

O/0693/26

TRADE MARKS ACT 1994

**IN THE MATTER OF INTERNATIONAL REGISTRATION DESIGNATING THE
UK UNDER NO. WO0000001698286 IN THE NAME OF UNEX APARELLAJE
ELECTRICO S.L. FOR THE FOLLOWING TRADE MARK:**



AS A TRADE MARK IN CLASSES 6, 9, 17 & 20

AND

**AND IN THE MATTER OF OPPOSITION THERETO
UNDER NO 441011
BY UNICLIP LTD**

BACKGROUND AND PLEADINGS

1. UNEX APARELLAJE ELECTRICO S.L (“the holder”) is the holder of the international registration (“the IR”) shown on the cover page of this decision. The IR was registered on 13 October 2022 and, with effect from the same date, the holder designated the UK as a territory in which it seeks to protect the IR under the terms of the Protocol of the Madrid Agreement. The IR was accepted and published in the Trade Marks Journal for opposition purposes on 24 February 2023. The holder seeks protection in the UK for the goods set out in Annex 1.¹

2. The IR enjoys a priority date of 27 April 2022, which stems from an earlier EU trade mark owned by the holder, namely number 018693653. This date is the relevant date for these proceedings.

3. On 24 May 2025, the IR was opposed by UNICLIP LTD (“the opponent”). The opposition is based upon sections 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994 (“the Act”). The section 5(2)(b) and 5(3) grounds are reliant upon the following mark:

UNEX

UKTM 1167560

Filing date 7 January 1982; date of entry in register 7 January 1982

Relying on all goods, namely:

Class 6: Clamps, clips, rivets, nuts, screws, tube fittings, bolts, washers, connectors, fittings and couplings, all for use on hoses or on pipes, all included in Class 6; metallic hosepipes. (“the opponent’s mark”)

4. Under its 5(2)(b) ground, the opponent claims that the marks at issue are visually similar and aurally and conceptually identical. Further, the opponent claims that its mark enjoys a higher degree of distinctive character owing to the use made of it. As such, the opponent claims that there is a likelihood of confusion between the marks at issue, which includes a likelihood of association.

¹ On 5 June 2025, the holder notified the registry that it had filed a request to limit the class 6 specification of its UK designation. The registry was informed on 16 June 2025 that the limitation was accepted by WIPO on that same date and a representation of the WIPO register reflecting this change was sent through on 1 July 2025. Accordingly, the UKIPO register was updated to reflect that change. As can be seen in Annex 1.

5. Under its 5(3) ground, the opponent claims that it has obtained a reputation in the UK in its mark and use of the application would take unfair advantage of, and/or be detrimental to, the distinctive character or the repute of the opponent's mark.

6. Under its 5(4)(a) ground, the opponent relies on the unregistered sign 'UNEX' which has been used throughout the UK since 1965 in respect of "hose clips and clamps."

7. Under this ground, it is claimed that as a result of the use of its unregistered sign, the opponent has generated substantial goodwill in the sign. It is claimed that the IR and the sign are similar and, as such, the opponent's position is that any use of the IR would result in a misrepresentation which would, in turn, lead to damage and a decrease in sales and custom for the opponent.

8. The holder filed a counterstatement wherein it denied the claims made against it. The holder requested that the opponent provide proof of use of its mark.

9. The holder is represented by Marks & Clerk, and the opponent is represented by Gill Jennings and Every LLP. Only the opponent filed evidence in chief. No hearing was requested, and only the opponent filed written submissions in lieu of the same. This decision is taken after careful consideration of the papers.

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 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Act relied upon in these proceedings are derived from an EU Directive. This is why this decision continues to make reference to the trade mark case-law of the EU courts.

EVIDENCE

11. The opponent's evidence in chief came in the form of the witness statements of Mr William Shepherd dated 26 February 2025 and Ms Julie Canet dated 3 March 2025. Mr Shepherd is the Managing Director of Uniclip Limited, a position he has held since 1977. His evidence is accompanied by 9 exhibits, being WS1 to WS9, and was adduced in order to demonstrate that the opponent's mark enjoyed an enhanced degree of distinctive character, enjoys a protectable level of goodwill and has obtained a reputation within the UK. Ms Canet

is a Chartered Trade Mark Attorney at the opponent's representative, a position she has held since September 2019. The witness statement is accompanied by one exhibit, being JC1, and was adduced to demonstrate examples of the opponent's goods sold online by authorised distributors.

12. I do not intend to summarise the evidence in full here. However, I confirm that I have taken all filed documents into account and will summarise them to the extent that I deem necessary below.

Proof of Use

13. Section 6A of the Act is as follows:

“(1) This section applies where-

(a) an application for registration of a trade mark has been published,

(b) there is an earlier trade mark of a kind falling within section 6(1)(a), (aa) or (ba) in relation to which the conditions set out in sections 5(1), (2) or (3) obtain, and

(c) the registration procedure for the earlier trade mark was completed before the start of the relevant period.

(1A) In this section ‘the relevant period’ means the period of 5 years ending with the date of the application for registration mentioned in subsection (1)(a) or (where applicable) the date of the priority claimed for that application.

(2) In opposition proceedings, the registrar shall not refuse to register the trade mark by reason of the earlier trade mark unless the use conditions are met.

(3) The use conditions are met if-

(a) within the relevant period the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or

- (b) the earlier trade mark has not been so used, but there are proper reasons for non-use.

(4) For these purposes-

- (a) use of a trade mark includes use in a form (the 'variant form') differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor), and
- (b) use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

[(5) Repealed]

(6) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services.
..."

14. Section 100 of the Act is as follows:

"If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it."

15. Given its filing date, the opponent's mark qualifies as an earlier trade mark under section 6 of the Act. The opponent's mark completed its registration process more than five years before the priority date of the IR. As such, it is subject to proof of use conditions. As set out above, the holder has put the opponent to proof of use, meaning that the conditions of use do apply to the earlier mark.

16. While section 6A of the Act (cited above) is silent on the issue of IRs, the Trade Marks (International Registration) Order 2008 sets out that this section of the Act extends

to apply to IRs. As such, the relevant period for the present assessment is the five-year period prior to the priority date of the IR, being 27 April 2022. The relevant period is, therefore, 28 April 2017 to 27 April 2022.

17. In *EasyGroup Ltd v Nuclei Ltd & Ors* [2023] EWCA Civ 1247, Arnold LJ summarised the law relating to genuine use as follows:

“105. The principles applicable to determining whether there has been genuine use of a trade mark have been considered by the CJEU in a considerable number of cases, the principal decisions being Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, Case C-259/02 *La Mer Technology Inc v Laboratories Goemar SA* [2004] ECR I-1159, Case C-416/04 *P Sunrider Corp v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237, Case C-442/07 *Verein Radetsky-Order v Bundervsvereinigung Kamaradschaft 'Feldmarschall Radetsky'* [2008] ECR I9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Marken BV v Hagelkruis Beheer BV* [EU:C:2012:816], Case C-609/11 *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], Case C-141/13 *P Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089], Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434] and Joined Cases C-720/18 and C-721/18 *Ferrari SpA v DU* [EU:C:2020:854].

106. Ignoring issues which do not arise in the present case, such as use in relation to spare parts or second-hand goods and use in relation to a subcategory of goods or services, the principles may be summarised as follows:

(1) Genuine use means actual use of the trade mark by the proprietor or by a third party with authority to use the mark: *Ansul* at [35] and [37].

(2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Centrotherm* at [71]; *Leno* at [29]; *Ferrari* at [32].

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have

another origin: Ansul at [36]; Sunrider at [70]; Verein at [13]; Silberquelle at [17]; Centrotherm at [71]; Leno at [29]; Gözze at [37], [40]; Ferrari at [32].

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: Ansul at [37]. Internal use by the proprietor does not suffice: Ansul at [37]; Verein at [14]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: Silberquelle at [20]-[21]. But use by a non-profit making association can constitute genuine use: Verein at [16]-[23].

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial *raison d'être* of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: Ansul at [37]-[38]; Verein at [14]; Silberquelle at [18]; Centrotherm at [71].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: Ansul at [38] and [39]; La Mer at [22]-[23]; Sunrider at [70]-[71], [76]; Centrotherm at [72]-[76]; Reber at [29], [32]-[34]; Leno at [29]-[30], [56]; Ferrari at [33].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no *de minimis* rule: Ansul at [39]; La Mer at [21], [24] and [25]; Sunrider at [72]; Leno at [55].

(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: Reber at [32].”

