O/0475/26

TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK APPLICATION NO UK3799175
BY TADANO LTD. TO REGISTER:

EVOLT

FOR GOODS IN CLASSES 7 AND 12

AND

IN THE MATTER OF OPPOSITION THERETO UNDER NO 437022
BY MCV BUS AND COACH LIMITED

BACKGROUND AND PLEADINGS

1. On 15 June 2022, TADANO LTD. ("the applicant") applied to register the trade mark on the cover page of this decision ("the applicant's mark") in the UK for the following goods:[1]

> Class 7: Loading-unloading machines and apparatus; Construction machines and apparatus.
>
> Class 12: Aerial work platform, namely, vehicles containing an aerial work platform; Traction engine; Ropeways for cargo or freight handling, being aerial conveyors for the transportation of cargo or freight handling; Non-electric prime movers for land vehicles, not including their parts; AC motors or DC motors for land vehicles, not including their parts; Mechanical parts and fittings for land vehicles exclusively used for transporting mobile cranes and cranes; Automobiles namely a vehicle exclusively used for transporting mobile cranes and cranes, and their parts and fittings; none of the aforementioned goods being for or relating to passenger vehicles.[2]

2. The applicant's mark was published in the Trade Marks Manual on 9 September 2022. On 20 October 2022, the mark was opposed by MCV Bus And Coach Limited ("the opponent"). The opposition is based on section 5(2)(a) of the Trade Marks Act 1994 ("the Act").

3. The opponent relies on the following mark:

evolt

UKTM 3433234
Filing date: 1 October 2019; date of entry in register 20 December 2019.
Relying on the following goods:

> Class 12: Buses; Coaches; Trucks; Lorries; Parts and fittings for all the aforesaid goods.

[1] The applicant's specification was amended by way of a Form TM21B dated 14 February 2024. The Tribunal subsequently wrote to the opponent requesting confirmation as to whether it wished to withdraw its opposition in light on the amended specification. No response was received and, in the absence of such, the opposition was deemed to be maintained.
[2] The applicant's mark claims priority from Japanese Trade Mark 2021-157011 with a priority date of 16/12/2021.

4. By virtue of its earlier filing date, the above mark constitutes an earlier mark in accordance with section 6 of the Act. As it was registered less than five years prior to the priority date claimed for the contested mark this mark is not subject to proof of use in accordance with section 6A of the Act.

5. The opponent argues that the respective marks are identical and the goods are similar.The opponent argues that due to these factors there is a likelihood of confusion between the marks, which includes a likelihood of association.

6. The applicant filed a counterstatement admitting identity of the marks, however, the applicant denies that the goods are sufficiently similar to result in a likelihood of confusion.

7. The applicant is represented by Kilburn & Strode LLP and the opponent represents itself. No hearing was requested. Only the applicant filed evidence and written submissions in lieu. This decision is taken following a careful consideration of the papers.

8. 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 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.

EVIDENCE

9. As above, only the applicant filed evidence. This came in the form of the witness statement of Mr Toshiaki Ujiie dated 17 September 2024. Mr Ujiie is the President, CEO and Represenative Director of TADANO Ltd. Mr Ujiie's statement is accompanied by 7 exhibits, being those labelled TU1 to TU7. The evidence adduces social media posts, press releases and demonstration of the EVOLT brand in relation to mobile cranes. Further, regulations in relation to crane operation, the qualifications required and screenshots from the opponent's webpage have also been provided.

10. I do not intend to summarise the evidence in full here. However, I confirm that I have taken all filed documents into account and will summarise them to the extent that I deem necessary below.

Section 5(2)(a): Legislation and case law

11. Section 5(2)(a) of the Act reads as follows:

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

12. The following standard summary of the principles applicable to the assessment of the likelihood of confusion was approved by the Supreme Court in *Iconix Luxembourg Holdings SARL v Dream Paris Europe Inc & Anor*, [2025] UKSC 25:

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. The average consumer is deemed to be reasonably well informed and reasonably circumspect and observant, but someone who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them they have kept in their 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 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 THE MARKS

13. It is a prerequisite of section 5(2)(a) of the Act that the marks at issue be identical. In considering whether marks are identical, I refer to the case of *S.A. Société LTJ Diffusion v. Sadas Vertbaudet SA*, Case C-291/00, wherein the Court of Justice of the European Union ("CJEU") held that:

> "54... a sign is identical with the trade mark where it reproduces, without any modification or addition, all the elements constituting the trade mark or where, viewed as a whole, it contains differences so insignificant that they may go unnoticed by an average consumer."

