O-246-22

TRADE MARKS ACT 1994

IN THE MATTER OF

TRADE MARK APPLICATION NO 3480565

BY JIANGSU YANGHE BREWERY JOINT-STOCK CO., LTD.

TO REGISTER

Ocean Blue

AS A TRADE MARK IN CLASS 33

AND

OPPOSITION THERETO (UNDER NO. 421614)

BY

FRANZ WILHELM LANGGUTH ERBEN GMBH & CO KG

BACKGROUND

1) On 10 April 2020, Jiangshu Yanghe Brewery Joint-Stock Co., Ltd. ('the applicant') applied to register the trade mark shown on the cover page of this decision in respect of the following goods:

> **Class 33:** Baijiu [Chinese distilled alcoholic beverage]; digesters [liqueurs and spirits]; wine; liqueurs; spirits [beverages]; alcoholic beverages, except beer; edible alcohol; arrack [arak]; fruit extracts, alcoholic; pre-mixed alcoholic beverages, other than beer-based.

2) The application was published in the Trade Marks Journal on 26 June 2020 and notice of opposition was later filed by Franz Wilhelm Langguth Erben GmbH & Co KG ('the opponent'). The opponent claims that the trade mark application offends under section 5(2)(b) of the Trade Marks Act 1994 ('the Act'). It relies upon the following European trade mark registration[1]:

EUTM No: 017062969

BLUE

Class 33: Wine; Sparkling wines; Beverages containing wine.

Filing date: 02 August 2017
Date of entry in the register: 17 February 2020

3) The opponent claims that:

> "The conflicting marks are highly similar on a visual, phonetic and conceptual basis.

[1] Although the UK has left the EU and the transition period has now expired, EUTMs, and International Marks which have designated the EU for protection, are still relevant in these proceedings given the impact of the transitional provisions of The Trade Marks (Amendment etc.) (EU Exit) Regulations 2019. Tribunal Practice Notice 2/2020 refers.

> The goods applied for …are in part identical with and in part highly similar to the goods of… Class 33 covered by the Opposition Mark"

4) The trade mark relied upon by the opponent is an earlier mark, in accordance with section 6 of the Act. As the earlier mark had not been registered for more than five years at the date the application was filed, the earlier mark is not subject to the proof of use conditions as per Section 6A of the Act.

5) The applicant filed a counterstatement denying the ground of opposition.

6) The opponent is represented by KUNZE PartG mbB and the applicant by Hanna, Moore + Curley. Both parties filed evidence. The opponent's evidence was also accompanied by submissions. Neither party requested a hearing. Only the opponent filed submissions in lieu. I now make this decision after a careful perusal of the papers before me.

EVIDENCE

7) The opponent's evidence comes from its legal representative, Mr Roland Kunze. The applicant's evidence comes from the General Manager of its International Trade Department, ShuoZANG. I have read all the evidence and will refer to it when it is relevant and appropriate to do so in the following decision.

DECISION

8) Section 5(2)(b) of the Act states:

> "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.

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."

Case law

9) The leading authorities which guide me are from the Court of Justice of the European Union ('CJEU'): *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 will wrongly believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

10) Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in

accordance with EU law as it stood at the end of the transition period. The provisions of the Act relied on in these proceedings are derived from an EU Directive. This is why this decision continues to make reference to the trade mark case law of EU courts.

Comparison of goods

11) All relevant factors relating to the goods should be taken into account when making the comparison. In *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer* the CJEU, Case C-39/97, stated at paragraph 23 of its judgment:

> "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."

12) Guidance on this issue has also come from Jacob J where, in *British Sugar Plc v James Robertson & Sons Limited* [1996] RPC 281, the following factors were highlighted as being relevant:

> (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.

13) In terms of being complementary (one of the factors referred to in *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer*), this relates to close connections or relationships that are important or indispensable for the use of the other. In *Boston Scientific Ltd v OHIM* Case T- 325/06, it was stated:

> "It is true that goods are complementary if 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.."