18. Proven use of a mark which fails to establish that “the commercial exploitation of the marks is real” because the use would not be “viewed as warranted in the economic sector concerned to maintain or create a share in the mark for the goods or services protected by the mark” is, therefore, not genuine use.

19. In assessing proof of use of the opponent’s mark, I am also mindful of Mr Alexander Q.C.’s comments in *Guccio Gucci SpA v Gerry Weber International AG*, Case BL O/424/14. He stated:

“The Registrar says that it is important that a party puts its best case up front – with the emphasis both on “best case” (properly backed up with credible exhibits, invoices, advertisements and so on) and “up front” (that is to say in the first round of evidence). Again, he is right. If a party does not do so, it runs a serious risk of having a potentially valuable trade mark right revoked, even where that mark may well have been widely used, simply as a result of a procedural error. [...] The rule is not just “use it or lose it” but (the less catchy, if more reliable) “use it – and file the best evidence first time round – or lose it”” [original emphasis]

20. I also note the following case of *Dosenbach-Ochsner Ag Schuhe Und Sport v Continental Shelf 128 Ltd*, Case BL O/404/13, Mr Geoffrey Hobbs Q.C. as the Appointed Person stated that:

21. The assessment of a witness statement for probative value necessarily focuses upon its sufficiency for the purpose of satisfying the decision taker with regard to whatever it is that falls to be determined, on the balance of probabilities, in the particular context of the case at hand. As Mann J. observed in *Matsushita Electric Industrial Co. v. Comptroller-General of Patents* [2008] EWHC 2071 (Pat); [2008] R.P.C. 35:

[24] As I have said, the act of being satisfied is a matter of judgment. Forming a judgment requires the weighing of evidence and other factors. The evidence required in any particular case where satisfaction is required depends on the nature of the inquiry and the nature and purpose of the decision which is to be made. For example, where a tribunal has to be satisfied as to the age of a person, it may sometimes be sufficient for that person to assert in a form or otherwise what his or her age is, or what their date of birth is; in others, more formal proof in the form of, for example, a birth certificate will be required. It all depends who is asking the question, why they are asking the question, and what is going to be done with the answer when it is given. There can be no universal rule as to

what level of evidence has to be provided in order to satisfy a decision-making body about that of which that body has to be satisfied.

22. When it comes to proof of use for the purpose of determining the extent (if any) to which the protection conferred by registration of a trade mark can legitimately be maintained, the decision taker must form a view as to what the evidence does and just as importantly what it does not ‘show’ (per Section 100 of the Act) with regard to the actuality of use in relation to goods or services covered by the registration. The evidence in question can properly be assessed for sufficiency (or the lack of it) by reference to the specificity (or lack of it) with which it addresses the actuality of use.”

22. I am also guided by *Awareness Limited v Plymouth City Council*, Case BL O/236/13, Mr Daniel Alexander Q.C., as the Appointed Person stated that:

“22. The burden lies on the registered proprietor to prove use. [...] However, it is not strictly necessary to exhibit any particular kind of documentation, but if it is likely that such material would exist and little or none is provided, a tribunal will be justified in rejecting the evidence as insufficiently solid. That is all the more so since the nature and extent of use is likely to be particularly well known to the proprietor itself. A tribunal is entitled to be sceptical of a case of use if, notwithstanding the ease with which it could have been convincingly demonstrated, the material actually provided is inconclusive. By the time the tribunal (which in many cases will be the Hearing Officer in the first instance) comes to take its final decision, the evidence must be sufficiently solid and specific to enable the evaluation of the scope of protection to which the proprietor is legitimately entitled to be properly and fairly undertaken, having regard to the interests of the proprietor, the opponent and, the opponent and, it should be said, the public.”

The opponent's evidence

21. Mr Shepherd states that the opponent (which was previously named DR Welch & Company Limited) was incorporated in 1947 and was purchased by his family in 1965. The rights associated with UNEX were transferred to the opponent's company in 1965; the opponent states the mark has been used extensively since that transfer. The opponent asserts that its goods were sold under the UNEX brand in the UK in relation to the following goods:

Class 6: Clamps, clips, tube fittings, connectors, fittings and couplings, all for use on hoses or on pipes.

22. The opponent has provided evidence in respect of turnover figures, invoices, advertising expenditure, printouts from webpages and sample documents of the mark demonstrated on goods. I note the following in regard to the evidence:

- a) Turnover figures for the products sold under the opponent's mark from 2017 to 2024 and for the year 2009:²

Year	Minimum Quantity Sold	Value
2009	172,954	Unknown
2017	211,017	£132,800.57
2018	288,683	£176,820.78
2019	269,450	£175,437.26
2020	170,489	£136,780.39
2021	220,132	£169,946.77
2022	194,738	£147,906.65
2023	206,686	£198,929.53
2024	183,658	£176,598.78

The opponent explains the absence of the sales figures associated with the year 2009; yearly reports were previously run through an alternative to the current 'Sage' accounting and business management programme (which was partially transitioned in 2017 and fully transitioned to in 2020). The opponent states that accordingly it cannot confirm whether the pre-sage reports are a full depiction of the quantity of its products sold and that the figures should be interpreted as a minimum. However, I note that I cannot and will not guess what the final figures are, I will rely on those provided to me. In addition, the opponent states that the goods are sold globally to a diverse range of customers,³ no breakdown has been provided to demonstrate what sales are attributed to the UK. Therefore, whilst the invoices provide an indication that some of the figures can be attributed to the UK, the specifics of what figures are to be associated with the jurisdiction are not clear to me.

- b) Exhibit WS5 is a sample of redacted invoices that pertain to the sale of goods between 9/6/2005 and 5/4/2022. 10 of the invoices provided are clearly outside of the UK and pertain to sales in Sweden, Norway, Israel, France, America and Australia. Of the remaining invoices that relate to the UK, 22 are dated outside of the relevant period.

² Witness Statement of William Shepherd, paragraph 17

³ Witness Statement of William Shepherd, paragraph 14

The 25 invoices dated in the relevant period are for sales in the UK for D loop clips to customers based throughout the UK, in particular Sheffield, Staffordshire, Essex, Didcot, Sussex, Lancashire, Yorkshire, Derbyshire, Southampton, Manchester, Newton Le Willows, Droitwich, High Wycombe, Crewe, Cambridge, Leicester, Leeds and the West Midlands. In all of the descriptions of the goods, reference is made to the opponent's 'UNEX' mark. I have calculated that the invoices that are within the relevant jurisdiction and period demonstrate the sale in the UK of 31, 471 D clips, of which I remind myself that the invoices are merely samples. Further, I note that the value of the items sold are low and account for sales per unit of just under and just over £1. In addition, contained within the invoices are a number of shipments for thousands of the items, one invoice is for 10,000 units.

- c) Exhibit WS7 includes webpage snapshots of various distributors (located in the UK and overseas). The snapshots from Abbeychart, PCM engineering, Able Hydraulics, Captivair, RS and Tom Parker are all dated 20 February 2025. The webpage snapshot from Uniclamp Australia is also dated 20 February 2025; however, the name of the company and the jurisdiction of 'au' for the website would suggest that it is within the Australian jurisdiction (outside of the UK). The remaining snapshots from Scientificlabs, the lab warehouse, Laboratory Analysis Limited, camlab and Zoro are undated. Enrgtech webpages are both undated and consist of images of goods and product codes with no description of the goods. The webpage snapshots demonstrate the opponent's goods, and the description of the goods includes reference to the opponent's mark. The following goods are referenced within the webpage snapshots:

- Unex Brass (Bolt) Stainless Steel Thumb Hex Hose Clip (various sizes)
- Clip Unex Hex Head (various sizes and in 10 pack)
- Unex Hexagonal Clips for tubing
- Unex Clip Hexagonal Head (various sizes)
- Unex Hose Clips H and D types (various sizes)
- Series Unex Hose Clips Individual and Trade Packs of 10
- Screwdriver for use with D type UNEX Clips
- Unex driver for Hose Clips
- Unex Brass (Bolt) Stainless Steel Slotted Screw Unex (various sizes)
- Unex Brass (Bolt) Stainless Steel Thumb Hex Unex (various sizes)
- Unex Screw Slot Head (D-type/H type and various sizes)

- d) Exhibit WS8 is a data sheet that the opponent states was used between 2005 and the date of the witness statement being filed. The data sheet displays the opponent's mark and type D, H, K and B hose clips.
- e) Exhibit WS9 is an advertisement promotion for hose clips that the opponent states ran between 1962 and 1965.

