O/1084/25

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00004039438
BY SHENZHEN SONGRI TRADING CO., LTD
TO REGISTER:

SOYAR

AS A TRADE MARK IN CLASS 9

AND

IN THE MATTER OF OPPOSITION THERETO
UNDER NO. OP000448066 BY
CARL ZEISS AG

BACKGROUND AND PLEADINGS

1. On 16 April 2024, Shenzhen Songri Trading Co., Ltd. ("the applicant") applied to register in the UK the trade mark shown on the cover page of this decision ("the applicant's mark"). The application was accepted and published for opposition purposes on 26 April 2024 and registration is sought for the following goods:

   Class 9: Microphones; Monitors; Televisions; DVDs; Radios; Amplifiers; Speakers; Computer keyboards; Computer peripherals; Laptops [computers]; Counters; Smartphones; Portable media players; Digital photo frames; Tablet computer.

2. On 17 June 2024, Carl Zeiss AG ("the opponent") filed an opposition opposing the application in full under section 5(2)(b) of the Trade Marks Act 1994 ("the Act"). The opponent relies upon the following International Registration:

   Sonnar

   International registration number WO0000001690317 ("opponent's mark")
   International registration date: 20 September 2022
   Date designated for protection in the UK: 20 September 2022
   Date protection granted in the UK: 4 April 2023
   Relying on all goods being:

   Class 9: Information technology and audio-visual, multimedia and photographic devices; photographic lenses; electrical and electronic devices; smart devices; smartphones; tablets; smart watches; parts of all the aforesaid goods; software for information technology and audio-visual, multimedia and photographic devices; software for electrical and electronic devices; software for smart devices, smartphones, tablets and smart watches.

3. The opponent's mark is derived from an earlier trade mark registered by the opponent in the European Union Intellectual Property Office. As such, the

opponent's mark benefits from an earlier priority date of 21 April 2022, being the filing date of the opponent's EUTM.

4. The opponent's case is that the marks at issue are visually and phonetically similar and conceptually neutral, and that the goods of the parties are either identical or similar, resulting in a likelihood of confusion.

5. The applicant filed a counterstatement denying the claims made.

6. Neither party filed evidence. No hearing was requested and only the opponent filed written submissions in lieu. This decision is taking following a careful perusal of the papers. The opponent is represented by Dehns. The applicant is represented by Gloria Qsing.

7. 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(2)(b): legislation and case law

8. Section 5(2)(b) of the Act reads 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".

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 or international trade mark (UK) 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.

11. The opponent's mark qualifies as an earlier trade mark under the above provisions. As the opponent's mark had not completed its registration process more than five years before the filing date of the applicant's mark, it is not subject to proof of use pursuant to section 6A of the Act. Consequently, the opponent may rely on the goods and services highlighted in its notice of opposition.

12. 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 Office for Harmonization in the Internal Market (Trade Marks and Designs) ("OHIM")*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case

C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P:

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

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

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

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

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

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

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

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

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

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

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

Comparison of goods

13. The parties goods are as follows:

The opponent's goods	**The applicant's goods**
Class 9 Information technology and audio-visual, multimedia and photographic devices; photographic lenses; electrical and electronic devices; smart devices; smartphones; tablets; smart watches; parts of all the aforesaid goods; software for information technology and audio-visual, multimedia and photographic devices; software for electrical and electronic devices; software for smart devices,	Class 9 Microphones; Monitors; Televisions; DVDs; Radios; Amplifiers; Speakers; Computer keyboards; Computer peripherals; Laptops [computers]; Counters; Smartphones; Portable media players; Digital photo frames; Tablet computer.

smartphones, tablets and smart watches.	

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,* 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 ("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 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 *Kurt v Hesse v Office for Harmonization in the Internal Market (Trade Marks and Designs) (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 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 that the responsibility for those goods lies with the same undertaking".

18. I bear in mind that, as per the case of *Separode* (BL O/399/10), it is permissible to group goods together for the purposes of assessment.

