

O/1206/25

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00004073815

BY GUANGZHOU SUSALE LIMITED

TO REGISTER:

neossion

AS A TRADE MARK IN CLASS 9

AND

IN THE MATTER OF THE OPPOSITION THERETO

UNDER NO. 450252

BY SIOEN INDUSTRIES N.V.

BACKGROUND AND PLEADINGS

1. On 10 July 2024, GUANGZHOU SUSALE LIMITED (“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 19 July 2024 in respect of the following goods:

Class 9: *Clothing for protection against accidents, irradiation and fire; Gloves for protection against accidents; Shoes for protection against accidents, irradiation and fire; Reflective safety vests; Life jackets; Safety helmets; Dust protective masks; Spectacle holders; Bullet-proof clothing; Wet suits.*

2. On 17 October 2024, the application was opposed by SIOEN INDUSTRIES N.V. (“the opponent”). The opposition was originally based upon Section 5(2)(b) and 5(3) of the Trade Marks Act 1994 (“the Act”), however, the opponent subsequently withdrew its opposition based on Section 5(3)¹ and the opposition continued based only on Section 5(2)(b).

3. Under Section 5(2)(b) the opponent relies upon the following trade marks and the goods and services covered by the same, as shown below:²

UK00913858121 (“the opponent’s word-only mark”)

SIOEN

Filing date: 20 March 2015

Registration date: 27 July 2015

Priority date: 22 September 2014

Class 23: *Yarns and threads, for textile use.*

¹ See the opponent’s written submissions dated 7 March 2025.

² Both marks are comparable EU marks. Following the end of the transition period of the UK’s withdrawal from the EU, all EU trade marks (“EUTM”) registered before 1 January 2021 were recorded as comparable trade marks in the UK trade mark register (and as a consequence, have the same legal status as if they had been applied for and registered under UK law). A ‘comparable trade mark (EU)’ retains the same filing date, priority date (if applicable) and registration date of the EUTM from which it derives.

Class 24: *Coated technical fabrics and coated textile products; none being decorative materials for household or interior furnishings, or made for household furnishings; textiles and textile goods, not included in other classes, namely, sunscreens [curtains] made of coated technical fabrics.*

Class 40: *Application of a coating or protective layer on technical textiles.*³

UK00903412657 (“the opponent’s figurative mark”)



Mark Description/Limitation: Colour Claimed : Black, white, blue.

Filing date: 16 October 2003

Registration date: 22 April 2005

Class 9: *Protective clothing, life belts, life jackets.*

Class 24: *Textiles of both synthetic and natural fibres (woven, knitted, non-woven, etc) with a coating composed of resins, synthetic or natural products, for manufacturing weatherproof clothing.*

Class 25: *Clothing, footwear, headgear.*

4. By virtue of their earlier filing date, the trade marks relied upon by the opponent are “earlier marks” in accordance with Section 6 of the Act. As the opponent’s earlier marks had been registered for five years or more at the filing date of the applied-for mark, they are both subject to the use conditions under Section 6A of the Act. However, as the applicant did not request that the opponent prove use of its marks, the opponent is entitled to rely upon all of its goods and services without demonstrating that it has used its marks.

³ This mark is registered for additional goods and services which are not relied upon in the present opposition.

5. Under Section 5(2)(b), the opponent claims there is a likelihood of confusion because the marks are similar, and the goods and services are identical or similar. It states as follows:

“The Applied for Mark is highly similar to the Opponent's Mark. Visually, both Marks contain the same letters, with letters S, I, and O all featuring in the same order. Phonetically, the Applied for Mark will be dissected upon pronunciation, as follows: NEO-SSION, with the last 5 letters of the Applied for Mark (SSION) being pronounced identically to the Opponent's Mark: SIOEN. Conceptually, both Trade Marks are invented words with no dictionary meaning, hence, conceptual similarity ought to remain neutral. In the alternative, due to the high level of visual and aural similarity between the Trade Marks, a significant portion of the public could infer a shared concept. For this portion of the public, conceptual similarity will be high. It is submitted that the Opponent's Mark is inherently highly distinctive, and due to its longstanding use in the UK, it has acquired an enhanced distinctive character and therefore enjoys a broader scope of protection. The goods applied for are highly similar to the goods and services relied upon by the Opponent. In view of this, there exists a likelihood of confusion or association and hence, the Application should be refused entirely under Section 5(2)(b) TMA 1994.”

6. In relation to the figurative mark, the opponent states:

“The level of stylization in the Opponent's logo is low, and will be overlooked by consumers, especially as the logo contains a word capable of being pronounced and because of this, the dominant and most distinctive element within the logo is the word "SIOEN".

7. The applicant filed a counterstatement, denying the claims made.

8. The opponent is represented by Albright IP Limited. The applicant is represented by Marcin Ociepka. Neither party filed any evidence during the evidence rounds, but the opponent filed written submissions dated 7 March 2025. Neither party requested

a hearing, nor did they file written submissions in lieu. I make this decision having taken full account of all the papers, referring to them as necessary.