Form of the mark

23. In *Lactalis McLelland Limited v Arla Foods AMBA*, BL O/265/22, Phillip Johnson, sitting as the Appointed Person, considered the correct approach to the test under s. 46(2). He said:

"13. [...] While the law has developed since *Nirvana* [BL O/262/06], the recent case law still requires a comparison of the marks to identify elements of the mark added (or subtracted) which have led to the alteration of the mark (that is, the differences) (see for instance, T-598/18 *Grupo Textil Brownie v EU*IPO*, EU:T:2020:22, [63 and 64]).

14. The courts, and particularly the General Court, have developed certain principles which apply to assess whether a mark is an acceptable variant and the following appear relevant to this case.

15. First, when comparing the alterations between the mark as registered and used it is clear that the alteration or omission of a non-distinctive element does not alter the distinctive character of the mark as a whole: T-146/15 *Hypen v EUIPO*, EU:T:2016:469, [30]. Secondly, where a mark contains words and a figurative element the word element will usually be more distinctive: T-171/17 *M & K v EUIPO*, EU:T:2018:683, [41]. This suggests that changes in figurative elements are usually less likely to change the distinctive character than those related to the word elements.

16. Thirdly, where a trade mark comprises two (or more) distinctive elements (eg a house mark and a sub-brand) it is not sufficient to prove use of only one of those distinctive elements: T-297/20 *Fashioneast v AM.VI. Srl*, EU:T:2021:432, [40] (I note that this case is only persuasive, but I see no reason to disagree with it). Fourthly, the addition of descriptive or suggestive words (or it is suppose figurative elements) is unlikely to change the distinctive character of the mark: compare, T-258/13 *Artkis*, EU:T:2015:207, [27] (ARKTIS registered and use of ARKTIS LINE sufficient) and T-209/09 *Alder*, EU:T:2011:169, [58] (HALDER registered and use of HALDER I,

HALDER II etc sufficient) with R 89/2000-1 CAPTAIN (23 April 2001) (CAPTAIN registered and use of CAPTAIN BIRDS EYE insufficient).

17. It is also worth highlighting the recent case of T-615/20 *Mood Media v EUIPO*, EU:T:2022:109 where the General Court was considering whether the use of various marks amounted to the use of the registered mark MOOD MEDIA. It took the view that the omission of the word “MEDIA” would affect the distinctive character of the mark (see [61 and 62]) because MOOD and MEDIA were in combination weakly distinctive, and the word MOOD alone was less distinctive still.”

24. I note the following from *La Superquimica v EUIPO*, T-24/17, EU:T:2018:668:

“39 Next, it should be noted that a word mark is a mark consisting entirely of letters, words or groups of words, without any specific figurative element. The protection which results from registration of a word mark thus relates to the word mentioned in the application for registration and not the specific figurative or stylistic aspects which that mark might have. As a result, the font in which the word sign might be presented must not be taken into account. It follows that a word mark may be used in any form, in any colour or font type (see judgment of 28 June 2017, *Josel v EUIPO - Nationale-Nederlanden Nederland* (NN), T-333/15, not published, EU:T:2017:444, paragraphs 37 and 38 and the case-law cited).”

25. The opponent’s mark is UNEX. Throughout the opponent’s evidence, the opponent has used the mark primarily in the way as registered. The opponent’s mark is also used in the following forms:



(Example 1)



(Example 2)



(Example 3)

26. The first example appears as above in the printouts of the opponent's company.⁴ In the mark, 'UNEX' appears in red stylised text accompanied by the words 'HOSE CLIPS' that appear in a white standard text under 'UNEX'. The distinctive character of the opponent's mark lies in the word UNEX. The way in which UNEX is presented in this example is acceptable on the basis that the opponent's mark is a word only mark and that the addition of the words HOSE CLIPS are purely descriptive, as such the words do not alter the distinctive character of the mark, meaning that it is an acceptable variant as per s6A(4)(a).

27. Example 2 consists of the text 'UNEX' appearing in red stylised text followed by 'R' encompassed by a circle appearing in red superscript. Example 3 consists of the text 'UNEX' appearing in red stylised text. The examples are not variant uses of the opponent's mark. Rather, they are uses of the opponent's word-only mark in a bold standard typeface; as a word only mark, the opponent's mark is duly protected for such use.

Genuine use of the mark

28. For use to be genuine, it must have been real commercial exploitation of the mark, in the course of trade, sufficient to create or maintain a market for the goods at issue in the relevant territory during the relevant five-year period. In making my assessment, I am required to consider all relevant factors, including:

- the scale and frequency of the use shown;
- the nature of the use shown;
- the goods for which use has been shown;
- the nature of those goods and the market(s) for them; and
- the geographical extent of the use shown.

29. I note that the holder reiterated that it did not consider the evidence to show use of the mark in relation to the goods relied upon. An assessment of genuine use is a global assessment, which includes looking at the evidential picture as a whole, not whether each individual piece of evidence shows use by itself.⁵

⁴ Exhibit WS2

⁵ *New York SHK Jeans GmbH & Co KG v OHIM*, T-415/09

30. The opponent has provided evidence regarding its turnover during the relevant period as outlined above, which amounted to in excess of £942,690.00 between 2017 and 2022. While the turnover is noted, the opponent states that these figures are of global sales, and this is supported by the sample invoices that demonstrate sales to countries outside of the UK specifically, Israel, Sweden, Norway, America, France and Australia. The opponent has failed to break down sales in the UK and to reflect the range of goods the opponent sells. Accordingly, it is difficult for me to determine exactly how this turnover pertains to the actual goods at issue. As such, I consider it appropriate to take this turnover with a degree of caution. Even if I were to ignore this point, the turnover provided is not particularly large when compared against what is likely to be an enormous market. Despite the lack of breakdown of the turnover, the opponent has provided a range of invoices from the relevant period that show sales of various D loop clips to customers in the UK. Of the invoices dated in the relevant period and within the relevant jurisdiction, I have calculated sales of 31, 471 units of the opponent's goods. The value of each unit is low, amounting to just under and just over (depending on the item) £1. These sales are throughout the relevant period to different locations within the UK jurisdiction and some of the invoices are for thousands of units of the opponent's goods, with one invoice being for 10,000 of the opponent's goods. I note that the sale of the goods relate to wingnuts (outside of the relevant period) and D loop clips of various sizes.

31. The opponent has not provided any evidence of advertising spend; however, the opponent does demonstrate a data sheet that it states has been used between 2005 and 2025 (when the opponent's evidence was filed). The opponent has failed to provide any information on the scale of the audience or the distribution or reach of the promotional material. The second advertisement mentioned above, also has the same issues with the added limitation of being run between 1962 to 1965 and accordingly well outside of the relevant period to offer the opponent any assistance in relation to proof of use. As mentioned previously, one of the webpages were for an Australian jurisdiction, I remind myself of the case of *Lifestyle Equities CV v Amazon UK Services Ltd*,⁶ which found that use of a non-UK website must target UK consumers and UK consumers would have to "*consider that it is targeted at them*". Taking this into account, I do not consider that this piece of the opponent's evidence targets UK consumers. This is on the basis that no evidence has been provided of the location or reach of the visitors of the websites, therefore, although these pages could be accessed by UK consumers, the evidence does not demonstrate that they have been targeted.

⁶ [2004] UKSC 8

32. Taking all of the evidence into account, I am of the view that the opponent has demonstrated that it operates a hardware component business with a presence in the UK. Such evidence does not demonstrate a high level of use, but I remind myself that use need not be quantitative in order for it to be deemed genuine.

33. There are some clear deficiencies in the evidence provided by the opponent. However, as noted above genuine use requires a global assessment of the evidence as a whole. The evidence has demonstrated sales of the opponent's goods to many companies throughout the UK and the relevant period. The figures in relation to the sales from the opponent are far from overwhelming, especially considering the limitations associated with the turnover figures evidence. However, from the invoices I can see that figures of 31,471 to customers in the UK throughout the relevant period constitute a genuine attempt to create a market for its goods under the opponent's mark. Further, I note that the cost per unit is low and the evidence indicates that a significant number of units being sold will constitute a larger volume of sales despite the low sales figures. The sales are not simply attributable to a one-off sale but, instead, the opponent has demonstrated a consistent and repeated pattern of sales to customers throughout the relevant period. On balance, I am content to conclude that the evidence, as a whole, sufficiently points to a genuine attempt to create or preserve market share in the UK during the relevant period.