In Sanco SA v OHIM Case T-249/11, the General Court ('GC') found that goods and services may be regarded as 'complementary' and therefore similar to a degree in circumstances where the nature and purpose of the respective goods and services was very different, i.e. chicken against transport services for chickens. The purpose of examining whether there is a complementary relationship between goods/services is to assess whether the relevant public are liable to believe that responsibility for the goods/services lies with the same undertaking or with economically connected undertakings. As Mr Daniel Alexander Q.C. noted as the Appointed Person in Sandra Amelia Mary Elliot v LRC Holdings Limited (BL-0-255-13):

> "It may well be the case that wine glasses are almost always used with wine – and are, on any normal view, complementary in that sense - but it does not follow that wine and glassware are similar goods for trade mark purposes."

Whilst on the other hand:

> ".....it is neither necessary nor sufficient for a finding of similarity that the goods in question must be used together or that they are sold together."

14) Finally, I note the decision in *Gérard Meric v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM* Case T-133/05) ('*Meric*'), where the GC held 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 the trade mark application (Case T-388/00 Institut für Lernsysteme v OHIM – Educational Services (ELS) [2002] ECR II-4301, paragraph 53) or when the goods designated by the trade mark application are included in a more general category designated by the earlier mark (Case T-104/01 Oberhauser v OHIM – Petit Liberto (Fifties) [2002] ECR II-4359, paragraphs 32 and 33; Case T-110/01 Vedial v OHIM – France Distribution (HUBERT) [2002] ECR II-5275,paragraphs 43 and 44; and Case T-10/03 Koubi v OHIM – Flabesa (CONFORFLEX) [2004] ECR II-719, paragraphs 41 and 42)."

15) The goods to be compared are:

Opponent's goods	Applicant's goods
Class 33: Wine; Sparkling wines; Beverages containing wine.	**Class 33:** Baijiu [Chinese distilled alcoholic beverage]; digesters [liqueurs and spirits]; wine; liqueurs; spirits [beverages]; alcoholic beverages, except beer; edible alcohol; arrack [arak]; fruit extracts, alcoholic; pre-mixed alcoholic beverages, other than beer-based.

16) The applicant's 'wine' is obviously identical to the opponent's 'wine'.

17) The applicant's 'alcoholic beverages, except beer' is a broad category which includes all the opponent's goods. They are identical in accordance with *Meric*.

18) The applicant's 'pre-mixed alcoholic beverages, other than beer-based' is, in my view, broad enough to include the opponent's 'beverages containing wine' because the latter term does not, in my view, mean that the beverages consist exclusively of wine; rather it means beverages consisting of wine and some other kind of beverage such as spritzers, for example. The goods are therefore identical, as per *Meric*.

19) Turning to the applicant's 'Baijiu [Chinese distilled alcoholic beverage]; digesters [liqueurs and spirits]; liqueurs; spirits [beverages]; arrack [arak]', these are all types of spirits and liqueurs. These are similar in purpose to the opponent's goods to the extent that they are consumed in order to enjoy the effects of alcohol. The nature of the respective goods is also similar in so far as they are all alcoholic drinks. However, the applicant's goods are usually (but not always) made from different ingredients to the opponent's goods. Spirits and liqueurs are also usually short drinks and are likely to have a higher 'alcohol by volume' content than the opponent's goods. The opponent's goods and spirits/liqueurs are therefore not usually in competition and nor are they complementary. Overall, I consider the applicant's goods to be similar to a low degree to those of the opponent.

20) I now consider the applicant's 'fruit extracts, alcoholic'. These are similar in purpose to the opponent's goods to the extent that they are consumed in order to enjoy the effects of alcohol. The nature of the respective goods is also similar in so far as they are all alcoholic drinks. The applicant's goods may also sometimes be made from the same ingredients as the opponent's goods (grapes, for example). The respective 'alcohol by volume' content may also be similar and there may be a degree of competition in play. However, there is no obvious complementary relationship between the goods. Overall, I consider the applicant's goods to be similar to a low degree to those of the opponent.

