O/0806/25

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00003970777
IN THE NAME OF
SHENZHEN JIWEILAI TECHNOLOGY CO., LTD.

TO REGISTER THE FOLLOWING TRADE MARK:

IN CLASSES 6, 11, 17, 20, 21 & 26

AND

IN THE MATTER OF OPPOSITION THERETO
UNDER NO. OP000446626
BY HOMEND ELEKTRONIK DAYANIKLI
TÜKETIM CIHAZLARI SANAYI VE TICARET A.S.

Background and pleadings

1. On 23 October 2023, Shenzhen Jiweilai Technology Co., Ltd. ("the Applicant") applied to register the trade mark shown on the cover page of this decision in the UK. The application was accepted and published in the Trade Marks Journal on 12 January 2024 in respect of goods in classes 6, 11, 17, 20, 21 and 26.

2. On 26 March 2024, Homend Elektronik Dayanikli Tüketim Cihazlari Sanayi ve Ticaret A.S. ("the Opponent") opposed the application under Section 5(2)(b) of the Trade Marks Act 1994 ("the Act"). The opposition is directed against the following goods in the application:

Class 11: Light bulbs; Lamps; Lighting apparatus and installations; Ceiling lights; Safety lamps; Electric lights for Christmas trees; Searchlights; Aquarium lights; Diving lights; Light-emitting diodes [LED] lighting apparatus; Fairy lights for festive decoration; String lights for festive decoration; Bicycle lights; Lighting apparatus for vehicles; Automobile lights; LED light strips; Light bars.

Class 21: Toothbrush holders; Toothbrush cases; Floss for dental purposes; Heads for electric toothbrushes; Brushes and brush-making articles; Cleaning articles; Sponges; Anti-static cloths for household use; Dusters; Brushes; Brush goods; Automobile wheel cleaning brushes; Toilet brushes.

3. The Opponent relies upon the following mark:

HOMEND

Registration no. UK00918266094
Filing date: 03 July 2020
Date of registration: 02 December 2020
Relying upon the following goods and services:

Class 11: Lighting and lighting reflectors.

Class 21: Household utensils for cleaning, brushes and brush-making materials.

4. Under Article 54 of the Withdrawal Agreement between the UK and the EU, the UK IPO created comparable UK trade marks for all right holders with an existing registered EUTM or International Registration designating the EU. As a result, the Opponent's mark was converted into a comparable UK trade mark. Comparable UK marks are now recorded in the UK trade mark register, have the same legal status as if they had been applied for and registered under UK law, and the original filing dates remain the same.[1]

5. The Opponent submits that there is a high degree of similarity between the marks and that the goods are identical or highly similar.

6. The Applicant filed a counterstatement within which it denied the claims made.

7. Neither party filed evidence. Neither party requested a hearing, however the Opponent filed submissions in lieu. This decision is taken following a careful consideration of the papers.

8. The Applicant is represented by RevoMark; the Opponent is represented by London IP Ltd.

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

[1] See also Tribunal Practice Notice ("TPN") 2/2020 End of Transition Period – impact on tribunal proceedings.

DECISION

Section 5(2)

10. The opposition is based upon Sections 5(2)(b) of the Act, which read as follows:

> "5(2) A trade mark shall not be registered if because -
>
> (a) …
>
> (b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,
>
> there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark".

11. By virtue of its earlier filing date, the Opponent's above registration constitutes an earlier mark within the meaning of section 6 of the Act. As the earlier mark had not completed the registration process more than five years before the filing date of the application in issue, it is not subject to proof of use pursuant to section 6A of the Act. The Opponent can, therefore, rely upon all of the goods it has identified without having to demonstrate use.

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

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

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

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

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

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

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

(g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa; Page 8 of 20

(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 and services

13. The goods for comparison are as follows:

Opponent's goods	Applicant's goods
Class 11: Lighting and lighting reflectors. Class 21: Household utensils for cleaning, brushes and brush-making materials.	Class 11: Light bulbs; Lamps; Lighting apparatus and installations; Ceiling lights; Safety lamps; Electric lights for Christmas trees; Searchlights; Aquarium lights; Diving lights; Light-emitting diodes [LED] lighting apparatus; Fairy lights for festive decoration; String lights for festive decoration; Bicycle lights; Lighting apparatus for vehicles; Automobile lights; LED light strips; Light bars. Class 21: Toothbrush holders; Toothbrush cases; Floss for dental purposes; Heads for electric toothbrushes; Brushes and brush-making articles; Cleaning articles; Sponges; Anti-static cloths for household use; Dusters; Brushes; Brush goods; Automobile wheel cleaning brushes; Toilet brushes.

14. In *Gérard Meric v OHIM,* Case T-133/05, the General Court ("GC") stated that:

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

15. 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 that:

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

16. Guidance on this issue has come from Jacob J. (as he then was) 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.