34. The opponent's mark is registered for the terms "Clamps, clips, rivets, nuts, screws, tube fittings, bolts, washers, connectors, fittings and couplings, all for use on hoses or on pipes, all included in Class 6; metallic hosepipes." These are broad terms, while I note that there is webpage evidence that shows use of bolts, screws and various clips other than D loop clips, the invoices do not cover such goods. As above, the turnover provided is not broken down in any way to enable me to determine how many of such goods were sold, preventing me from being able to accurately attribute any use to bolts, screws and various other clips than D loop clips. This leaves clips, which is itself a very broad term. On this point, I refer to the case of *Merck KGaA v Merck Sharp & Dohme Corp & Ors* [2017] EWCA Civ 1834 which sets out that whilst it is permissible to grant use for suitable sub-categories of broad terms, care must be taken to ensure that an owner of a trademark is not stripped of protection for goods which, the same as those for which use has been proved, are not in essence different from them and cannot be distinguished from them other than in an arbitrary way. In the present case, I appreciate that the opponent has not shown use for all the different types of clips. I accept that the opponent's goods being 'clips' would include D loop clips. I do not consider it appropriate under the case law to create a subcategory in the circumstances. Accordingly, in my view a fair specification for the opponent's class 6 goods would be 'clips, all for use on hoses or on pipes'.

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

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

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

(a) ...

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected, there exists a likelihood of confusion on the part of the public, which includes the likelihood or association with the earlier trade mark.”

36. 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.”

37. 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. The average consumer is deemed to be reasonably well informed and reasonably circumspect and observant, but someone who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them they have kept in their 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 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;
- 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

38. The goods to be compared are as follows:

The opponent's goods	The holder's goods
Class 6: Clips, all for use on hoses or on pipes.	Class 6: Cable glands, all metal products; metal products not included in other classes

	for conducting, cables in electric, electronic and electrotechnical installations, namely, perforated and flat profiles of metal for cable paths, channels, gutters, skirting boards, moldings and their covers, posts, linear or angular covers, steering gears, partitions, adapters for mechanisms, cable stays, angles, connectors, brackets, mounting axles, hinges, structural profiles, rails, frames, spacers, sleeves, boxes and chests, ceiling, overhead and surface supports, dowels; metal products not included in other classes for binding and fastening cables in electric, electronic and electrotechnical installations, namely, bolt-on, screwed and self-adhesive bases, screws and bolts; metal products not included in other classes for marking and identifying cables in electric, electronic and electrotechnical installations, namely label-holder boxes, plates and rings, signage boards; none of the aforesaid goods for use on hoses or on pipes. Class 9: Fuses, terminals, accessories for the signage and identification of electrical conductors and ducts; ducts for electrical cables; devices for electric current connections and outlets; plugs, connectors, sockets, switches and commutators; connection boxes, junction boxes and adapters for power mechanisms for electrical distributions and, in general, electric lighting materials included in this class; protective boxes and sheaths for electricity transmission; clamps, clips, holders, anchors and connectors for electrical conductors and ducts; signaling
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	apparatus and instruments; frames, desks and cabinets for distribution, switching, control and electric connections; wiring and electric installations. Class 17: Insulating washers, insulating nozzles, insulating tape, insulating collars, insulating elements for electrotechnical use; insulators, insulating products and particularly; insulating clamps; insulating connectors; insulating hangers; non-metallic flexible pipes and non-metallic pipe connections; pipe muffs not of metal; rail supports [insulators]; flexible through-hole reinforcing elements and profiles; overhead and surface insulating fasteners and supports for cables and pipes; products made of rubber, gum and asbestos not included in other classes, namely materials for sealing and insulating, all for electric, electronic and electrotechnical installations; rings, plates and profiles made of uncoated plastic materials for identifying, labeling and conducting cables and other elements in electric, electronic and electrotechnical installations. Class 20: Products not included in other classes of plastic materials, namely; bolt-on, screwed and self-adhesive bases for fastening, compressed blocks, spacers or not, label-holder boxes, signage plates and fasteners, screws, plates, covers, channels and gutters, connections, angles, brackets, mounting axles comprising anchoring devices for fixing media to profiles, hinges, rails.
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39. When making the comparison, all relevant factors relating to the goods in the specifications should be taken into account. In the judgment of the Court of Justice of the European Union (“CJEU”) in *Canon*, Case C-39/97, the court stated at paragraph 23 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”.

40. Guidance on this issue has also come from Jacob J. (as he was then) in the *Treat* case, [1996] R.P.C. 281, where he identified the factors for assessing similarity as:

- (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.”

41. In *Boston Scientific Ltd v OHIM*, Case T-325/06, the General Court (“GC”) stated that “complementary” means:

“... 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.”

42. I note that the opponent has made submissions concerning the comparison of the goods in its submissions in lieu. However, it is noted that the comparisons that have been made are based on the holder's previous specification before the change was made at WIPO and reflected in the UK register. As some of the goods in the comparison are not reflected in the new specification, there is a limitation to the level of assistance provided by the opponent's submissions on the matter.

43. Despite this, I do note that the opponent submitted that all of the contested Class 6 goods are identical or similar to the opponent's clips. This is on the basis that they have the same nature, coincide in distribution channels, end users and producer. In addition, it is submitted that their purpose, in the broadest set, may also be the same. In relation to the contested goods in class 9 and its 'clips' the opponent submitted that, whilst the purpose of the goods are distinct, they have similar manufacturers and distribution channels. In addition, it was submitted that they belong to the same sector of the market and target the same consumers and share the same producers. Accordingly, the opponent submits that there is no dissimilarity between the contested goods and 'Clips' in its specification. Moving onto class 17, the opponent submitted that the contested goods are similar to at least a low degree to 'Clips' in its specification on the basis that they share the same relevant public, distribution channels and producers. Finally, in relation to the class 20 goods, the opponent submitted that the contested goods in class 20 are similar to 'clips' in the opponent's specification on the basis that the goods share the same public, distribution channels and producers. It is on the above reasoning that the opponent submits that none of the contested goods can be considered dissimilar to the opponent's mark.

44. I have taken into account the opponent's submissions; however, in relation to the goods in the holder's specification I have set out below, being:

Class 6: Cable glands, all metal products; metal products not included in other classes for conducting, cables in electric, electronic and electrotechnical installations, namely, perforated and flat profiles of metal for cable paths, channels, gutters, skirting boards, moldings and their covers, posts, linear or angular covers, steering gears, partitions, adapters for mechanisms, cable stays, angles, [...] mounting axles, hinges, structural profiles, rails, frames, spacers, sleeves, boxes and chests, ceiling, overhead and surface supports, dowels; metal products not included in other classes for binding and fastening cables in electric, electronic and electrotechnical installations, namely, bolt-on, screwed and self-adhesive bases, screws and bolts; metal products not included in other classes for marking and identifying cables in electric, electronic and

electrotechnical installations, namely label-holder boxes, plates and rings, signage boards; none of the aforesaid goods for use on hoses or on pipes.

Class 9: Fuses, terminals, accessories for the signage and identification of electrical conductors and ducts; ducts for electrical cables; devices for electric current connections and outlets; plugs, connectors, sockets, switches and commutators; connection boxes, junction boxes and adapters for power mechanisms for electrical distributions and, in general, electric lighting materials included in this class; protective boxes and sheaths for electricity transmission; signaling apparatus and instruments; frames, desks and cabinets for distribution, switching, control and electric connections; wiring and electric installations.

Class 17: Insulating washers, insulating nozzles, insulating tape, insulating collars, insulating elements for electrotechnical use; insulators, insulating products and particularly; insulating hangers; pipe muffs not of metal; rail supports [insulators]; flexible through-hole reinforcing elements and profiles; products made of rubber, gum and asbestos not included in other classes, namely materials for sealing and insulating, all for electric, electronic and electrotechnical installations; rings, plates and profiles made of uncoated plastic materials for identifying, labeling and conducting cables and other elements in electric, electronic and electrotechnical installations; insulating clamps; insulating connectors; Non-metallic flexible pipes and non-metallic pipe connections; overhead and surface insulating fasteners and supports for cables and pipes.

Class 20: Products not included in other classes of plastic materials, namely; bolt-on, screwed and self-adhesive bases for fastening, compressed blocks, spacers or not, label-holder boxes, signage plates and fasteners, screws, plates, covers, channels and gutters, connections, angles, brackets, mounting axles comprising anchoring devices for fixing media to profiles, hinges, rails.