19. The opponent's position is that the applicant's goods are identical or similar to the opponent's goods. The opponent states that:

> "[T]he applicant's "smartphones; tablet computer" are identical to the opponent's "smartphones; tablets". The applicant's other goods all fall within the opponent's broad terms "information technology and audio-visual, multimedia and photographic devices; electrical and electronic devices" so are identical thereto or at least similar."

20. The applicant's position is:

> "[T]he goods under SOYAR are "Microphones; Monitors; Televisions; DVDs; Radios; Amplifiers; Speakers; Computer keyboards; Computer peripherals; Laptops [computers]; Counters; Smartphones; Portable media players; Digital photo frames; Tablet computer" are total different from the goods under Sonnar. The goods under Sonnar are "Photographic and optical apparatus and instruments; and parts and fittings included in Class 9 for all the aforesaid goods; but not including sunglasses or sungoggles or frames, cases or lenses, for sunglasses or sungoggles or parts or fittings of any of these excluded goods. Electric goods and optical apparatus are not related."

21. On 24 September 2025, the Registry sent an official letter to the parties stating it had come to their attention that the applicant's counterstatement refers to an incorrect goods specification for the opponent. The Registry provided the applicant with a period of 14 days to amend this accordingly and to file submissions on their position. The Registry stated that a failure to do so would result in the Hearing Officer writing their decision based on the Form TM8 and counterstatement dated 13 August 2024 that refers to the incorrect goods specification. The Registry did not receive a response to their official letter. Consequently, this decision will be written on the basis of the above comments, which include reference to incorrect goods. As the comments are incorrect, they are to be disregarded meaning that the applicant is deemed not to have expressly denied that there exists any similarity between the goods. I will, therefore, proceed as if there is at least some degree of similarity between the goods at issue. That being said, it remains incumbent on me to conduct a full comparison in order to determine the actual level of similarity that exists.

22. I do not intend to summarise the remaining comments of the parties 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.

Smartphones; Tablet computer.

23. The above terms of the applicant are self-evidently identical with "smartphones" and "tablets" respectively in the opponent's specification.

Counters.

24. In the absence of any submissions to the contrary, I find that counters in the applicant's specification describes a small device that contains a number counter that counts whenever the user presses a button or lever. I see no obvious similarities between these goods and any of the opponent's goods. However, while my view would be that these goods are dissimilar, I remind myself of what I have said above about the applicant's failure to clarify its position in respect of the comparison of the goods at issue. As a result, I must find that these goods are similar to at least some degree. Therefore, I find that these goods are similar to a low degree.

Computer keyboards; Computer peripherals; Laptops [computers], Monitors; Microphones; Speakers; Digital photo frames.

25. The above goods are either computer hardware, consumer electronics or accessories therefor. I note that the opponent's specification includes the term "information technology and audio-visual, multimedia and photographic devices". This broad term can encompass all of the above applicant's goods as they are all information technology, audio-visual, multimedia and photographic devices. Overall, I find the goods to be identical under the principle of *Meric*.

Portable media players; Radios; Televisions; Amplifiers.

26. All of the above goods are different types of electronic devices. A radio is an electronic device that receives audio waves and converts them to allow users to listen to broadcasts. A portable media player is an electronic device that plays digital media including audio-visual. An amplifier is an electronic device that increases the size of a signal. Finally, a television is an electronic device that

receives and displays audio-visual signals. I note the opponent's specification includes the terms "electrical and electronic devices" and "information technology and audio-visual, multimedia and photographic devices". As all of the applicant's goods above are types of electronic devices, I find the goods to be identical under the principle of *Meric*.

DVDs.

27. DVD's are a type of data carrier. As the opponent's term "information technology and audio-visual, multimedia and photographic devices" is not limited in any way, I consider that it can include DVD players or DVD copiers. Clearly these goods are different in nature and their method of use to DVD's. However, there is clearly an overlap in trade channels and user in that a producer of a DVD player or DVD copier may also produce and sell a spindle of blank DVD's and those would be aimed at the same average consumer. The goods have a complementary relationship as the opponent's goods are important for the applicant's goods to work, meaning that the consumer may well conclude that the same undertaking is responsible for both. Overall, I find that these goods are similar to a medium degree.