17. In *Kurt Hesse v OHIM,* Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In Boston Scientific Ltd v OHIM, Case T-325/06, the General Court ("GC") stated that "complementary" means:

> "82. ...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 that the responsibility for those goods lies with the same undertaking".

18. For the purposes of considering the issue of similarity of the goods and services, it is permissible to consider groups of terms collectively where appropriate: *Separode Trade Mark*, BL O-399-10.

19. In *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1)* [2024] UKSC 36, Lord Kitchin set out the proper approach to considering terms in specifications:

> "365. […] The correct approach, as a matter of principle, in considering a specification of services which is defined by terms which are not clear or precise, is to confine the terms used to the substance or core of their possible meanings: see, for example, *Reed Executive plc v Reed Business Information Ltd* [2004] EWCA Civ 159; [2004] RPC 40, at para 43. So too, if a specification of goods is defined by terms which are ambiguous, then it should be confined to those goods which are clearly covered. These principles are consistent with

first, the requirement that the specifications of goods and services must be clear and precise so that others know what they can and cannot do; and secondly, general fairness because any ambiguity is the responsibility of the owner of the mark. If despite this, the words used are still unclear so that they cannot be interpreted, then it is permissible to disregard them. But, in my opinion, that will rarely be the case."

20. In *YouView TV Ltd v Total Ltd* [2012] EWHC 3158 (Ch), Floyd J. (as he then was) stated that:

> "… 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."

Class 11

"Light bulbs; Lamps; Lighting apparatus and installations; Ceiling lights; Safety lamps; Electric lights for Christmas trees; Searchlights; Aquarium lights; Diving lights; Light-emitting diodes [LED] lighting apparatus; Fairy lights for festive decoration; String lights for festive decoration; Bicycle lights; Lighting apparatus for vehicles; Automobile lights; LED light strips; Light bars."

21. The Applicant's above goods fall within the Opponent's broader category of "lighting and lighting reflectors". The goods are therefore identical on the principle outlined in *Meric.*

Class 21

"Brushes and brush-making articles; Brushes".

22. While expressed slightly differently, the Applicant's above goods are self-evidently identical to the Opponent's "[…] brushes and brush-making materials".

"Brush goods; Automobile wheel cleaning brushes; Toilet brushes".

23. The Applicant's above goods are types of cleaning brushes and fall within the Opponent's broader category of "household utensils for cleaning, brushes and brush-making materials". The goods are therefore identical on the principle outlined in *Meric.*

"Cleaning articles; Sponges; Anti-static cloths for household use; Dusters".

24. The Applicant's above goods are similar to the Opponent's "household utensils for cleaning […]". I consider that the parties' goods overlap in user, method of use and purpose as they are all items used for cleaning, primarily in a domestic setting. While the nature of the exact goods may vary (utensils typically being made from a solid material such as plastic), I consider they would be provided by the same undertakings, and supermarkets and general retailers would locate the goods in the same aisle, or in close proximity to one another. While the goods could be used alongside one another, I do not consider them to be complementary in the way described in caselaw. However, they could be in competition as the average consumer, when seeking to clean their homes, may choose to purchase one item over the other. Taking the above into account, I consider that the goods are similar to a high degree.

"Heads for electric toothbrushes".

25. The Opponent submits that their "household utensils for cleaning, brushes and brush-making materials" are identical to the Applicant's above goods. I bear in mind the guidance of *SkyKick* not to apply too liberal an interpretation to the natural

meaning of the goods at issue, however the class 21 term “brushes” is a broad category that includes cosmetic and toiletry brushes, as well as those for household purposes. It therefore follows that an electric toothbrush would be a type of brush. In view of this, there is a level of complementarity between the goods at issue (to the extent that electric toothbrushes are a sub-category of “brushes”), as an electric toothbrush would need the heads for electric toothbrushes to work. However, I do not consider them to be in competition, as a head for an electric toothbrush cannot be used without the electric toothbrush itself. The goods also overlap in user and purpose, being to clean the teeth. An electric toothbrush, and a head for an electric toothbrush would usually be produced by the same undertaking and there is an overlap in trade channels, as retailers would locate the goods in close proximity to one another. Taking the above into account, I consider that the goods are similar to a medium degree.

“Floss for dental purposes”

26. As set out in paragraph 25, I consider that the Opponent’s broad category of “brushes” includes toothbrushes. In view of this, to the extent that toothbrushes are a sub-category of “brushes” there is an overlap in purpose, with the goods at issue both being to clean the teeth. However, the nature of the goods is different. An undertaking that produces toothbrushes will likely also produce dental floss, which would be sold within the same retail establishments, located in close proximity to one another. Although a toothbrush and dental floss could be used alongside each other, I do not consider the goods to be complementary, nor do I consider them to be in competition. Taking the above into account, I consider that the goods are similar to a low degree.

