

O/0718/25

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00004032866

BY JGY SUPPLIES LTD

TO REGISTER:

kuou

IN CLASSES 9 & 18

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. OP000447861 BY

HEFEI LANGTU E-COMERCE CO., LTD

Background and pleadings

1. On 30 March 2024, JGY Supplies Ltd (“the applicant”) applied to register in the UK the trade mark shown on the cover page of this decision (“the applicants mark”). The application was accepted and published for opposition purposes on 12 April 2024 and registration is sought for the following goods:

Class 9: Dog whistles; Sport whistles; Sports whistles; Signal whistles; Signalling whistles; Whistles for signalling; Whistle alarms; Signaling whistles; Electronic collars to train animals; Whistles [warning apparatus]; Life-saving vests for dogs; Lifesaving vests for use by dogs; Alarm bells; Animal signalling rattles for directing livestock.

Class 18: Pets (Clothing for -); Clothing for pets; Dog clothing; Clothing for dogs; Clothing for domestic pets; Garments for pets; Clothing for animals; Dog apparel; Raincoats for pet dogs; Animal apparel; Clothes for animals; Electronic pet collars; Pet hair bows; Bags for sports clothing; Cat collars; Hat boxes of leather; Boxes of leather (Hat -); Dog collars; Dog shoes; Collars for pets; Dog leashes; Dog coats; Fur; Imitation leather hat boxes; Pet leads; Animal leashes; Dog parkas; Pet clothing; Dog waste bag dispensers adapted for use with leashes; Dog bellybands; Collars for cats; Horse collars; Hat boxes for travel; Dog leads; Coats for dogs; Cat o' nine tails; Rawhide chews for dogs; Horse tail wraps.

2. On 6 June 2024, Hefei Langtu E-Commerce Co., Ltd (“the opponent”) opposed the application in full under sections 5(1) and 5(2)(a) of the Trade Marks Act 1994 (“the Act”). The opponent relies upon the following mark:

kuou

UK registration no. UK00003368021

Filing date 18 January 2019; registration date 5 April 2019

Relying on all goods, being:

Class 21: Kitchen utensils; Bottle openers, electric and non-electric; Glasses [receptacles]; Ceramics for household purposes; Crystal [glassware]; Tea services [tableware]; Soap boxes; Scrubbing brushes; Toothbrush cases; Floss for dental purposes; Cosmetic utensils; Isothermic bags; Ice cube molds; Gloves for household purposes; Birdcages; Plug-in diffusers for mosquito repellents; Rubber gloves for domestic use; Mops.

3. By virtue of relying on section 5(1) of the Act, the opponent's position is that the marks and goods at issue are identical and, as such, the applicant's mark should be refused registration for its class 9 and class 18 goods. As for its claim under the section 5(2)(a) ground, the opponent maintains that the marks at issue are identical and that the goods of the parties are similar, resulting in a likelihood of confusion.
4. The applicant filed a counterstatement wherein it accepted that the marks at issue were identical but denied the claims in respect of the goods at issue.
5. The opponent is represented by Provik Limited. The applicant is not represented. Neither party filed evidence or written submissions. No hearing was requested. This decision is taken following a careful perusal of the papers.
6. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

DECISION

Section 5(1) and 5(2)(a) legislation

7. Section 5(1) of the Act reads as follows:

“(1) A trade mark shall not be registered if it is identical with an earlier trade mark and the goods or services for which the trade mark is applied for are identical with the goods or services for which the earlier trade mark is protected.”

8. Section 5(2)(a) of the Act is as follows:

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

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

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

9. Section 5A of the Act states as follows:

“Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only.”

10. An earlier trade mark is defined in section 6 of the Act, the relevant parts of which state:

“(6)(1) In this Act an “earlier trade mark” means –

(a) a registered trade mark, international trade mark (UK) or Community trade mark or international trade mark (EC) which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks,

(2) References in this Act to an earlier trade mark include a trade mark in respect of which an application for registration has been made and which, if registered, would be an earlier trade mark by virtue of subsection (1)(a) or (b), subject to its being so registered.”