The average consumer and the nature of the purchasing act

28. The case law, as set out earlier, requires that I determine who the average consumer is for the respective parties' goods. I must then decide the manner in which these goods are likely to be selected by the average consumer in the course of trade. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

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

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

29. The opponent submits that although some of the applicant’s goods might be aimed at professionals, for example, in the music industry (‘microphones, amplifiers, speakers’) or the IT industry (‘monitors; computer keyboards; computer peripherals’), they are also, and more likely to be aimed at the general public. The opponent states that the cost of the applicant’s goods will range from a few pounds to hundreds or thousands of pounds. The applicant has not made any submissions regarding the average consumer.

30. The average consumer of the goods at issue is likely to comprise both members of the general public and professional consumers. The cost of the various goods at issue is likely to vary significantly, as will the frequency of the associated purchase. I do consider that laptops, tablet computers and televisions are relatively high value goods that will not be purchased with a degree of frequency, suggesting that the average consumer will be taking an above average (but not the highest) degree of attention when making a selection. They will do this by choosing from a website or visiting a shop, and they may also have used review websites or magazines to assist their decision. They will consider the cost, capabilities and quality of the products within their selection process. The purchasing process is likely to be primarily visual for the goods. However, I also consider that aural considerations will play a role, given the potential for oral recommendations and advertising and discussions with sales representatives.

31. Computer peripherals such as microphones, radios and computer keyboards will, generally, have a lower retail value than laptops and televisions but will also not be purchased regularly. When making a purchase, the average consumer will use similar methods to those above, with the visual element being the most significant, but not discounting aural considerations for recommendations. Overall, given the need to ensure compatibility with existing systems, speed and sound quality, I consider that the average consumer will pay a medium degree of attention during the purchasing process.

Comparison of marks

32. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) 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.

33. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

> ".....it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion."

34. 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 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.

35. The respective trade marks are shown below:

The opponent's mark	The applicant's mark
SONNAR	SOYAR

36. The opponent submits that the marks are visually and phonetically similar and conceptually neutral. The opponent states that both marks are short words which

share their first two and last two letters. In its counterstatement, the applicant states that the marks are totally different.

Overall impression

37. Both parties' marks are word only marks. The applicant's mark consists of the word "SOYAR" whereas the opponent's mark consists of the word "SONNAR". There are no other elements that contribute to the overall impression of the marks, which lies in the words themselves.

Visual comparison

38. Visually, the marks overlap through the use of the letters "SO" at their beginnings and the letters "AR" at their ends. The marks differ in the present of the letter "Y" as the third letter in the applicant's mark and the letters "NN" as the third and fourth letters in the opponent's mark. Overall, while the mark do share some letters and even bearing in mind that consumers tend to focus on the beginning of the marks,[1] the different letters will be noticed. Overall, I find that the marks are visually similar to a medium degree.

Aural comparison

39. The opponent's mark consists of two syllables and will be pronounced as "SON-ARR" or "SOH-NAH". The applicant's mark also consists of two syllables and will be pronounced as "SOY-AR" or "SOY-AH". While there are similarities in these syllables, they are not identical. In comparing the marks, I am of the view that they are, aurally, short marks, both being two syllables in length. While there is no special test for 'short marks',[2] I consider that the shortness of the marks at issue means that the average consumer is more likely to notice the differences. As a result, I do not consider that the marks are highly similar but, instead I find that marks are aurally similar to a medium degree.

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[1] *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02
[2] See paragraph 44 of *BOSCO*, BL O/301/20

Conceptual comparison

40. Conceptually, the opponent submits that the marks are conceptually neutral because both marks are invented words which are meaningless in relation to the goods. The applicant does not make any submissions regarding the conceptual position. In considering the marks, I agree with the opponent in that neither has any obvious meaning and, as such, I find that the marks at issue are conceptually neutral.

Distinctive character of the opponent's mark

41. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 the CJEU stated that:

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

42. 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 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. The opponent has not pleaded that its mark has obtained an enhanced level of distinctiveness and, no evidence has been filed to that effect. Therefore, I only have the inherent position to consider.