RELEVANCE OF EU LAW

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.

DECISION

Section 5(2)(b)

10. 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.”

11. Section 5A of the Act is as follows:

“5A Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only.”

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 greater degree of similarity between the marks, and vice versa;

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

(i) mere association, in the strict sense that the later mark brings to mind the earlier mark, 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. Some of the applied-for goods (i.e. *Clothing for protection against accidents, irradiation and fire* in class 9) are identical to the goods on which the opposition is based (i.e. *Protective clothing* in class 9, as covered by the figurative mark). For reasons of procedural economy, the Tribunal will not undertake a full comparison of the goods and/or services listed above. The examination of the opposition will proceed on the basis that the contested goods are identical to those covered by the earlier figurative mark. If the opposition fails even where the goods are identical, it follows that the opposition will also fail where the goods are only similar.

14. For the sake of completeness, I should point out that the identical goods I have identified above are protected by the registration of the figurative mark. Although the opponent also relies on a word-only mark, the differences between the word-only mark and the figurative mark are unlikely to make any difference to the outcome of the case. This is because they both consists of the identical word 'SIOEN' and the opponent stated that the level of stylization in the opponent's figurative mark is low and will not

prevent the consumer from perceiving the verbal element of that mark as the word 'SIOEN' which remains the dominant and most distinctive element of the mark.

Average consumer

15. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective 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. (as he then was) 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.”

16. The average consumer for the goods at issue will be a member of the general public, workmen/women, medical and healthcare professionals or a business user purchasing safety equipment for use in a commercial context. The goods at issue are likely to be selected visually from the shelves of a retail shop (or its online equivalent), catalogues or the website or premises of a specialist. However, I do not discount aural considerations in the form of, for example, advice received from a sales assistant or word-of-mouth recommendations.


17. The cost of the goods is relatively inexpensive, and they will be purchased relatively frequently. Generally speaking, the average consumers will pay a medium degree of attention during the selection process of the goods at issue.

Comparison of marks

18. 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. 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.”

19. It would be wrong, therefore, to artificially dissect the trade marks, 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. The respective marks are shown below:

| The applied-for mark | The opponent's mark |
|----------------------|--|
| neossion |  |

20. The applied-for mark is a word-only mark consisting of the single word ‘neossion’ presented in a standard typeface in lower-case letters, without any other elements to contribute to the overall impression. The overall impression conveyed by the mark therefore rests in the word itself.

21. The opponent's figurative mark consists of the word 'SIOEN' presented in a slightly stylised typeface with the letters 'S', 'I', 'E' and 'N' presented in black, and the letter 'O' presented in a purple/bluish colour. Whilst the stylisation and the colour are not completely negligible, they are not striking and will not prevent the verbal element of the mark from being perceived as the distinctive word 'SIOEN', which remains the dominant element of the mark.

Visual, aural and conceptual similarity

22. The verbal elements of the marks are the words 'neossion' (in the application) and 'SIOEN' (in the opponent's figurative mark). In its submissions in lieu the opponent states as follows:

"The respective Trade Marks are both comprised of the same letters, namely, S, I, O, E and N, and coincide in the letter string "S-I-O". Save for replacing the letter "E", with another letter "S", Earlier Mark 1 is entirely contained within the latter portion of the Application. The addition of the word "NEO" at the beginning of the Application does not alter the distinctive character of the Mark to any extent, being that the word "neo" is commonly understood to mean "new". Hence, this word possesses little, to no, distinctive character. Whilst acknowledging that Trade Marks should be assessed as a whole, it is well established that when perceiving a verbal sign, the consumer will likely break it down into elements that suggest a concrete meaning or which resemble words known to them (EUIPO Case T-256/04 at paragraph 57). In the Application, the word "neo" will be perceived separately from "ssion", as consumers will understand the word "neo", but not the "ssion" portion of the Mark, regardless of there not being a space between these words. The effect of this is that the "ssion" portion of the Application and the word "neo" have their own independent distinctive character, with the word "neo" being of lesser importance in the overall impression conveyed by the Mark. Whilst "neo" forms the first part of the Trade Mark, it is a readily understood word, and is comprised of three letters. On the other hand, the "ssion" portion of the Application is a word without meaning and comprises five letters. Hence, this is the more memorable element of the Application and visually, is the longer

and more striking word. Whilst it is generally held that consumers pay more attention to the first part of a Trade Mark, it is also accepted that this is not always the case (paragraph 7 in Appeal to the Appointed Person Decision BL O/1141/23). As above, due to the independent roles “neo” and “ssion” play in the overall impression of the Application, it is submitted that consumers will pay more attention to the latter part of the Mark.

The Trade Marks are visually similar to a medium degree.”