14. In the present case, the applicant's mark is a word mark of the word 'Evolt' and the opponent's mark is of the same word 'evolt'; the 'e' appears in a lower case in the opponent's mark. As word marks, the marks are protected in whatever form, colour, or font they are used.[3] Accordingly, the application is covered by fair and notional use of the opponent's mark. Further, I note that both parties find the mark to be identical. Taking all of the above into account, I find the marks at issue are identical.

COMPARISON OF THE GOODS

The applicant's goods	**The opponent's goods**
Class 7: Loading-unloading machines and apparatus; Construction machines and apparatus. Class 12: Aerial work platform, namely, vehicles containing an aerial work platform; Traction engine; Ropeways for cargo or freight handling, being aerial conveyors for the transportation of cargo or freight handling; Non-electric prime movers for land vehicles, not including their parts; AC motors or DC motors for land vehicles, not including their parts; Mechanical parts and fittings for land vehicles exclusively used for transporting mobile cranes and cranes; Automobiles namely a vehicle exclusively used for transporting mobile cranes and cranes, and their parts and fittings; none of the aforementioned goods being for or relating to passenger vehicles.	Class 12: Buses; Coaches; Trucks; Lorries; Parts and fittings for all the aforesaid goods.

[3] see *La Superquimica v EUIPO*, Case T-24/17, paragraph 39.

15. In *Gérard Meric v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* case T-133/05, the General Court (GC) stated:

> "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".

16. In comparing the respective specifications, all relevant factors should be considered, as per *Canon*, where the Court of Justice of the European Union ("CJEU") 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."

17. Case law has described "complementary" as meaning that *"… 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 the responsibility for those goods lies with the same undertaking."*[4]

18. 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;

4 Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM), Case T-325/06.

(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.

19. The opponent submitted in its TM7 that the applicant's goods and its class 12 goods are very similar. However, I note that the opponent has not identified the specific goods it considers to be the most similar. I note that it is the opponent's duty to adequately particularise the opposition and provide appropriate comparators to enable the Hearing Officer to best assess the similarity between the parties' specifications. In In *Abus August Bremicket Sohne KG v Muhammad Ali* (O/0911/24) Mr Iain Purvis K.C., sitting as the Appointed Person, found that:

"28. […] it is for the Opponent to put forward the combinations of goods on which it relies for similarity (or identicality). If it fails to identify a particular combination, it cannot expect the Hearing Officer to do the job for it. [This] approach […] would place an intolerable burden on Hearing Officers in cases of this nature in which there will be thousands of potential combinations of goods which could be relied on, and for each combination a slightly different argument for similarity could be made. Furthermore, such an approach would be unfair on the Applicant for the mark, since they will have had no opportunity to address points on similarity taken by the Hearing Officer if those points are not first raised by the Opponent."

20. Therefore, I will proceed by only comparing the goods that I consider offer the best prospect of a finding of similarity.

21. I remind myself that Section 60A of the Act sets out that goods are not to be considered similar simply because they appear in the same classes. Alternatively, section 60A also states that goods are not to be considered dissimilar simply because they appear in different classes.

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

Class 7

Loading-unloading machines and apparatus

23. The applicant compared its own goods to "*Buses; Coaches; Trucks; Lorries; Parts and fittings for all the aforesaid goods"* and stated that the goods differ in nature, purpose, method of use and are neither in competition nor complementary. Furthermore, it submits that the goods do not share the same trade channels, users or provider.

24. The applicant submits that its goods are *"essentially special machines for activities in construction, ranging from soil excavation and the loading and unloading thereof, demolition, ground preparation, the moving of materials and waste management as well as digging, all for the purposes of construction."*[5] I do not agree with the applicant that this term is limited to construction; rather, I consider the term to be broader and interpret it to mean machinery whose primary function is to load goods on to, or unload goods from, vehicles, containers, or storage areas, or for moving and handling cargo for the purpose of loading and unloading it for subsequent shipping or storage. This type of equipment performs the job of moving cargo without transporting it from one place to another. This term would cover goods such as, for example, pallet lifters to store and subsequently distribute cargo.

25. I consider that 'Trucks' is the better comparator presented in the terms relied upon by the opponent and will proceed on that basis with this comparison. I note that as the opponent's goods lie within class 12, they are related to the transport of merchandise. On consideration, I agree with the applicant and do not consider that there is any similarity between the goods at issue. The intended purpose of the opponent's goods in Class 12 is to carry or transport something from one place to another, whereas the applicant's goods are for moving and handling cargo, etc. Whilst I recognise that the opponent's goods can also include goods such as lifting equipment installed on trucks and lorries, as they are covered by class 12, they are integral to or specifically designed for use in or with transport vehicles. Consequently, the goods will differ in nature and in the method of use as the

[5] Applicant's submissions in lieu, paragraph 23

opponent's goods are driven around, whereas the applicant's goods remain at the place where the task is performed.