45. I remind myself of the case of *Unicorn Studio Inc v Veronese Case CH-2023-000214*, Iain Purvis, KC, sitting as deputy High Court judge, stated that any finding of similarity requires the exercise of common sense.⁷ I note that he stated that:

“24. Thirdly, any finding of similarity in the end requires the exercise of common sense and requires the hearing officer to stand back and consider the overall question. It

⁷ Paragraph 24

strikes me that here the hearing officer was engaging essentially in a box-ticking exercise, asking how many of the factors identified in *TREAT* or in *Canon* could be said to have been satisfied. Had the hearing officer stood back and considered the overall question of similarity, I believe she would have considered and certainly ought to have considered that the idea that figurines and works of art were similar to electric lamps, chandeliers or mirrors was nonsensical and it hardly needed a careful consideration of the *Canon* or *TREAT* factors to come to that conclusion. I therefore agree with the appellant that this category of goods should have been found dissimilar, and certainly it could not have reasonably been found similar to more than 'a very low degree'. The hearing officer's decision that it might approach a medium degree of similarity such as to give rise ultimately to a risk of confusion was to my mind not a decision within the range of views which was reasonable to take on the facts of this case, and the opposition should therefore have been dismissed in relation to this of goods."

46. I consider that the reasoning in the above case applies in the current circumstances. Taking a step back and looking at the overall question of similarity of the goods, I consider that a finding of any similarity between the holder's and the opponent's goods is so fleeting that it would be insufficient to find any similarity between the goods. For example, in relation to class 6 goods above, the submissions were made that the goods were similar on the basis that they have the same nature, coincide in distribution channels, end users and producer. In addition, it is submitted that their purpose, in the broadest set, may also be the same. The purpose and nature of the holder's goods will differ to that of the opponent's; the opponent's goods will secure objects tightly together whereas the holder's goods will be aspects of structural profiles, electric and electronic systems or aspects of signage, the purpose will not be the same in the broadest sense. Whilst the goods may be sold in the same hardware store, in relation to where they are positioned, they will be placed in different sections of the store. Any overlap in user will be very general. Further, the producers of the goods will differ, as a company that produces electronic components will not also produce signage or shelves. Taking a realistic approach to the comparison of these particular goods, it would hardly need a careful consideration of those factors to conclude that the above goods are not similar to 'clips, all for use on hoses or on pipes'. Therefore, taking all of the above into account, I find the goods to be dissimilar.

47. Moving onto Class 9, I remind myself that the opponent submitted that whilst the purpose of the goods is distinct, they have similar manufacturers and distribution channels. In addition, it was submitted that they belong to the same sector of the market and target the

same consumers and share the same producers. Accordingly, the opponent submits that there is no dissimilarity between the contested goods and 'Clips' in its specification. I agree that the purposes of the goods are different but disagree that the manufacturers will be the same, and nothing has been provided in the form of evidence to suggest otherwise. The submission in relation to sector of the market is irrelevant, as the canon and treat factors (discussed above) do not consider this as a factor as part of the assessment of the similarity of the goods. There may be a very general overlap in users. Despite the general overlap in trade channels and users, I consider that these are so fleeting that there is insufficient to substantiate similarity and the goods are dissimilar.

48. In consideration of class 17, opponent submitted that the contested goods are similar to at least a low degree to 'Clips' in its specification on the basis that they share the same relevant public, distribution channels and producers. I do not consider that the same companies that produce clips for hoses and pipes will also produce insulating washers, for example. Further, any overlap in users will be very general. In addition, it is my view that the holder's goods may be sold through specialist stores, whilst I do accept that the goods may be sold in a hardware store, they will not be sold in the same sections of the store. Despite a very general overlap in users and trade channels, I consider that these are so fleeting that there is insufficient to substantiate similarity and find the goods to be dissimilar.

49. Finally, in response to the submissions in relation to class 20, the opponent submitted that the contested goods in class 20 are similar to 'clips' in the opponent's specification on the basis that the goods share the same public, distribution channels and producers. It is not my view that the goods will share the same producers, as I do not consider producers of clips for hoses and pipes will also produce signage plates and fasteners, for example. Further, I do not consider that there will be an overlap in users or distribution channels, as they will be sold in different stores. Taking a realistic approach to the comparison of these particular goods, it would hardly need a careful consideration of those factors to conclude that the above goods are not similar to 'clips, all for use on hoses or on pipes'. Therefore, taking all of the above into account, I find the goods to be dissimilar.

Class 6

Connectors

50. Comparing these goods to the opponent's "clips, all for use on hoses or on pipes". I consider that these goods will both be constructed of metal; however, the shapes of the goods

will differ. Nonetheless, the purpose of the goods will differ as connectors will join electrical circuits or mechanical components, whereas the clips will be used to hold or secure objects tightly together. Accordingly, the method in which the goods will be used will also differ. I consider that the goods will overlap in trade channels as they will be sold in hardware stores, in relation to where they are positioned in the store, I do not consider that they will be positioned in the same sections. For example, if the connector is for an electrical circuit, and the clip is for a hose, they will be placed in different sections of the store. I consider that the goods may overlap in user; however, this overlap is very general. I do not consider the goods to be complementary as they are not important/indispensable to one another. Further, as they perform different purposes, the goods are not in competition. Taking the above into account, I find the goods to be similar to a very low degree.

Brackets

51. In the absence of any evidence or submissions to the contrary, the holder's goods are a physical support projecting from a wall or structure that holds weight or strengthens an angle. I consider that these goods will both be constructed of metal; however, the shapes of the goods will differ. However, the purpose of the goods will differ as clips will be used to hold or secure objects tightly together, whereas brackets act as mentioned above. Accordingly, the method in which the goods will be used will also differ. I consider that the goods will overlap in trade channels as they will be sold in hardware stores; however, they will be sold from different sections of the store. Further, there is nothing before me to suggest that the producer of one good would also produce the other. I consider that there may be a very general overlap in users. I do not consider the goods to be complementary as they are not important/indispensable to one another. Further, as the goods perform different purposes, the goods are not in competition. Taking the above into account, I find the goods to be similar to a very low degree. I consider that *brackets* in the holder's specification are similar to a low degree to the opponent's *clips all for use on hoses or on pipes*.

Class 9

Clamps for electrical conductors and ducts

52. In the absence of any evidence or submissions to the contrary, the above goods are devices that are used to secure, support and protect wires and cables. The goods will differ in purpose as the holder's goods are to secure, support and protect wires and cables whereas the opponent's goods are items that are used to secure pipes and hoses together. Accordingly,

the method of use of the goods will also differ, as will the nature of the goods. Whilst I consider that the goods may be sold in the same hardware store (although the holder's goods may also be sold in a specialist electrical store), they will not be sold in the same sections. Further, there is nothing before me to suggest that the producer of either party's good would also produce the other. The goods are neither complementary nor are they in competition with one another. I consider that any overlap in users will be general. Whilst I found there to be a fleeting overlap in trade channels and users, I do not consider that this is sufficient to substantiate a finding of similarity between the goods. Accordingly, taking all the above into account, I find the goods to be dissimilar. Applying the same reasoning above, I consider that the following goods in the holder's specification to be dissimilar: *Holders for electrical conductors and ducts; Anchors for electrical conductors and ducts.*

Connectors for electrical conductors and ducts

53. In the absence of any evidence or submissions to the contrary, the above goods join wires and cables to create a safe and reliable electrical pathway. This is in contrast to the holder's goods, which secure pipes and hoses together; whilst the goods secure aspects of systems together, the systems joined, being electrical and hose and pipes respectively, the systems and method of securing will differ. Accordingly, the goods will differ in purpose and method of use. I also consider that the nature will differ. Whilst I consider that the goods may be sold in the same hardware store (although the holder's goods may also be sold in a specialist electrical store), they will not be sold in the same sections. The goods are neither complementary nor in competition. Whilst there may be a general overlap in users and aspects of trade channels, I do not consider that it is sufficient to substantiate similarity. Therefore, I find the goods to be dissimilar.

Clips for electrical conductors and ducts

54. The opponent's goods are both clips, and therefore, will share some general purpose. However, the specific purpose of the goods will differ, as the holder's goods are for use in electrical conductors and ducts whereas the opponent's goods are for use with pipes and hoses. The goods may overlap in nature, as both parties' goods may be metal or plastic and will be shaped the same. Whilst the application of the goods will be similar, the methods of use will differ slightly. As with some of the aforementioned goods, the goods may overlap in trade channels, and they may be sold through the same store, such as a hardware store; however, given the different specialisms, they will be located in different parts of the store. The goods may overlap generally in users, such as an individual doing DIY or a professional

builder, but the overlap is very general. The goods are not complementary nor are they in competition. Taking the above into account, I find the goods to be similar to a medium degree.

