visual perception of the marks in question will generally take place prior to purchase. Accordingly the visual aspect plays a greater role in the global assessment of the likelihood of confusion.”

In my judgement, taking all the above factors into account, the differences between the competing trade marks are likely to enable consumers paying, at least, a medium level of attention, to avoid mistaking the marks for one another, notwithstanding the principles of imperfect recollection and interdependency. As a result, I find that there is no likelihood of direct confusion, even in relation to goods that are identical.

50. That leaves indirect confusion to be considered. In *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, Mr Iain Purvis QC, (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).”

51. These three categories are not exhaustive; rather, they were intended to be illustrative of the general approach, as has been confirmed by the Court of Appeal in *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors*.¹ I recognise that a finding of indirect confusion should not be made merely because the competing marks share a common element. In this connection, it is not sufficient that a mark merely calls to mind another mark: this is mere association not indirect confusion.

52. Furthermore, in *Liverpool Gin* Arnold LJ referred to the comments of James Mellor Q.C. (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at [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

¹ *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207

be a “proper basis” for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

53. I have made a multi-factorial assessment of the various considerations in play. The common elements of the respective marks are not so strikingly distinctive, in and of themselves that the consumer would assume that only the opponent would be using them as part of its trade mark. While sight of one mark may bring to mind the other mark, and consumers may consider that the marks coincidentally include some of the same letters in the same positions, it would be highly unusual for a company to rebrand its mark or launch a sub-brand by adopting a different name, other than some overlap in letters. In my view, there would be no logical reason for consumers (either members of the public or professionals) to believe that there is an economic connection between the undertakings. I therefore find no likelihood of indirect confusion.

Conclusion

54. The opposition has failed in its entirety. Therefore, subject to any successful appeal, the application may proceed to registration for all of the goods contained within the specification.

Costs

55. The applicant has been successful, and, in the ordinary course of these proceedings, would be entitled to a contribution towards its costs. However, the applicant is unrepresented meaning that, in order to claim any costs, it is required to file a completed costs pro-forma. It did not do so. I note that a blank costs pro-forma was provided to the opponent under the cover of a letter from the Tribunal dated 19 October 2024. I also note that this letter set out that:

“If the pro-forma is not completed and returned, costs, other than official fees arising from the action (excluding extensions of time), may not be awarded.”

The applicant incurred no official fees to file the Counterstatement and therefore, as no costs pro-forma was filed, I make no award of costs in these proceedings.

Dated this 21st day of July 2025

Oliver Rose'Meyer

For the Registrar