26. Moreover, the goods have different manufacturing methods that require technical skills and knowledge for production. Therefore, I consider that it is very unlikely that consumers will perceive the goods as originating from the same undertaking. It follows that the trade channels for the goods are not the same. Neither are the goods complementary, as they are not indispensible or important for the use of the other in such a way that consumers think that responsibility for the production of those goods lies with the same undertaking. The goods are not in competition because they cannot be substituted for one another as they do not serve the same purpose. In contrast to the applicant's submissions, I do consider that there is a possibility that the goods may target the same specialised public or public with similar needs, but I do not find that this factor, on its own, is sufficient to substantiate similarity. Consequently, I consider that the applicant's goods are dissimilar to 'trucks'. Even comparing the goods with any of the other terms in the opponent's specification, there would not be a finding that differs from dissimilarity.

Construction machines and apparatus

27. I do agree with the applicant's submission that the above goods are *"essentially special machines for activities in construction, ranging from soil excavation and the loading and unloading thereof, demolition, ground preparation, the moving of materials and waste management as well as digging, all for the purposes of construction."*[6] The applicant made the same submissions concerning the similarity of the goods as established at paragraph 22 above, with the comparison between the same goods in the opponent's specification mentioned in that paragraph.

28. The purpose of the goods will differ as the purpose of the opponent's goods in Class 12 is to carry or transport something from one place to another, whereas the applicant's goods will serve multiple purposes in the construction industry, including tasks such as excavation, material handling, lifting, road construction and safety and efficiency (some of which were mentioned by the applicant as referenced above). I note that as the opponent's goods lie within class 12, they are related to the transport of merchandise. As mentioned in the previous comparison, whilst I recognise that the opponent's goods can also include goods such as lifting equipment that is installed on trucks and lorries, as they are covered

[6] Applicant's submissions in lieu, paragraph 23

by class 12, they are integral to or specifically designed for the use in or with transport vehicles. Consequently, the goods will differ in nature and in the method of use as the opponent's goods are driven around, whereas the applicant's goods remain at the place where the task is performed.

29. I consider that the considerations above in paragraphs 25 and 26 also apply to this comparison; the goods will have different manufacturing methods, the average consumer will consider that the production of each good lies with different undertakings, and the goods are neither complementary nor in competition. Taking all of the above into account, I consider the goods to be dissimilar.

Class 12

30. I note that the applicant's class 12 goods are all subject to the limitation *"none of the aforementioned goods being for or relating to passenger vehicles."* I have taken this limitation into consideration when conducting the comparisons between the parties' goods below.

Aerial work platform, namely, vehicles containing an aerial work platform

31. The applicant compared these goods to all of the class 12 goods in the opponent's specification. The applicant submits that there is no similarity between the goods on the basis that the nature, purpose, method of use, channels of distribution and users differ. Furthermore, the applicant submits that the goods are not in competition, nor are they complementary. As mentioned above, the opponent did not provide specific comparisons between the goods, but it was submitted that the goods are very similar.

32. The applicant defines its goods as *"essentially a special vehicle that includes a specialised mechanical device, being a mobile aerial work platform, used to provide safe access to inaccessible areas for workers typically at height for purposes of maintenance and construction of all types".*[7] I agree mostly with the definition provided by the applicant, but it is my view that their use is not just limited to maintenance and construction, as they are also used in cleaning or industrial tasks. The applicant compared its goods to "*Buses;Coaches; Trucks; Lorries; Parts and fittings for all the aforesaid goods"* in the

[7] Applicant's submissions in lieu, paragraph 44

opponent's specification. As mentioned previously, the opponent did not provide a specific comparator. I consider that the best comparator in the opponent's specification is 'trucks'.

33. I do not consider that the goods at issue will share the same purposes, as the opponent's goods will be for transportation, and the applicant's goods will be to allow individuals to access typically difficult to access areas. The goods will therefore differ in their method of use and users. I do not consider that the goods will share trade channels, as I consider that the applicant's goods, and some of the opponent's goods, will be purchased from specialist retailers that will not overlap. For example, a retailer that sells lorries is not likely to sell aerial work platforms. I do appreciate that vehicles containing aerial work platforms would be inclusive of truck-mounted platforms, but it is still not my view that the goods will overlap with trade channels (as users would go to a specialist provider in search of such a good). Even taking into consideration the truck mounted platforms mentioned before, I do not consider that the goods will be in competition. This is because, as they offer different purposes, a consumer would not select a truck, for example, in place of a truck mounted aerial platform. Further, whilst aerial platforms may be present on trucks, the respective goods are not complementary as they are not indispensable to one another, and the average consumer would not think that they came from the same undertaking. Taking all of the above into account, I find the goods to be dissimilar. Even comparing the goods with any of the other terms in the opponent's specification, there would not be a finding that differs from dissimilarity.