21) Finally, I turn to the applicant's 'edible alcohol'. I have no submissions or evidence from the opponent as regards the meaning of this term nor why it considers these goods to be similar to its goods. In my view, the normal and natural meaning of 'edible alcohol' is alcohol which is safe for human consumption (as opposed to other types of alcohol which is not fit for human consumption which may be used for other industrial, pharmaceutical or medicinal purposes). The respective goods are similar in nature to the limited extent that they are both liquids that contain alcohol. However, I would expect the users of the goods to be different: the opponent's goods are likely to be purchased by the general public for consumption; the applicant's goods are likely to be purchased by drink manufacturers for use in the process of making alcoholic drinks. The intended purpose, methods of use and trade channels therefore differ and there is no competitive relationship in play. It is possible that the applicant's 'edible alcohol' may sometimes be used in the process of making the opponent's goods and may therefore be complementary in that sense but not, in my view, in such a way that consumers are likely to believe that the respective goods come from the same undertaking. Overall, I find no similarity between the respective goods or, if I am wrong, any similarity is very low.

Average consumer and the purchasing process

22) It is necessary to determine who the average consumer is for the respective goods and the manner in which they are likely to be selected. 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."

23) The average consumer of the majority of the goods at issue (with the exception of the applicant's 'edible alcohol', which I deal with in the next paragraph) is a member of the general public over the age of 18 and businesses such as restaurants and night clubs who may purchase such goods for onward sale to their customers. The cost of those goods is likely to vary. Even for those at the lowest end of the cost scale, the average consumer may wish to ensure that they are selecting a preferred type, strength, or flavour before committing to the purchase. I find that a medium (i.e. average) level attention will likely be paid. I bear in mind that the goods may be requested orally in bars and restaurants, for example, and therefore aural considerations must be borne in mind. That said, in those circumstances, the average consumer is likely to encounter the marks visually before placing their order by way of bottles on shelves/fridges behind the bar or on spirit optics, for instance.[2] The goods will also be sought out visually on supermarket/off-license shelves where the visual aspect will dominate the selection process.

24) For the reasons given in paragraph 21 of this decision, I consider that the average consumer of the applicant's 'edible alcohol' is likely to consist mainly of businesses in the drinks trade for use in the production of alcoholic drinks. Such consumers are likely to want to ensure that the goods are fit for purpose and human consumption and are likely to pay a medium degree of attention. The goods are likely to be sought out visually through trade catalogues and websites and therefore the purchase will be mainly visual. That said, I do not discount the potential for aural use of the marks.

Comparison of marks

25) 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

[2] *Rani Refreshments FZCO v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-523/12 and *Simonds Farsons Cisk plc v OHIM*, Case T-3/04.

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."

It would be wrong, therefore, artificially to dissect the marks, although it is necessary to take into account their distinctive and dominant components and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

26) The marks to be compared are:

Opponent's mark	**Applicant's mark**
BLUE	Ocean Blue

27) The overall impression of the opponent's mark rests solely in the single word BLUE. The applicant's mark consists of the two words Ocean Blue in a cursive script. The overall impression of that mark is dominated by the combination of the two words, which form a unit.

28) Visually, both marks contain the word Blue. However, the applicant's mark also contains the word Ocean at the beginning of its mark which is absent from the opponent's mark. This is an important point of difference since it is the beginnings of marks which tend to have the greatest impact upon the perception. The cursive script in which the applicant's mark is presented appears to me to be a fairly standard type of font. As the opponent's mark may be used in the same/highly similar font, this is not a point of visual difference. Overall, I find a low to medium degree of visual similarity between the marks.

29) Aurally, both marks consist of everyday words, the pronunciation of which requires no explanation. Clearly, the marks coincide in respect of the single syllable word BLUE. However, the applicant's mark contains the additional two syllable word Ocean which precedes the word Blue and is absent from the opponent's mark. The presence of the word 'Ocean' in the applicant's mark creates a notable point of aural contrast, as compared to the opponent's mark, because it is that word which will be spoken first and therefore have greater impact than the word 'blue' which follows it. Overall, I find a low degree of aural similarity between the marks.

30) Conceptually, the opponent contends that the respective marks have 'an identical connotation'[3] because the opponent's mark refers to the colour blue and the applicant's mark is a shade of blue, as shown in the RAL colour chart in its evidence[4]. While I do not accept that the average consumer is likely to be aware of the particular RAL colour matching system in the opponent's evidence, I do accept that the applicant's mark is, in any event, likely to be perceived as meaning a particular shade of blue, given the natural meaning of the words in the mark. That said, I disagree that this renders the marks conceptually identical. This is because the opponent's mark refers to the colour blue *per se* while the applicant's mark is likely to be perceived as a specific shade of blue which is reminiscent, specifically, of the ocean. That specific reminiscence is absent from the opponent's mark. In my view, this results in no more than a medium degree of conceptual similarity between the marks.

