

**O/0920/25**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF  
TRADE MARK APPLICATION NUMBER 4106155  
BY TAHIR JAMIL  
TO REGISTER THE FOLLOWING TRADE MARK:**



**IN CLASS 6**

**AND**

**AN OPPOSITION THERETO UNDER NUMBER 60003510  
BY THYSSENKRUPP AG**

## BACKGROUND AND PLEADINGS

1. On 30 September 2024, TAHIR JAMIL (“the Applicant”) applied to register in the UK the trade mark shown on the cover page of this decision (“the contested mark”). The application was accepted and published for opposition purposes on 18 October 2024 and registration is sought for goods in class 6.<sup>1</sup>
2. On 4 December 2024, ThyssenKrupp AG (“the Opponent”) filed a fast-track opposition, opposing the application in full under section 5(2)(b) of the Trade Marks Act 1994 (“the Act”).
3. The Opponent relies upon the following International Registration for its opposition:

International Registration: WO0000001541703,



4. The International Registration has a filing date of 28 January 2021 and a registration date of 25 November 2021. The Opponent relies on goods in class 6 for this opposition.<sup>2</sup>
5. The Opponent claims that the Applicant’s mark is highly similar to its mark and that the goods covered by the Applicant’s mark are identical or similar to the class 6 goods covered by its mark, resulting in a likelihood of confusion, including a likelihood of association between the marks.

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<sup>1</sup> See goods comparison

<sup>2</sup> See goods comparison

6. The Applicant filed a counterstatement denying the grounds of the opposition.
7. Given the filing date, the Opponent's mark is an earlier mark, in accordance with section 6 of the Act. However, as it had not been registered for five years or more at the filing date of the application, it is not subject to the use requirements specified within section 6A of the Act. As a consequence, the Opponent may rely upon all of the goods for which the earlier mark is registered without having to establish genuine use.
8. Rule 6 of the Trade Marks (Fast Track Opposition) (Amendment) Rules 2013, S.I. 2013 No. 2235, disapplies paragraphs 1-3 of Rule 20 of the Trade Mark Rules 2008, but provides that Rule 20 (4) shall continue to apply. Rule 20(4) states that:

“(4) The registrar may, at any time, give leave to either party to file evidence upon such terms as the registrar thinks fit.”
9. The net effect of these changes is to require the parties to seek leave in order to file evidence in fast track oppositions. No leave was sought in respect of these proceedings.
10. Rule 62 (5) (as amended) states that arguments in fast track proceedings shall be heard orally only if (i) the Office requests it or (ii) either party to the proceedings requests it and the registrar considers that oral proceedings are necessary to deal with the case justly and at proportionate cost; otherwise, written arguments will be taken. A hearing was neither requested nor considered necessary. Both parties filed written submissions in lieu. This decision is taken following a careful consideration of the papers.
11. The Applicant is unrepresented, and the Opponent is represented by Forrester IP LLP.

12. 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.

## **PRELIMINARY ISSUE**

13. The Applicant, in its submissions makes reference to Section 5(3) and asks the Opponent to provide an explanation. The Opponent brought the fast track opposition proceedings based on Section 5(2)(b) only and therefore it is not necessary, nor is it required, to provide any explanation in relation to Section 5(3). I will therefore say nothing more on the matter.

## **DECISION**

### **Section 5(2)(b)**

14. Sections 5(2)(b) of the Act states:

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

[...]

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

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

## Relevant law

15. The following principles are gleaned from the decisions of the Court of Justice of the European Union ("CJEU") 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.

### The principles

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

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

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

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

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

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

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

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

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

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

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

## **Comparison of goods**

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

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

application are included in a more general category designated by the earlier mark.”

17. I bear in mind that it is permissible to group goods together for the purposes of assessment: *Separode Trade Mark*:<sup>3</sup>

“The determination must be made with reference to each of the different species of goods listed in the opposed application for registration; if and to the extent that the list includes goods which are sufficiently comparable to be assessable for registration in essentially the same way for essentially the same reasons, the decision taker may address them collectively in his or her decision.”