55. As a level of similarity is required between the competing goods in order for there to be a likelihood of confusion under the present ground,⁸ the opposition fails against all of the following goods in the holder's specification:

Class 6: Cable glands, all metal products; metal products not included in other classes for conducting, cables in electric, electronic and electrotechnical installations, namely, perforated and flat profiles of metal for cable paths, channels, gutters, skirting boards, moldings and their covers, posts, linear or angular covers, steering gears, partitions, adapters for mechanisms, cable stays, angles, [...] mounting axles, hinges, structural profiles, rails, frames, spacers, sleeves, boxes and chests, ceiling, overhead and surface supports, dowels; metal products not included in other classes for binding and fastening cables in electric, electronic and electrotechnical installations, namely, bolt-on, screwed and self-adhesive bases, screws and bolts; metal products not included in other classes for marking and identifying cables in electric, electronic and electrotechnical installations, namely label-holder boxes, plates and rings, signage boards; none of the aforesaid goods for use on hoses or on pipes.

Class 9: Fuses, terminals, accessories for the signage and identification of electrical conductors and ducts; ducts for electrical cables; devices for electric current connections and outlets; plugs, connectors, sockets, switches and commutators; connection boxes, junction boxes and adapters for power mechanisms for electrical distributions and, in general, electric lighting materials included in this class; protective boxes and sheaths for electricity transmission; signaling apparatus and instruments; frames, desks and cabinets for distribution, switching, control and electric connections; wiring and electric installations; holders, anchors, clamps and conductors for electrical conductors and ducts.

Class 17: Insulating washers, insulating nozzles, insulating tape, insulating collars, insulating elements for electrotechnical use; insulators, insulating products and particularly; insulating hangers; pipe muffers not of metal; rail supports [insulators]; flexible through-hole reinforcing elements and profiles; products made of rubber, gum and asbestos not included in other classes, namely materials for sealing and insulating, all for electric, electronic and electrotechnical installations; rings, plates and profiles made of

⁸ *eSure Insurance v Direct Line Insurance* [2008] ETMR 77 CA

uncoated plastic materials for identifying, labeling and conducting cables and other elements in electric, electronic and electrotechnical installations; insulating clamps; insulating connectors; Non-metallic flexible pipes and non-metallic pipe connections; overhead and surface insulating fasteners and supports for cables and pipes.

Class 20: Products not included in other classes of plastic materials, namely; bolt-on, screwed and self-adhesive bases for fastening, compressed blocks, spacers or not, label-holder boxes, signage plates and fasteners, screws, plates, covers, channels and gutters, connections, angles, brackets, mounting axles comprising anchoring devices for fixing media to profiles, hinges, rails.

THE AVERAGE CONSUMER AND THE PURCHASING PROCESS

56. 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 in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97.

57. In *Iconix Luxembourg Holdings SARL*, 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.

58. The average consumer for the goods at issue are members of the general public and also specialised business customers of the building sector with specific professional knowledge or expertise.

59. The cost of the goods in question is likely to vary; however, on balance it is likely to be relatively low. The frequency of the purchase will vary depending on the average consumer, with the general public purchasing the goods infrequently, but business consumers purchasing the goods frequently and in bulk. The average consumer will take factors into consideration such as the cost, quality, compatibility with systems and size availability. It is my view that a medium degree of attention will be paid during the purchasing process.

60. The goods are likely to be purchased by self-selection from the shelves of retailers, such as hardware stores, and their online equivalents. Accordingly, visual considerations are, therefore, likely to dominate the selection process. However, I do not discount that there will be an aural component to the purchase given that the goods may be recommended by friends/colleagues and the average consumer may seek the advice of a sales assistant.

COMPARISON OF THE MARKS

61. It is clear from *Sabel* that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in *Bimbo* 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.”

62. Therefore, it would be wrong to dissect the trade marks artificially, though it is necessary to take into account the distinctive and dominant components of the marks; due weight must be given to any other features which are not negligible and hence contribute to the overall impressions created by the marks.

63. The marks to be compared are as follows:

The IR	The opponent's mark
	UNEX

64. The holder's mark consists of the text 'UNEX' that appears in a white slightly stylised text. The word is rendered on a red oval background. It is my view that, as the eye is naturally drawn to the element of the mark that can be read, the text plays a greater role in the overall impression of the mark with the colour and background playing lesser roles.

65. The opponent's mark is the word-only mark 'UNEX' which appears in standard font. There are no other elements to the overall impression, which lies in the text as a whole.

66. Visually, the marks share the text 'UNEX', which I have found plays a greater role in the overall impression of the holder's mark. I note that as the opponent's mark is a word only mark, it could be used in any standard typeface, form and colour.⁹ The red background in the holder's mark are points of visual difference. Taking all this into account, I consider the marks to be visually highly similar.

67. Aurally, the marks will be articulated in the same way. The differing elements will not be pronounced. Consequently, I find the marks will be aurally identical.

⁹ *LA Superquímica v EUIPO*, Case T-24/17, at paragraph [39]

68. Conceptually, neither of the marks has a defined meaning in English, and they are each likely to be perceived by a significant proportion of the average UK consumer as invented words with no conceptual meaning. I can see no reason why the average consumer would attribute any meaning to the marks; neither mark has any clear concept. Consequently, the conceptual position is neutral.

DISTINCTIVE CHARACTER OF THE EARLIER MARK

69. In *Lloyd Schuhfabrik Meyer*, 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 C108/97 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).”

70. Registered trade marks possess varying degrees of inherent distinctive character. The degree of distinctiveness is an important factor as it directly relates to whether there is a likelihood of confusion; the more distinctive the earlier mark, the greater the likelihood of confusion may be. The distinctive character of a mark may be enhanced as a result of it having been used in the market.

71. The opponent’s mark is a word-only mark of UNEX, as such the inherent distinctiveness of the mark lies within the word. Above, I set out that ‘UNEX’ will not be

attributed any meaning by the UK consumer. It will, instead, be viewed as a made-up word with no obvious connection to the goods at issue. Therefore, I find that it attracts a high degree of inherent distinctive character.

72. I shall now turn to consider whether the distinctiveness of the mark has been enhanced through use. I do not intend to reproduce the evidence here but remind myself that it covered a turnover of over £1.3 million between 2017 and 2024, with £375,528 being after the relevant period. No evidence has been provided indicating advertising expenditure.

73. While the opponent's turnover is noted, I have discussed above that there is no breakdown of the turnover provided from a jurisdictional or goods perspective. The invoice evidence is of assistance in determining which goods were sold and that some of the goods were sold within the UK; however, I note that the invoices include sales to individuals/organisations outside of the UK. Given that enhanced distinctiveness is in relation to the UK average consumer, any turnover to other countries is of no assistance here. Without anything further from the opponent, it is not possible for me to determine how much of the turnover can be attributed to sales in the UK and it would, in my view, be unreasonable for me to infer that the sales associated can be attributed to sales in the UK. I appreciate that I made a similar inference in respect of genuine use (and found genuine use), but I remind myself that the burden for proving use is far less onerous than that for enhanced distinctiveness. For example, use need not be quantitative in order for it to be genuine, whereas distinctive character is a measure of how strongly the mark identifies the goods of a single undertaking. Therefore, I consider that attributing at least some of the turnover to the relevant goods so as to result in genuine use was reasonable. However, to support a finding of enhanced distinctive character would require an inference that the majority of the turnover is applicable to the relevant goods. This is not reasonable in the circumstances.

74. As a result of the above, I find that the evidence does not demonstrate that the opponent's earlier mark benefits from an enhanced degree of distinctiveness. Therefore, the inherent position applies.

LIKELIHOOD OF CONFUSION

75. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods down to the responsible undertakings being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is

a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services 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 they have retained in their mind.

76. I have found the goods at issue to vary in similarity, from similar to a very low degree to similar to a medium degree. The average consumer base for the goods will be members of the general public and business consumers who will select goods primarily via visual means (though I do not discount an aural component) whilst paying a medium degree of attention. I have found the marks at issue are visually highly similar, aurally identical and conceptually neutral. Lastly, I concluded that the opponent's mark enjoys a high degree of inherent distinctiveness.

77. Taking all of the above into account and bearing in mind the principle of imperfect recollection, I consider that the differences between the marks are insufficient to avoid confusion. I am of the view that the average consumer will overlook or misremember the differences between the marks, given that the only point of difference is the presence of the red background, which I have found play a lesser role in the overall impression of the mark. Even applying a medium degree of attention, the marks will be misremembered or mistakenly recalled as each other. I find that there is a likelihood of direct confusion between the marks. This finding does not extend to the goods that I have found to be similar to a very low degree.