Identity of the marks

11. It is a pre-requisite of both sections 5(1) and 5(2)(a) of the Act that the trade marks at issue are identical. In the present case, the applicant has conceded that the marks at issue are identical. Despite the fact that the opponent’s mark is a figurative one whereas the applicant’s is word only, I agree that the marks are identical. I will, therefore, proceed on this basis. The consequence of this is that the opposition may proceed in respect of both the section 5(1) and section 5(2)(a) grounds.

Comparison of goods

12. In order for the opponent to succeed under section 5(1) of the Act, the goods at issue must be considered identical. Where the goods are deemed identical, the opposition will succeed in full under the section 5(1) ground. However, section 5(2)(a) grounds only require a level of similarity. Therefore, where the goods are not identical it is still necessary for me to consider the level of similarity (if any) between the non-identical goods. I will discuss the impact this has on the opposition at the conclusion of my assessment of the goods at issue.

13. The parties goods are outlined below:

The opponent's goods	The applicant's goods
<p>Class 21: Kitchen utensils; Bottle openers, electric and non-electric; Glasses [receptacles]; Ceramics for household purposes; Crystal [glassware]; Tea services [tableware]; Soap boxes; Scrubbing brushes; Toothbrush cases; Floss for dental purposes; Cosmetic utensils; Isothermic bags; Ice cube molds; Gloves for household purposes; Birdcages; Plug-in diffusers for mosquito repellents; Rubber gloves for domestic use; Mops.</p>	<p>Class 9: Dog whistles; Sport whistles; Sports whistles; Signal whistles; Signalling whistles; Whistles for signalling; Whistle alarms; Signaling whistles; Electronic collars to train animals; Whistles [warning apparatus]; Life-saving vests for dogs; Lifesaving vests for use by dogs; Alarm bells; Animal signalling rattles for directing livestock.</p> <p>Class 18: Pets (Clothing for -); Clothing for pets; Dog clothing; Clothing for dogs; Clothing for domestic pets; Garments for pets; Clothing for animals; Dog apparel; Raincoats for pet dogs; Animal apparel; Clothes for animals; Electronic pet collars; Pet hair bows; Bags for sports clothing; Cat collars; Hat boxes of leather; Boxes of leather (Hat -); Dog collars; Dog shoes; Collars for pets; Dog leashes; Dog coats; Fur; Imitation leather hat boxes; Pet leads; Animal leashes; Dog parkas; Pet clothing; Dog waste bag dispensers adapted for use with leashes; Dog bellybands; Collars for cats; Horse collars; Hat boxes for travel; Dog leads; Coats for dogs; Cat o' nine tails; Rawhide chews for dogs; Horse tail wraps.</p>

14. When making the comparison, all relevant factors relating to the goods and services in the specifications should be taken into account, as per *Canon Case C-39/97*, where the CJEU stated at paragraph 23 of its judgement:

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

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

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

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

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

17. In *YouView TV Ltd v Total Ltd*, [2012] EWHC 3158 (Ch), paragraph 12, Floyd J (as he then was) gave the following guidance on construing the words used in specifications:

“[...] Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless, the principle should not be taken too far. Treat was decided the way it was because the ordinary and natural, or core, meaning of ‘dessert sauce’ did not include jam, or because the ordinary and natural description of jam was not ‘a dessert sauce’. Each involved a straining of the relevant language, which is incorrect. Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question.”

18. I bear in mind that it is permissible to group goods together for the purposes of assessment: *Separode Trade Mark*.¹

19. In its notice of opposition and statement of grounds, the opponent’s position is that the applicant’s applied for goods in classes 9 and 18 are pet-related and that the

¹ BL O-399-10 (AP)

opponent's specification contains birdcages. The opponent considers that the applicant's goods are similar to the opponent's goods as "they will destine to the same consumers and they will offer to identical market". Having considered the opponent's specification as a whole, I consider that birdcages represent the opponent's best case when comparing the applicant's pet-related goods and it is on this term I will conduct my comparison for the applicant's pet-related goods. However, where the applicant's goods are not pet-related I will discuss the comparable opponent's terms (if any) in the individual comparisons below.