“Toothbrush holders; Toothbrush cases”

27. The Opponent submits that, due to their complementarity to toothbrushes, the Applicant’s above goods are highly similar to their “household utensils for cleaning, brushes and brush-making materials”. I consider that the user would overlap. However, even where I consider the Opponent’s goods to encompass toothbrushes, the goods at issue differ in purpose, nature, and method of use. I say this because toothbrushes are used in the mouth for cleaning teeth and

freshening breath, while the Applicant's toothbrush holders and toothbrush cases are used to store a toothbrush for hygiene purposes and to protect it from damage. To the extent that toothbrushes are a sub-category of "brushes", I consider there will be an overlap in trade channels as the same undertakings would sell both toothbrushes and toothbrush cases/holders and would position the goods within close proximity to each other. I do not consider that the goods will be in competition with one another, however I consider there to be a degree of complementarity as a toothbrush will be considered important and/or indispensable to a toothbrush case or holder in such a way that the average consumer may think that the responsibility of the goods lies within the same undertaking. Bearing this in mind, I find the goods to be similar to a low degree.

Comparison of the marks

28. The respective trade marks pleaded under section 5(2)(b) are shown below:

Earlier trade mark	Contested trade mark
HOMEND	

29. The Opponent's mark consists of the word "HOMEND". The overall impression of the mark lies in this element alone.

30. The Applicant's mark is a figurative mark that consists of both a word and a device element. At the top of the mark is a device made of several lines arranged in a stylised triangular shape. Below this is the word "HOMMAND" presented in upper-case, with the exception of the letter 'n', which is in lower case, albeit it is the same height as the other letters. While the horizontal line from the letter A is omitted, I consider that the letter is still clearly identifiable. I note that consumers tend to be drawn to elements of marks that can be read, however this is not always the case.

The relative size and position of the device (being markedly larger than the word) results in the device playing an equal role to the word element in the overall impression of the mark.

31. Visually, the word elements within each mark coincide in five out of six/seven letters, being the letters “HOM” at the start, and the “ND” at the end of each word. The centre of the Applicant’s mark consists of the letters “MA”, while the centre of the Opponent’s mark consists of the letter “E”, which is a point of visual difference. Furthermore, the Opponent’s mark has a single “M”, whereas the Applicant’s mark has a double “M”. While I bear in mind that the beginnings of marks tend to have more impact,[2] the large triangular device in the Applicant’s mark is another point of visual difference, being entirely absent from the Opponent’s mark. Overall, I consider the marks to be visually similar to between a low and medium degree.

32. Aurally, the device in the application will not be articulated. Both marks are made up of two syllables, being “HOM-AND” in the Applicant’s mark and “HOM-END” in the Opponent’s mark. The additional letter “M” in the Applicant’s mark will not change the pronunciation of the mark as a whole. The only point of aural difference is the pronunciation of the second syllable, being -and or -end. In view of this, I consider the marks are aurally similar to a high degree.

33. Conceptually, both marks are comprised of invented words which do not convey any particular concept. The figurative element adds no conceptual meaning to the Applicant’s mark. On that basis the respective marks are conceptually neutral.

Average consumer and the purchasing act

34. It is necessary for me to determine who the average consumer is for the goods and services in question; I must then determine the manner in which the goods and services are likely to be selected by the average consumer in the course of trade.

[2] *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

35. 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 and services in question: *Lloyd Schuhfabrik Meyer, Case C-342/97.* In *Hearst Holdings Inc, Fleischer Studios Inc v A. V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited,* [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

> "The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The words "average" denotes that the person is typical. The term "average" does not denote some form of numerical mean, mode or median."

36. The average consumer of the goods will be members of the general public. The cost of purchase is likely to vary depending on the style and quality of the goods, but overall, the price will be relatively inexpensive for these types of household goods. The frequency of the purchase will vary, being frequent for low cost disposable goods, such as household utensils for cleaning, and less frequent for higher cost, more long lasting goods, such as lighting. Several factors may influence the average consumer when purchasing the goods, such as, inter alia, the type of material used, durability, the quality of the items, and the aesthetic look of the goods. Taking all of these factors into account, it is my view that the average consumer will pay a medium degree of attention. The goods will be bought in retail outlets, specialist shops (such as homeware stores), or their online equivalents. The customer will self-select the goods from display shelves, or by selecting the image of their desired product if purchasing online, and therefore the visual component will dominate the selection process. However, I do not discount the role that aural selection may play when purchasing, such as through word-of-mouth recommendations or when discussing the goods with staff in a shop.