[3] Written Submissions dated 29 Dec 2021, [22]
[4] Exhibit RK2

Distinctive character of the earlier mark

31) The distinctive character of the earlier mark must be considered. The more distinctive it is, either by inherent nature or by use, the greater the likelihood of confusion (*Sabel BV v Puma AG*). 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 *WindsurfingChiemsee* 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)."

32) BLUE is a normal, everyday word with which the average consumer will be very familiar. However, it is neither descriptive nor allusive in relation to the opponent's goods. I find that it has a normal degree of inherent distinctiveness. There is no evidence before me to show that this has been enhanced through use.

Likelihood of confusion

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

34) I will first consider the likelihood of direct confusion. I have found that some of the respective goods are identical, some are similar to a low degree and others, if similar at all, share only a very low degree of similarity. The earlier mark also has a normal degree of distinctive character. The respective marks share only a low to medium degree of visual similarity, a low degree of aural similarity and no more than a medium degree of conceptual similarity. Even allowing for imperfect recollection, I find that the average consumer, paying at least a medium level of attention, is unlikely to mistake one mark for the other in relation to any of the relevant goods. There is no likelihood of direct confusion.

35) I now turn to consider whether there is a likelihood of indirect confusion. In *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, 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)".

36) 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* (O/219/16), where he said at [16] that "a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion". Arnold LJ agreed, pointing out that there must be a "proper basis" for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

37) Furthermore, it is not sufficient that a mark merely calls to mind another mark: *Duebros Limited v Heirler Cenovis GmbH,* BL O/547/17. This is mere association not indirect confusion.

38) The common element between the marks at issue is the everyday word 'blue'; this is not a word which is "so strikingly distinctive". The applicant's mark also does not simply add "a non-distinctive element to the earlier mark"; the additional word

‘Ocean’ is a distinctive one which combines to form a distinctive unit with the word ‘Blue’. As to whether the marks at issue are likely to fall within Mr Purvis’ category (c), I come to the view that this is unlikely. It is true that one mark is a reference to the colour blue and the other a particular shade of blue however, that is not enough, in my view to conclude that one mark would be perceived as an “entirely logical and consistent” brand extension of the other in relation wine or any of the other drinks at issue and I cannot see there is likely to be any other kind of mental process on the part of the consumer that is likely to lead them to believe that the respective goods come from the same undertaking. To my mind, the most that can be said is that the common inclusion of the everyday word ‘blue’ may result in one mark bringing to mind the other mark. However, that is mere association, not indirect confusion, which, as noted by Mr James Mellor QC in the case law above, is insufficient to satisfy the requirements of section 5(2)(b).

39) This conclusion is not disturbed by the opponent’s reference to other proceedings in which it has successfully opposed three other marks at the EUIPO, the Spanish OEPM and the French INPI respectively. Suffice to say, I do not consider that any of those proceedings are on a par with, or should have any bearing on, the proceedings before me. While each of those contested marks contained the word ‘blue’, the additional matter and/or words in those marks (or, indeed, the lack of additional dominant or distinctive matter insofar as the European Mark for the word ‘Blue’ on a wine bottle, is concerned) means that the visual, aural and conceptual considerations are not the same as those in the instant case, as between ‘Blue’ and ‘Ocean Blue’. Furthermore, the likelihood of confusion in the Spanish and French proceedings is not assessed from the perspective of an English-speaking UK consumer.

OUTCOME

40) **The opposition fails**

COSTS

41) As the applicant has been successful, it is entitled to a contribution towards its costs. Using the guidance in Annex A of Tribunal Practice Notice 2/2016, I award the applicant costs on the following basis:

Preparing a statement and considering the opponent's statement	£300
Preparing evidence and considering the other side's evidence	£500
Total:	**£800**

42) I order Franz Wilhelm Langguth Erben GmbH & Co KG to pay Jiangshu Yanghe Brewery Joint-Stock Co., Ltd. the sum of **£800**. This sum is to be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 22nd day of March 2022

Beverley Hedley
For the Registrar,
the Comptroller-General