43. The opponent's mark is a word only mark being "SONNAR". The opponent states that "SONNAR" is an invented word which has no direct or specific meaning for any of the goods relied upon and accordingly, the inherent distinctive character of the opponent's mark is medium or above.

44. As above, the opponent's mark carries no meaning and, as such, it will be viewed as an invented word. Therefore, I consider that the opponent's mark enjoys a high degree of distinctiveness.

Likelihood of confusion

45. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods and services down to the responsible undertakings being the same or related. 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. It is necessary for me to keep in mind the distinctive character of the opponent's 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 they have retained in their mind.

46. Whilst conducting a global assessment of the likelihood of confusion I must be aware of the fact that not all aspects of the respective marks will necessarily have the same impact. For example, the importance of the respective visual, aural and conceptual aspects will be dependent on factors such as the way the goods at issue are marketed, and in which type of store/platform they are made available.

47. Throughout the course of this decision, I have found the respective goods to range from being identical to similar to a low degree. The average consumers are members of the general public at large and professional consumers who, depending on the goods at issue, will select them via primarily visual means (though I do not discount an aural component) after having paid either an above average (but not the highest) or a medium degree of attention during the purchasing process depending on the goods at issue. I have found the marks to be similar to a medium degree from both a visual and aural perspective and conceptually neutral. I have found the opponent's mark to possess a high degree of inherent distinctive character.

48. As above, I have accepted that neither "SONNAR" or "SOYAR" have a clear meaning. The competing marks are both single word marks which share the first two letters and last two letters. In this instance, where both marks are short, I consider that the differences in the marks are likely to be easily identified by the average consumer. I also take into consideration that I have found the marks to be conceptually neutral. 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 an above average (but not the highest) or 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, even when considered on identical goods.

49. This leaves indirect confusion to be considered. In respect of such, I remind myself of the case of *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, wherein Mr Iain Purvis Q.C., 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)".

50. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, 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*,[3] 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.

51. It is not sufficient that a mark merely calls to mind another mark: *Duebros Limited v Heirler Cenovis GmbH*.[4] This is mere association not indirect confusion.

52. The types of cases set out in paragraph 17 of Mr Purvis's decision *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10 set out at paragraph 49 above are not exhaustive. However, they are the most usual circumstances where indirect confusion may arise. In my judgment, none of them apply here. Firstly, the common element of both marks, being the first two letters "SO" and the last two letters "AR", are not so distinctive that consumers would assume that no one else but the brand owner would be using it in a trade mark at all. I do not consider that these common elements alone would lead consumers to believe that the marks originate from the same or economically linked undertakings. This is because both marks are short and likely to be perceived as a whole, and whilst the overlapping element will be noted, the same can be said for the different letters in the middle of each word. Secondly, the applicant's mark does not add a non-distinctive element to the earlier mark of the kind which one would expect to find in a sub-brand or brand extension. Thirdly, the changing of the third and fourth letters "NN" in the middle of the opponent's mark to "Y" being the third letter in the applicant's mark does not appear to be logical and consistent with a brand extension. Additionally, it seems highly improbable that the applicant's mark would be taken as signifying a collaboration between the parties. Given the visual and aural differences in the marks, as well as the conceptual neutrality, I do not consider that the variations in the middle of the words are indicative of a logical brand extension.

[3] BL O/219/16
[4] BL O/547/17

53. Taking all of the above into account, I find that there exists no likelihood of indirect confusion, even when the consumers are confronted by the marks on identical goods.

CONCLUSION

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

COSTS

55. The applicant has been successful and is entitled to a contribution towards their costs, based upon the scale published in Tribunal Practice Notice 1/2023. In considering the costs award, I note that neither party filed any evidence. In the circumstances, I hereby award the applicant the sum of £250 calculated as follows:

Considering the notice of opposition and preparing the counterstatement:	£250
Total:	**£250**

56. I therefore order Carl Zeiss AG to pay Shenzhen Songri Trading Co., Ltd. the sum of £250. The above 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 conclusion of the appeal proceedings.

Dated this 20th day of November 2025

N Barratt

For the Registrar