20. As stated at paragraph 4 above, the applicant filed a counterstatement denying any similarities between the applicant's goods and the opponent's goods with the sole exception being the admission that the applicant's mark is identical to the opponent's mark.

21. I do not intend to summarise the opponent's statement of grounds or the applicant's counterstatement in full here. However, I confirm that I have taken all filed documents into account and will summarise them to the extent deemed necessary below.

Class 9

Dog whistles; Sport whistles; Sports whistles; Signal whistles; Signalling whistles; Whistles for signalling; Whistle alarms; Signaling whistles; Whistles [warning apparatus].

22. The above applicant's terms are instruments used to produce a high-pitched sound to give a signal. The opponent submits that the applicant's applied for goods in classes 9 and 18 are pet-related products and are similar to the opponent's goods as the opponent's specification contains "birdcages". I disagree with this statement. While "birdcages" are likely to be sold in pet stores, they are likely to be found in different sections of the pet stores to the above goods. As such, any overlap in trade channels is likely to be fleeting. Further, as far as I am aware, a producer of the above goods will not produce birdcages, or vice versa. As for user, I have nothing to suggest that there is any meaningful overlap between the user of the applicant's goods listed above and the opponent's "birdcages" as the userbase for

both goods could generally be said to be the pet owning general public at large. In my view, these points are insufficient to give rise to similarity between these goods. If they were, it could be said that any goods relating to pets could be similar to any other goods relating to pets, regardless of what they were. This is not a sufficient ground to find similarity. Overall, I find there is no similarity with any of the opponent's goods. Therefore, I find the respective goods to be dissimilar.

Life-saving vests for dogs; Lifesaving vests for use by dogs.

23. The above applicant's goods are flotation devices to keep dogs afloat in water. In comparing the above goods with "birdcages" in the opponent's specification, I find that the same points apply as those discussed in the preceding paragraph. Therefore, I find the respective goods to be dissimilar.

Electronic collars to train animals.

24. The above contested good is a device worn by animals to help train them and improve their behaviour. In comparing the above goods with "birdcages" in the opponent's specification, I find that the same reasoning applies as per that specified at paragraph 22 above. Therefore, I find the respective goods to be dissimilar.

Animal signalling rattles for directing livestock.

25. The above applicant's good is a device used to help direct livestock in the direction you wish for them to travel. In comparing the above goods with "birdcages" in the opponent's specification, I find that the same reasoning applies as per that specified at paragraph 22 above. Therefore, I find the respective goods to be dissimilar.

Alarm bells.

26. The above term covers a device that makes a loud sound that acts as a warning. There are no comparable terms in the opponent's specification and I see no reason

why there would be any obvious overlaps between the above and the opponent's goods. Therefore, I find the respective goods to be dissimilar.

Class 18

Pets (Clothing for -); Clothing for pets; Dog clothing; Clothing for dogs; Clothing for domestic pets; Garments for pets; Clothing for animals; Dog apparel; Raincoats for pet dogs; Animal apparel; Clothes for animals; Electronic pet collars; Pet hair bows; Cat collars; Dog collars; Dog shoes; Collars for pets; Dog coats; Dog parkas; Pet clothing; Dog bellybands; Collars for cats; Horse collars; Coats for dogs.

27. The above applicant's goods are all items that animals can wear. As per the reasoning specified at paragraph 22 above, there is no similarity between the above applicant's goods and the opponent's "birdcages". Therefore, I find the respective goods to be dissimilar.

Hat boxes of leather; Boxes of leather (Hat -); Imitation leather hat boxes; Hat boxes for travel.