78. However, even if the differences were noticed and recalled, in my view, consumers would believe that the marks are alternative marks used by the same undertaking in different contexts. For example, the opponent's mark could be used on packaging of the goods and the holder's mark would be used in promotional examples, or vice versa.

79. The opposition succeeds in part on the grounds of 5(2)(b). The opposition succeeds in relation to the following goods only:

Class 9: Clips for electrical conductors and ducts.

SECTION 5(3)

80. Section 5(3) of the Act states:

“5(3) A trade mark which – is identical with or similar to an earlier trade mark, shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom (or, in the case of a European Union trade mark or international trade mark (EC), in the European Union) and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or repute of the earlier trade mark.”

81. The relevant case law can be found in the following judgments of the CJEU: Case C-375/97, *General Motors*, Case 252/07, *Intel*, Case C-408/01, *Adidas Salomon*, Case C-487/07, *L’Oreal v Bellure*, Case C-323/09, *Marks and Spencer v Interflora*, Case C383/12P, *Environmental Manufacturing LLP v OHIM*. The law appears to be as follows.

(a) The reputation of a trade mark must be established in relation to the relevant section of the public as regards the goods or services for which the mark is registered; *General Motors*, paragraph 24.

(b) The trade mark for which protection is sought must be known by a significant part of that relevant public; *General Motors*, paragraph 26.

(c) It is necessary for the public when confronted with the later mark to make a link with the earlier reputed mark, which is the case where the public calls the earlier mark to mind; *Adidas Salomon*, paragraph 29 and *Intel*, paragraph 63.

(d) Whether such a link exists must be assessed globally taking account of all relevant factors, including the degree of similarity between the respective marks and between the goods/services, the extent of the overlap between the relevant consumers for those goods/services, and the strength of the earlier mark’s reputation and distinctiveness; *Intel*, paragraph 42

(e) Where a link is established, the owner of the earlier mark must also establish the existence of one or more of the types of injury set out in the section, or there is a serious likelihood that such an injury will occur in the future; *Intel*, paragraph 68; whether this is the case must also be assessed globally, taking account of all relevant factors; *Intel*, paragraph 79.

(f) Detriment to the distinctive character of the earlier mark occurs when the mark's ability to identify the goods/services for which it is registered is weakened as a result of the use of the later mark, and requires evidence of a change in the economic behaviour of the average consumer of the goods/services for which the earlier mark is registered, or a serious risk that this will happen in future; *Intel*, paragraphs 76 and 77 and *Environmental Manufacturing*, paragraph 34. 51.

(g) The more unique the earlier mark appears, the greater the likelihood that the use of a later identical or similar mark will be detrimental to its distinctive character; *Intel*, paragraph 74.

(h) Detriment to the reputation of the earlier mark is caused when goods or services for which the later mark is used may be perceived by the public in such a way that the power of attraction of the earlier mark is reduced, and occurs particularly where the goods or services offered under the later mark have a characteristic or quality which is liable to have a negative impact of the earlier mark; *L'Oreal v Bellure NV*, paragraph 40.

(i) The advantage arising from the use by a third party of a sign similar to a mark with a reputation is an unfair advantage where it seeks to ride on the coat-tails of the senior mark in order to benefit from the power of attraction, the reputation and the prestige of that mark and to exploit, without paying any financial compensation, the marketing effort expended by the holder of the mark in order to create and maintain the mark's image. This covers, in particular, cases where, by reason of a transfer of the image of the mark or of the characteristics which it projects to the goods identified by the identical or similar sign, there is clear exploitation on the coat-tails of the mark with a reputation (*Marks and Spencer v Interflora*, paragraph 74 and the court's answer to question 1 in *L'Oreal v Bellure*).

82. The conditions of section 5(3) are cumulative. There must be similarity between the marks, the opponent must also show that its mark has achieved a level of knowledge, or reputation, amongst a significant part of the public. The opponent must also establish that the public will make a link between the marks, in the sense of the earlier mark being brought to mind by the later mark. Assuming that these conditions have been met, section 5(3) requires that one or more of three types of damage claimed by the opponent will occur. It is unnecessary for the purposes of section 5(3) that the goods be similar, although the relative

distance between them is one of the factors which must be assessed in deciding whether the public will make a link between the marks.

Reputation

83. In *General Motors*, Case C-375/97, the CJEU held that:

“25. It cannot be inferred from either the letter or the spirit of Article 5(2) of the Directive that the trade mark must be known by a given percentage of the public so defined.

26. The degree of knowledge required must be considered to be reached when the earlier mark is known by a significant part of the public concerned by the products or services covered by that trade mark.

27. In examining whether this condition is fulfilled, the national court must take into consideration all the relevant facts of the case, in particular the market share held by the trade mark, the intensity, geographical extent and duration of its use, and the size of the investment made by the undertaking in promoting it.

28. Territorially, the condition is fulfilled when, in the terms of Article 5(2) of the Directive, the trade mark has a reputation 'in the Member State'. In the absence of any definition of the Community provision in this respect, a trade mark cannot be required to have a reputation 'throughout' the territory of the Member State. It is sufficient for it to exist in a substantial part of it.”

84. I have summarised the opponent’s evidence at paragraphs 22 A to E above. This same evidence is relied upon for the basis of the cancellation holder’s 5(3) claim. I do not intend to repeat the evidence in full here. I can deal with this ground relatively swiftly.

85. Earlier in my decision, I found that the distinctive character of the opponent’s mark had not been enhanced through use. I recognise that the test for reputation is not the same as that for enhanced distinctive character, but the same factors are to be taken into account in both assessments. On this point, I note that in the present case, the mark relied upon is the same as above, so too are the goods relied upon. Further, the relevant date and the relevant territory for the issue of reputation are identical to the above assessment. Therefore, the evidence is, for the reasons set out in relation to enhanced distinctiveness, insufficient to establish a reputation in the UK. Consequently, the opposition based upon section 5(3) falls at the first hurdle.

86. The opposition based upon section 5(3) of the Act is dismissed. I will now proceed to consider the remaining grounds of the opposition.

OUTCOME: The opposition based on section 5(3) fails.

SECTION 5(4)(A)

87. Section 5(4)(a) of the Act states as follows:

“5(4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented –

a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, where the condition in subsection (4A) is met,

aa) [...]

b) [...]

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of “an earlier right” in relation to the trade mark”.

88. Subsection (4A) of section 5 of the Act states:

“(4A) The condition mentioned in subsection (4)(a) is that the rights to the unregistered trade mark or other sign were acquired prior to the date of application for registration of the trade mark or date of the priority claimed for that application.”

89. In *Discount Outlet v Feel Good UK*, [2017] EWHC 1400 IPEC, Her Honour Judge Melissa Clarke, sitting as a deputy Judge of the High Court, conveniently summarised the essential requirements of the law of passing off as follows:

“55. The elements necessary to reach a finding of passing off are the ‘classical trinity’ of that tort as described by Lord Oliver in the *Jif Lemon* case (*Reckitt & Colman Product v Borden* [1990] 1 WLR 491 HL, [1990] RPC 341, HL), namely goodwill or reputation;

misrepresentation leading to deception or a likelihood of deception; and damage resulting from the misrepresentation. The burden is on the Claimants to satisfy me of all three limbs.

56. In relation to deception, the court must assess whether "a substantial number" of the Claimants' customers or potential customers are deceived, but it is not necessary to show that all or even most of them are deceived (per *Interflora Inc v Marks and Spencer Plc* [2012] EWCA Civ 1501, [2013] FSR 21)."

90. Halsbury's Laws of England Vol. 97A (2021 reissue) provides further guidance with regard to establishing the likelihood of deception. In paragraph 636 it is noted (with footnotes omitted) that:

"Establishing a likelihood of deception generally requires the presence of two factual elements:

(1) that a name, mark or other distinctive indicium used by the claimant has acquired a reputation among a relevant class of persons; and

(2) that members of that class will mistakenly infer from the defendant's use of a name, mark or other indicium which is the same or sufficiently similar that the defendant's goods or business are from the same source or are connected.

While it is helpful to think of these two factual elements as two successive hurdles which the claimant must surmount, consideration of these two aspects cannot be completely separated from each other.

The question whether deception is likely is one for the court, which will have regard to:

(a) the nature and extent of the reputation relied upon,

(b) the closeness or otherwise of the respective fields of activity in which the claimant and the defendant carry on business;

(c) the similarity of the mark, name etc used by the defendant to that of the claimant;

(d) the manner in which the defendant makes use of the name, mark etc complained of and collateral factors; and

(e) the manner in which the particular trade is carried on, the class of persons who it is alleged is likely to be deceived and all other surrounding circumstances.