23. Conversely, the applicant states:

“[...] the trademarks under comparison consist of different letters, placed in a completely different sequence, creating an overall entirely different impression [...] The length of the marks not only affects the visual, but also the phonetic assessment of the mark. Aurally, according to the guidelines the overall phonetic impression produced by a sign is particularly influenced by the number and sequence of its syllables. The earlier trademarks consist of only two syllables, i.e. "SIO" and "EN", while the Sign consists of three syllables, i.e. "NE", "O" and "SSION", this difference between them also affects the accentuation of the trademarks in question. Therefore the compared trademarks differ significantly from each other from a phonetic point of view, not only in the syllables but also different rhythms and intonations”.

24. I agree with the applicant that the verbal elements of the marks ‘neossion’ and ‘SIOEN’ are completely different, the coincidence of the string of three letters ‘SIO’ and the presence of the final letter ‘N’ being insufficient to give rise to any meaningful similarity between the marks from a visual, aural and conceptual perspective. In addition, although the string of three letters ‘SIO’ is present in both marks, it is placed at the beginning of the opponent’s mark and in the middle/towards the end of applied-for mark respectively, which further reduce the ability of the eye to readily perceive it in both marks. To be fair, my first reaction when seeing the marks was to wonder where the similarity lies, and it was only after I read the opponent’s submissions that I identified the presence in both marks of the string of three letters ‘SIO’ and the final letter ‘N’. Lastly, the opponent’s argument about the element ‘neo’ being perceived

separately from the element 'ssion' engages in an artificial dissection of the marks, because the average consumer normally perceives a mark as a whole and does not analyse its details. The applicant's mark consists of the single invented word 'neossion' which it would be artificial to dissect: it is presented as a single word and the average consumer will not extrapolate the element 'neo' and 'ssion' independently. Further, the element 'ssion' has no meaning and consequently 'neo' will not be seen as a prefix within 'neossion' – to work as a prefix, 'neo' would need to be used with another word to qualify it, for example, 'neoclassic'.

25. Bearing in mind that the word 'neossion' and 'SIOEN' are of different length, being eight and five letter long respectively, that they have a different beginning, and that the coincidence of the string of three letter 'SIO' is not easily identifiable, being placed at the beginning and in the middle/end of the marks respectively, the only readily perceivable similarity between the marks being the final letter 'N', I consider that the marks are visually different. This is even without considering the stylisation of the opponent's mark. The same conclusion applies, in my view, to the aural comparison with the marks being pronounced as 'NEO-SION' and 'SIO-ENN.' Conceptually, neither mark conveys any meaning and, consequently, the conceptual position is neutral.

26. Since some similarity of marks essential,⁴ there is no likelihood of confusion between the marks. However, for the sake of completeness and in case I am wrong, I will proceed on the basis that there is a low level of Visual and aural similarity between the marks.

Distinctive character of the earlier mark

27. 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

⁴ Calvin Klein Trademark Trust v OHIM, Case C-254/09 P

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).”

28. Registered trade marks possess various 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 made of it.

29. The earlier mark consists of the stylised word ‘SIOEN’. The word ‘SIOEN’ is an invented word which does not evoke any concept, and the stylisation does not change anything. I consider the mark to be distinctive to a high degree.

Likelihood of confusion

30. 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, including that a lesser degree of similarity between the respective marks may be offset by a greater degree of similarity between the respective goods

and vice versa. I must keep in mind the distinctive character of the earlier marks, the average consumer for the goods and the nature of the purchasing process. I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between marks and must instead rely upon the imperfect picture of them that they have retained in their mind.

31. Earlier in this decision I found that:

- The marks are visually and aurally similar to a low degree and conceptually neutral.
- The goods are identical.
- The goods will be selected visually with an average degree of attention. However, aural considerations cannot be discounted completely.
- The earlier mark is distinctive to a high degree.

32. I consider that notwithstanding the identity of the goods and the high distinctive character of the earlier mark, the low visual and aural similarity between the marks is insufficient to cause the average consumer to directly confuse them. In reaching this conclusion, I bear in mind that (a) the marks are of different length, (b) the only similarity between the mark consists of a string of three letters (I.E. 'SIO') which is placed in different positions within the marks and the final letter 'N', which is common to both marks. The marks are sufficiently different not to be misread or mis-recalled for one another. There is no likelihood of direct confusion.

33. As regards indirect confusion, since the marks consists of different words which will be perceived as wholes, and create different overall impressions, there is no basis for the relevant public to think that they are marks used by the same or economically linked undertakings.

33. There is no likelihood of indirect confusion.

34. The opposition fails in its entirety.

OUTCOME

35. The opposition is unsuccessful, and the application can proceed to registration.

COSTS

36. The applicant has been successful and is, therefore, entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 1/2023. In the circumstances, I award the applicant the sum of £450 as a contribution towards the costs of proceedings. The sum is calculated as follows:

Filing a counterstatement

And considering the notice of opposition: £300

Considering the opponent's submissions: £150

Total: £450

37. I, therefore, order SIOEN INDUSTRIES N.V. to pay GUANGZHOU SUSALE LIMITED the sum of £450. This sum is to be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 22nd day of December 2025

TERESA PINTO

For the Registrar