Distinctive character of the earlier trade mark

37. The distinctive character of a trade mark can be appraised only, first, by reference to the goods and services in respect of which registration is sought and, secondly, by reference to the way it is perceived by the relevant public – *Rewe Zentral AG v OHIM (LITE)* [2002] ETMR 91. In *Lloyd Schuhfabrik*, the CJEU stated that:

> "22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee* v *Huber and Attenberger* [1999] ECR I-0000, paragraph 49).
>
> 23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51)."

38. Registered trade marks possess varying degrees of inherent distinctive character, being lower where they are suggestive or allusive of a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use that has been made of it.

39. As the Opponent has not filed any evidence to show that the distinctiveness of its earlier registration has been enhanced through use, I have only have the inherent position to consider.

40. The Opponent's mark consists of the word "HOMEND". As previously discussed, it is my view that the average consumer in the UK would not assign a meaning to this word. Instead, it would be perceived as an invented word with no descriptive or allusive qualities. I therefore find that the mark has a high level of inherent distinctiveness.

Likelihood of confusion

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

42. There are two types of confusion that may occur. Direct confusion is where the average consumer mistakes one mark for the other, while indirect confusion is where the average consumer recognises that the marks are different, but for some reason assumes that the later mark also identifies the goods or services of the owner of the earlier mark, or that the two undertakings are related: see *L.A. Sugar Limited v Back Beat Inc*, BL O/375/10, paragraph 16.

43. The following factors must be considered to determine if a likelihood of confusion can be established:

- I have found the marks to be visually similar to between a low and medium degree.
- I have found the marks to be aurally similar to a high degree.
- I have found the marks to be conceptually neutral.
- I have found the Opponent's mark to be inherently distinctive to a high degree.
- I have identified the average consumer to be members of the general public who will select the goods primarily by visual means, although I do not discount an aural component.
- I have concluded that a medium degree of attention will be paid during the purchasing process.
- I have found the parties goods to be between identical and similar to a low degree.

Taking all of the above into account, I do not consider that the marks at issue would be misremembered or inaccurately recalled for one another. While I bear in mind the similarities between the marks, including the shared use of the letters "HOM" at the start and "ND" at the end of the marks, I am of the view that the points of difference are such that they will enable reasonably observant and circumspect consumers to accurately remember which mark is which. The device element plays a significant role in the overall impression of the Applicant's mark, owing to its size and positioning within the mark. Bearing in mind visual considerations will dominate the selection process for the goods at issue, I consider it unlikely the average consumer would overlook this device element. It therefore follows that the average consumer, even when paying a medium level of attention will notice the differences between the marks and avoid mistaking one for the other. Consequently, I find that there is no likelihood of direct confusion, even in relation to identical goods.

44. That leaves indirect confusion to be considered. In *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, Mr Iain Purvis QC, (as he then was) sitting as the Appointed Person, explained that:

> "16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are

very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: "The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark.

17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:

> (a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right ("26 RED TESCO" would no doubt be such a case).
>
> (b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as "LITE", "EXPRESS", "WORLDWIDE", "MINI" etc.).
>
> (c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension ("FAT FACE" to "BRAT FACE" for example)."

45. These three categories are not exhaustive; rather, they were intended to be illustrative of the general approach, as has been confirmed by the Court of Appeal. I recognise that a finding of indirect confusion should not be made merely because the competing marks have something in common. In this connection, it is not

sufficient that a mark merely calls to mind another mark: this is mere association not indirect confusion.[3]

46. Furthermore, in *Liverpool Gin*,[4] Arnold LJ referred to the comments of James Mellor QC (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at [16] that "a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion". Arnold LJ agreed, pointing out that there must be a "proper basis" for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

47. While I note the examples set out by Mr Purvis are not exhaustive, in this case I see no reason why a consumer would believe the marks at issue are from the same or economically linked undertakings. I have already found that the average consumer will not mistake or misremember the marks in their entirety for one another, given the presence of the additional device element in the Applicant's mark. While the marks share the use of the letters "HOM" at the start of the mark and "ND" at the end of the mark, I do not consider the differences between the marks to be logical and consistent with brand variation. I find that there is no likelihood of indirect confusion.

CONCLUSION

48. The opposition based upon section 5(2)(b) is unsuccessful, and the application may proceed to registration.

COSTS

49. The Apppicant has been successful and is entitled to an award of costs. The relevant scale is contained in Tribunal Practice Notice ("TPN") 1/2023. Applying the guidance in the TPN, I consider the following to be fair:

[3] *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17
[4] *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207

Preparing a statement and considering the other side's statement	£250
Total:	**£250**

50. I therefore order Homend Elektronik Dayanikli Tüketim Cihazlari Sanayi ve Ticaret A.S. to pay Shenzhen Jiweilai Technology Co., Ltd. the sum of £250. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 1st day of September 2025

Emma Rees
For the Registrar