In assessing whether deception is likely, the court attaches importance to the question whether the defendant can be shown to have acted with a fraudulent intent, although a fraudulent intent is not a necessary part of the cause of action.”

91. Whilst I found that the evidence filed is insufficient to find a reputation, the bar for proving a protectable level of goodwill is lower. As such, I find that there exists a protectable level of goodwill in the opponent’s business. That being said, for reasons similar to those discussed above when considering the opponent’s mark, I accept that the opponent’s use is sufficient to prove that it enjoys a protectable level of goodwill in relation to ‘hose clips and clamps’ only. In respect of the level of goodwill associated with the sign, I consider this to be low based on the evidence provided.

92. Under the 5(2)(b) ground, I found there to be a likelihood of confusion between the parties’ marks, for all the goods that I found to be similar. In assessing the present ground, I remind myself of the case of *Comic Enterprises Ltd v Twentieth Century Fox Film Corporation* [2016] EWCA Civ 41, wherein Kitchen LJ set out that it was doubtful whether the difference between the legal tests for likelihood of confusion and misrepresentation will (all other factors being equal) produce different outcomes. As the opponent’s sign is identical to the mark relied upon under the 5(2)(b) ground, and it is protected for the same goods, I am of the view that this principle applies here. As such, I find that misrepresentation exists, and I say this for the same reasons given when discussing the likelihood of confusion under the section 5(2)(b) ground above. In relation to the goods that I have found to be dissimilar under section 5(2)(b), they operate in different fields of activity and, as such, the burden to overcome this is very high¹⁰ and the opponent has done nothing to discharge this burden.

93. The opponent has pleaded that use of the holder’s mark would take unfair advantage of the reputation of its mark as customers may assume that the mark (and goods) is an extension of the opponent’s products (or be authorised by them). Further, the opponent has pleaded that the holder’s mark, without due cause, causes damage to the opponent’s mark. I

¹⁰ See *Harrods Limited v Harrodian School Limited* [1996] RPC 697 (CA) and *Stringfellow v. McCain Foods (G.B.) Ltd.* [1984] R.P.C. 501, pg 535

note that the parties operate in the same field of activity, and it follows, according to *Bocacina Limited v Boca Cafés Limited, Dercio De Souza Junior, Malgorzata De Souza*,¹¹), Mr Daniel Alexander QC, sitting as an Enterprise Judge, said “*There is no dispute that if there is goodwill and misrepresentation, there would be damage.*” Consequently, I find the 5(4)(a) ground to be successful, the same level of success as the section 5(2)(b) ground.

CONCLUSION

94. The opposition fails under section 5(3) and succeeds in part under section 5(2)(b) and 5(4)(a) of the Act.

95. The opposition has succeeded in part but only in respect of some of the goods. The IR is refused registration for the following goods:

Class 9: Clips for electrical conductors and ducts.

96. However, the IR will proceed to registration in the UK for the following goods:

Class 6: Cable glands, all metal products; metal products not included in other classes for conducting, cables in electric, electronic and electrotechnical installations, namely, perforated and flat profiles of metal for cable paths, channels, gutters, skirting boards, moldings and their covers, posts, linear or angular covers, steering gears, partitions, adapters for mechanisms, cable stays, angles, [...] mounting axles, hinges, structural profiles, rails, frames, spacers, sleeves, boxes and chests, ceiling, overhead and surface supports, dowels; metal products not included in other classes for binding and fastening cables in electric, electronic and electrotechnical installations, namely, bolt-on, screwed and self-adhesive bases, screws and bolts; metal products not included in other classes for marking and identifying cables in electric, electronic and electrotechnical installations, namely label-holder boxes, plates and rings, signage boards; none of the aforesaid goods for use on hoses or on pipes; connectors; brackets.

Class 9: Fuses, terminals, accessories for the signage and identification of electrical conductors and ducts; ducts for electrical cables; devices for electric current connections and outlets; plugs, connectors, sockets, switches and commutators; connection boxes, junction boxes and adapters for power mechanisms for electrical distributions and, in general, electric lighting materials included in this class; protective boxes and sheaths for electricity transmission; signaling apparatus and instruments; frames, desks and cabinets

¹¹ [2013] EWHC 8090 (IPEC)

for distribution, switching, control and electric connections; wiring and electric installations; holders, anchors, clamps and conductors for electrical conductors and ducts.

Class 17: Insulating washers, insulating nozzles, insulating tape, insulating collars, insulating elements for electrotechnical use; insulators, insulating products and particularly; insulating hangers; pipe muffers not of metal; rail supports [insulators]; flexible through-hole reinforcing elements and profiles; products made of rubber, gum and asbestos not included in other classes, namely materials for sealing and insulating, all for electric, electronic and electrotechnical installations; rings, plates and profiles made of uncoated plastic materials for identifying, labeling and conducting cables and other elements in electric, electronic and electrotechnical installations; insulating clamps; insulating connectors; Non-metallic flexible pipes and non-metallic pipe connections; overhead and surface insulating fasteners and supports for cables and pipes.

Class 20: Products not included in other classes of plastic materials, namely; bolt-on, screwed and self-adhesive bases for fastening, compressed blocks, spacers or not, label-holder boxes, signage plates and fasteners, screws, plates, covers, channels and gutters, connections, angles, brackets, mounting axles comprising anchoring devices for fixing media to profiles, hinges, rails.

COSTS

97. Both parties have had a degree of success. Whilst the opponent has succeeded in opposing one term, the remainder of the goods for which protection in the UK was sought survived the opposition. As such, the holder enjoyed the greater degree of success in these proceedings. Therefore, the holder is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice 1/2023. The sum is calculated as follows:

Filing a defence/ counterstatement and considering the notice of opposition	£250
Total	£250

98. I therefore order Uniclip Ltd to pay UNEX APARELLAJE ELECTRICO S.L. the sum of £250. 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 31st day of July 2026

A KLASS

For the Registrar

Annex 1

Class 6: Cable glands, all metal products; metal products not included in other classes for conducting, cables in electric, electronic and electrotechnical installations, namely, perforated and flat profiles of metal for cable paths, channels, gutters, skirting boards, moldings and their covers, posts, linear or angular covers, steering gears, partitions, adapters for mechanisms, cable stays, angles, connectors, brackets, mounting axles, hinges, structural profiles, rails, frames, spacers, sleeves, boxes and chests, ceiling, overhead and surface supports, dowels; metal products not included in other classes for binding and fastening cables in electric, electronic and electrotechnical installations, namely, bolt-on, screwed and self-adhesive bases, screws and bolts; metal products not included in other classes for marking and identifying cables in electric, electronic and electrotechnical installations, namely label-holder boxes, plates and rings, signage boards; none of the aforesaid goods for use on hoses or on pipes.

Class 9: Fuses, terminals, accessories for the signage and identification of electrical conductors and ducts; ducts for electrical cables; devices for electric current connections and outlets; plugs, connectors, sockets, switches and commutators; connection boxes, junction boxes and adapters for power mechanisms for electrical distributions and, in general, electric lighting materials included in this class; protective boxes and sheaths for electricity transmission; clamps, clips, holders, anchors and connectors for electrical conductors and ducts; signaling apparatus and instruments; frames, desks and cabinets for distribution, switching, control and electric connections; wiring and electric installations.

Class 17: Insulating washers, insulating nozzles, insulating tape, insulating collars, insulating elements for electrotechnical use; insulators, insulating products and particularly; insulating clamps; insulating connectors; insulating hangers; non-metallic flexible pipes and non-metallic pipe connections; pipe muffers not of metal; rail supports [insulators]; flexible through-hole reinforcing elements and profiles; overhead and surface insulating fasteners and supports for cables and pipes; products made of rubber, gum and asbestos not included in other classes, namely materials for sealing and insulating, all for electric, electronic and electrotechnical installations; rings, plates and profiles made of uncoated plastic materials for identifying, labeling and conducting cables and other elements in electric, electronic and electrotechnical installations.

Class 20: Products not included in other classes of plastic materials, namely; bolt-on, screwed and self-adhesive bases for fastening, compressed blocks, spacers or not, label-holder boxes,

signage plates and fasteners, screws, plates, covers, channels and gutters, connections, angles, brackets, mounting axles comprising anchoring devices for fixing media to profiles, hinges, rails, clamps and clips; trunking (non-metallic) for cables carrying electricity supply.