28. The above contested goods are boxes to protect hats in storage or transportation. The closest comparable term in the opponent's specification is "soap boxes" as these are boxes used to store or transport soap. However, the user, use, trade channels and nature of the goods are all different. Consequently, I find these goods to be dissimilar.

Dog leashes; Pet leads; Dog leads; Animal leashes.

29. The above applicants goods are all leads used to assist in walking animals. In comparing the above goods with "birdcages" in the opponent's specification, I find that the same reasoning applies as per that specified at paragraph 22 above. As a result, I find these goods to be dissimilar.

Dog waste bag dispensers adapted for use with leashes.

30. The above term covers a dispenser of waste bags for dogs to be used with leashes. In comparing the above goods with “birdcages” in the opponent’s specification, I find that the same reasoning applies as per that specified at paragraph 22 above. As a result, I find these goods to be dissimilar.

Bags for sports clothing.

31. The contested good is a bag used to carry or store sports clothing. The closest comparable term in the opponent’s specification is “isothermic bags”. While there may be some overlap in nature (on the basis that they are bags), the method of use and purpose of “isothermic bags” are different to the contested good, as “isothermic bags” are used to transport items at a maintained temperature, they are not used to transport or store sports clothing. The goods will not have the same trade channels and will not be sold near each other in retail establishments. Even where there can be said to be an overlap in nature, I am of the view that different materials will be used to make each of the goods. As a result, I find these goods to be dissimilar.

Rawhide chews for dogs.

32. The contested good is a type of chew for dogs. There are no comparable terms in the opponent’s specification. As a result, I find these goods to be dissimilar.

Horse tail wraps.

33. The above applicant’s good is a wrap used to protect horse tail. There are no comparable terms in the opponent’s specification. As a result, I find these goods to be dissimilar.

Cat o' nine tails.

34. The above contested good is a multi-tailed whip. There are no comparable terms in the opponent's specification. As a result, I find these goods to be dissimilar.

Fur.

35. The above contested good is hair that covers the skin of certain animals. There are no comparable terms in the opponent's specification. Additionally, there are no obvious reasons why the relevant factors would overlap to give rise to any similarity with the above contested applicant good and the opponent's goods, including "birdcages". For example, while "birdcages" are likely to be sold in pet stores, fur is likely to be purchased once it has been made into a different article such as a fur coat and will therefore be sold in different stores to pet stores. There will be no overlap in trade channels. As for user, I have nothing to suggest that there is any meaningful overlap between the applicant's good listed above and the opponent's "birdcages" or the remaining opponent's goods as the userbase for both goods could generally be said to be the general public at large. However, these points are not sufficient to give rise to a level of similarity. If these points were sufficient, it could be said that any good bought by the general public at large could be similar to any other goods, regardless of what they were. This is not a sufficient ground to find similarity. As a result, I find these goods to be dissimilar.

Conclusion of goods comparison

36. The section 5(1) ground requires that the goods are identical. As I have not found any of the parties' goods to be identical, the opponent's claim fails under this ground.

37. The opposition reliant upon the section 5(2)(a) ground also fails. This is on the basis that for there to exist a likelihood of confusion under section 5(2) of the Act, there must be a degree of similarity between the goods.²

² *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA

CONCLUSION

38. The opposition has failed in its entirety. Therefore, the applicant's mark may, subject to any successful appeal of my decision, proceed to registration in the UK in respect of all of the goods for which protection was sought.

COSTS

39. As the opposition has been unsuccessful, it would ordinarily be the applicant that would be entitled to an award of costs. However, as it has not instructed professional representatives, it was invited by the Tribunal to indicate whether it intended to make a request for an award of costs by filling out and returning a costs pro-forma. It was made clear by way of the Tribunal's correspondence dated 20 November 2024 that, if the pro-forma was not completed by 18 December 2024, costs, other than official fees arising from the action (excluding extensions of time), may not be awarded. The applicant did not return a completed pro-forma to the Tribunal and as it did not incur any official fees in these proceedings, I hereby make no order as to costs.

Dated this 31st day of July 2025

N Barratt

For the Registrar