18. The goods to be compared are shown in the table below:

<b>The Opponent’s goods</b>	<b>The Applicant’s goods</b>
<p>Class 6 Ores; common metals and their alloys and products made therefrom, included in this class, namely unwrought and semi-wrought common metals and their alloys and products made therefrom, in particular rods, panels, bands, sheets and plates, in particular tailored blanks, pipes and fittings therefor, tinplate and blackplate, sleepers, rails and other track parts for railbound vehicles, in particular side guide rails and glide strips for magnetic suspension trains, special and specialty profiles; building and construction materials of metal, namely timber, plank and trench sheeting, sheet</p>	<p>Class 6 Metal wire [common metal]; Alloys of metal; Metal alloys; Ores of metal; Metal ores; Tantalum [metal]; Sheet metal; Metal foil; Metal tubing; Rods of metal; Metal rods; Sculptures of metal; Grommets (Metal -); Metal hardware; Molds of metal; Non-ferrous metal alloys; Metal castings; Solder (Metal -) for stainless steel; Casings of metal; Extrusions of metal; Metal extrusions; Metal mouldings; Metal pipes; Pipes of metal; Metal moldings; Rings of metal; Metal rings; Sculptures of non-precious metal; Metal forgings; Figurines of non-precious metal.</p>

<sup>3</sup> BL O/399/10

piling, light sections, sheet pile crossbeams and fittings, flood sheet piling, box sheet piling, steel poles, staves, flat panel and shipbuilding profiles, flat products of stainless steel (corrosion-resistant, acid-resistant, heat-resistant), nickel-based materials, titanium and titanium alloys, magnetic materials (electrical sheets), work platforms, temporary bridges, and scaffolding and falsework and parts therefor, namely formwork, props, beams, wires and ropes, and wire mesh and other wire products, sheet metal goods, weld filler materials, in particular soldering wire, welding rods, and cored wires, cast, pressed, drawn or machined mouldings, in particular rings, sprockets, toothed wheels, worm wheel sets, industrial gear units, in particular extruder gears, storage and transport containers, prefabricated and collapsible transportable buildings and parts therefor, in particular container offices and workshops, houses, halls, garages, bridges, windows, doors, gates, and roof, ceiling and wall construction elements, cast parts of metal, soldering materials, namely soldering wire, rods of metal for brazing; goods of common metal not included in other classes, namely containers, construction fittings, roof panels, facade panels, springs,

windows, windowsills, window frames, dies, fabrics, grilles, hooks, cramps, bearings, supports for propping up ships, running rails, nails, profiles, space trusses, rings, loops, locks, screws, silos, pins, gate and door frames, gates and doors, supporting structures, staircases, door panels, door handles, screw-connection parts, wall panels, brackets, fences and parts therefor, fittings for the aforesaid goods, included in this class; metal building materials, in particular prefabricated sandwich construction components consisting predominantly of sheet metal for industrial, hall and residential construction, ironmongery, small items of metal hardware, pipes and tubes of metal; non-electric cables and wires of common metal, transportable buildings of metal; metal building materials; scaffolding, included in this class and shuttering and parts therefor of metal for concrete; rails and railway points of metal; railway material of metal; fixtures of metal for guiding and gripping rail vehicles, being parts for railway rails.	
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19. The Opponent submits <sup>4</sup> that all of the Applicant's goods are identical to its goods. It states that the Applicant's goods are included under its broad term "*common metals and their alloys and products made therefrom, included in this class, namely unwrought and semi-wrought common metals and their alloys and products made therefrom...*". The Opponent acknowledges that the term

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<sup>4</sup> Written submissions in lieu, dated 14 March 2025

continues to list specific goods under the expression “*in particular*”, however submits that the term is not restricted to these goods. Instead, the use of “*in particular*” merely serves to provide an example of the goods.

20. Whilst the Applicant makes no specific submissions in relation to the similarity, or lack thereof, of the goods, in their submissions,<sup>5</sup> they confirm their rejection to the whole claim made by the Opponent, that there is similarity between the respective trade marks and the goods.

*Ores of metal; Metal ores.*

21. I consider the Opponent’s term ‘*Ores*’ broad enough to cover the above terms from the Applicant’s specification. The Applicant’s terms would be included in the more general category contained within the Opponent’s specification. Bearing in mind the principle of *Meric*, the goods are identical.
22. As noted above, the Opponent submits that its term ‘*common metals and their alloys and products made therefrom, included in this class, namely unwrought and semi-wrought common metals and their alloys and products made therefrom ...*’ is unrestricted, and whilst it continues to list ‘particular’ goods, this is merely an example and not an exhaustive list. I agree. It is considered that the term ‘*in particular*’ that follows the broad term serves to indicate an example of the goods applied for and does not act as a restriction. Essentially, the Opponent’s term to be compared to the Applicant’s goods is ‘*unwrought and semi-wrought common metals and their alloys and products made therefrom*’, which as a broad term, encompasses all of the Applicant’s remaining goods. They are, therefore, identical in line with the principle set out in *Meric*. For the avoidance of doubt, this finding of identity applies equally to the remaining groups of the Applicant’s goods, as listed below:

- *Alloys of metal; Metal alloys; Tantalum [metal]; Non-ferrous metal alloys.*

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<sup>5</sup> Written submissions in lieu, dated 14 March 2025

- *Sheet metal; Metal foil.*
- *Rods of metal; Metal rods; Metal pipes; Pipes of metal; Extrusions of metal; Metal extrusions.*
- *Metal hardware; Grommets (Metal -); Metal wire [common metal]; Metal tubing; Solder (Metal -) for stainless steel.*
- *Casings of metal.*
- *Rings of metal; Metal rings.*
- *Sculptures of non-precious metal; Sculptures of metal; Figurines of non-precious metal; Metal castings; Metal forgings; Metal moldings; Metal mouldings; Molds of metal.*

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

23. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties' goods. I must then determine the manner in which the goods are likely to be selected by the average consumer. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

“60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person.

The word “average” denotes that the person is typical. The term “average” does not denote some form of numerical mean, mode or median.”

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



### **Comparison of trade marks**

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

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

The Opponent's earlier mark	The Applicant's contested mark
	

### Overall impression

29. The Opponent's mark consists of the two letters, 't' and 'k' with no other elements. As such, the overall impression is derived from the letters in equal measure with neither letter having a more dominant role.
30. The Applicant's mark consists of the letters 'T' and 'K' separated by a stylised winged sword device. Whilst both elements contribute to the overall impression of the mark, I find that, the eye is naturally initially drawn to the elements of the mark that can be easily read, namely the letters 'TK', keeping in mind *MigrosGenossenschafts-Bund v EUIPO*, T-68/17, where it was stated that:

“...in the case of a mark consisting of both word and figurative elements, the word elements must generally be regarded as more distinctive than the figurative elements, or even as dominant, since the relevant public will keep in mind the word elements to identify the mark concerned, the figurative elements being perceived more as decorative elements...”

### **Visual similarity**

31. Visually, both marks overlap in the use of the two letters ‘t’ and ‘k’, albeit with the Applicant’s mark using capital letters. However, I bear in mind that notional and fair use of the Opponent’s word only mark would include use in both upper and lower case,<sup>6</sup> so letter case is irrelevant to the comparison. The device element present in the Applicant’s mark will not be overlooked by the average consumer and therefore acts as a visual point of difference. Accordingly, I consider there to be a medium degree of visual similarity.

### **Aural similarity**

32. Aurally, both marks contain the same two letters (tk) which will be articulated identically as “TEE – KAY”. The device element in the Applicant’s mark will not be articulated and therefore the marks are aurally identical.

### **Conceptual similarity**

33. For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer. This is highlighted in numerous judgments of the GC and the CJEU including *Ruiz Picasso v OHIM* [2006] e.c.r.-I-643; [2006] E.T.M.R 29. The assessment must, therefore, be made from the point of view of the average consumer.

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<sup>6</sup> *Bentley Motors Limited v Bentley 1962 Limited*, BL O/158/17

34. Conceptually, I have not been provided with submissions from either party as to what concepts would be assigned to the Opponent's and Applicant's marks. However, I consider that the letters 'tk/TK', in both marks, will be recognised as an initialism, which is an abbreviation in which each letter is pronounced separately, with no immediate conceptual meaning, since they may stand for any number of word combinations. The stylisation and winged sword device present in the Applicant's mark will merely be perceived as decorative elements with no particular conceptual meaning. Therefore, since it is not clear what the letters signify, the marks are conceptually neutral. However, as both marks clearly use the same letters, 'tk/TK', they will share a concept to that extent.

### **Distinctive character of the earlier mark**

35. 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 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).”

36. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use that has been made of it.
37. Although the distinctiveness of a mark can be enhanced by virtue of the use that has been made of it, the Opponent has not filed any evidence of use in relation to its mark. Consequently, I have only the inherent position to consider.
38. As highlighted above, the earlier mark consists simply of the letters ‘tk’. The letters have no immediate conceptual meaning, since they may stand for any number of word combinations, Furthermore, I have no submissions or evidence before me to suggest that the letters ‘tk’ are descriptive or allusive in relation to the goods at issue. Consequently, I consider the Opponent’s mark to be inherently distinctive to a medium degree.

### **Likelihood of confusion**

39. 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 vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the Opponent’s trade mark, the average consumer for the goods and the nature of the purchasing process. In

doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he has retained in his mind.

40. Throughout the course of this decision, I have determined that:

- The respective goods are identical.
- The average consumer includes the general public at large who will demonstrate a medium degree of attention when purchasing the goods, as well as professional consumers, such as building contractors and professional businesses in the metal industry who will demonstrate an above medium degree of attention when purchasing the goods.
- The purchasing process for the goods will be primarily visual in nature, though aural considerations have not been excluded.
- The marks at issue are visually similar to a medium degree. The marks are aurally identical. The marks are conceptually neutral, but they share the concept of both containing the letters 'tk/TK'.
- The Opponent's mark possesses a medium degree of inherent distinctive character.

41. I acknowledge that the competing marks coincide in their shared use of the letters 'tk/TK'. This is a dominant element in both marks. Nevertheless, the Applicant's mark contains an additional element, namely the stylised winged sword device. Although this element plays a slightly lesser role in the Applicant's mark, it is not negligible and is unlikely to be overlooked by the average consumer. Taking the above into account, it is my view that the differences between the competing marks are likely to be sufficient for the consumer, paying at least a medium degree of attention, to distinguish between them and avoid mistaking one for the other. As such, notwithstanding the

principles of imperfect recollection and interdependency, I find that there is no likelihood of direct confusion.

42. That leaves indirect confusion to be considered. Indirect confusion was described in the following terms by Iain Purvis QC (as he then was), sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc.*<sup>7</sup>

“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 recognised 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).

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<sup>7</sup> BL O/375/10

(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).”

43. These three categories are not exhaustive. Rather, they were intended to be illustrative of the general approach.<sup>8</sup>
44. I recognise that indirect confusion has its limits and that such a finding should not be made merely because the competing marks share a common element. In this connection, it is not sufficient that a mark merely calls to mind another mark.<sup>9</sup> It has also been emphasised that, where there is no direct confusion, there must be a proper basis for finding indirect confusion.<sup>10</sup>
45. The average consumer tends to perceive trade marks as wholes and I am conscious not to artificially dissect the Applicant’s mark. However, I find that the letters ‘TK’ play an independent distinctive role within the Applicant’s mark, i.e., it has a distinctive significance which is independent of the significance of the whole. The same is true of the Opponent’s mark as it is the sole element. Additionally, it is a dominant element of the Applicant’s mark and is also reproduced in the Opponent’s mark. It is my view that the average consumer will perceive the addition of the stylisation and figurative element in the Applicant’s mark merely as a brand variant or sub-brand of the Opponents ‘tk’ mark. To my mind, consumers will not see ‘tk/TK’ used on different marks in relation to identical goods and put it down to mere coincidence. Rather, they are far more likely to assume a connection between the two undertakings and

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<sup>8</sup> As was confirmed by the Court of Appeal in *Liverpool Gin Distillery and others v Sazerac Brands, LLC and others* [2021] EWCA Civ 1207, paragraph 12.

<sup>9</sup> *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17

<sup>10</sup> See the Court of Appeal’s comments in *Liverpool Gin Distillery*, paragraph 13.

will simply consider that the additional elements in the application is simply an alternative mark being used by the same or economically linked undertaking by virtue of the common use of 'tk/TK'. As a result, I find there to be a likelihood of indirect confusion.

## CONCLUSION

46. The opposition under section 5(2)(b) has been successful in its entirety. Subject to any successful appeal, the application is refused registration.

## COSTS

47. The Opponent has been successful in its opposition and is entitled to a contribution towards its costs. The relevant Tribunal Practice Notice for these proceedings is TPN 1/2023, which states that costs in an opposition brought under the fast-track procedure are capped at £600 (excluding official fees). Accordingly, I award costs to the opponent on the following basis:

Official Fee	£100
Preparing the notice of opposition and considering the counter statement	£250
Written submissions in lieu	£100
<b>Total</b>	<b>£450</b>

48. I therefore order **TAHIR JAMIL** to pay **THYSSENKRUPP AG** the sum of **£450**. This sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the final determination of the appeal proceedings.

**Dated this 30<sup>th</sup> day of September 2025**

**Oliver Rose'Meyer**

**For the Registrar**