Traction engine

34. The applicant submits that the above good is a steam-powered tractor that moves heavy loads or ploughs the ground. The applicant argues that there is no similarity between the above goods and any of the goods in the opponent's specification. The applicant submits this on the basis that the goods differ in nature, purpose, method of use, channels of distribution and users.

35. Whilst these engines may have been used widely historically, and they appear today for historical representations of steam power at agricultural/steam fairs, for example, it is my view that use of this technology is not widespread outside of those environments. I do not consider that the goods provide the same general purpose of providing power to machines as "parts and fittings for all the aforesaid goods" (the closest comparator I could identity) in the opponent's specification, which would encompass the likes of, for example, diesel engines. This is on the basis that the traction engine refers to the entire steam-

powered tractor and not just parts and fittings used in vehicles. Further, the specific purposes will differ as the applicant's goods is a steam-powered vehicle, and given the outdated nature of this technology, the opponent's goods will provide power to an electrical or fuel powered engine. However, the method of use and nature of the goods will differ. I do not consider that the goods will share trade channels, as due to the more historical nature of the applicant's goods, it is my view that the provider will be more specialist than the provider of the opponent's goods, where they may simply visit a parts store to select items. On that basis, I consider that the goods will differ in the trade channels as well as the users. I do not find the goods to be in competition, nor do I find them to be complementary. I do not consider that is sufficient to substantiate similarity, especially given that the specific purposes differ. Taking all of the above into account, I agree with the applicant that the goods will be dissimilar.

Ropeways for cargo or freight handling, being aerial conveyors for the transportation of cargo or freight handling

36. The applicant submits that the above goods are aerial conveyors that transfer materials within areas such as manufacturing or high altitude areas that are difficult to reach by air transport. The applicant submits that the above goods and all of the opponent's goods differ in their nature, intended purpose, method of use, trade channels, providers and users.

37. I consider that the best comparators with the applicant's goods are the terms 'Trucks' and 'Lorries' in the opponent's specification. The opponent's goods have the general purpose of carrying or transporting something from one place to another, while the applicant's goods specifically transport materials at height, such as in areas that are difficult to reach; accordingly, the goods will overlap in purpose on a superficial level. Further, the method of use of the goods will differ, as the opponent's goods will be used via road, and the applicant's goods will be transfered via aerial conveyors. I do not consider that the goods will share trade channels; it is my view that the applicant's goods, and some of the opponent's goods, will be purchased by specialist retailers that will not overlap. For example, a retailer that sells lorries is not likely to sell aerial conveyors, nor do I consider that they will be provided by the same company. There may be a general overlap in users as they may wish to transport goods via different means. There will be no competition between the goods and no complementarity. Taking all of the above into account, particularly the specialist nature of the applicant's goods, overall, I do not consider that the points of similarity identified are sufficient for an overall finding of similarity between the goods. I find these goods to be dissimilar.

Non-electric prime movers for land vehicles, not including their parts

38. From the applicant's submissions in lieu, it is unclear what the description of the above goods is, but the closest description that I can identify is that they are mechanical parts and fittings with the purpose of acting as a main source of power for non-passenger vehicles. More specifically, they are used to convert energy created by fuel into power to drive machines. It is my understanding that these goods can be used as parts in many vehicles powered by fuel, such as trucks, lorries, buses and coaches. Accordingly, I consider that these goods are encompassed by the term "Parts and fittings for all the aforesaid goods" in the opponent's specification. Therefore, I find these goods to be identical on the principle outlined in *Meric.*

AC motors or DC motors for land vehicles, not including their parts

39. The applicant submits that its goods are essentially mechanical parts and fittings with the intended purpose of acting as the main source of power for non passenger vehicles. I do not disagree with this description, but more specifically than the applicant's submissions, I consider that they are electrical motors that convert electricity into mechanical rotation to move vehicles. The applicant submits that there is no similarity between the applicant's goods and any of the opponent's goods at issue. This is on the basis that they do not share the same nature, intended purpose, method of use, channels of distribution, producer/provider and do not target the same public. However, there is a lack of any detail explaining the applicant's findings in relation to those factors.

24. It is my understanding that, alongside other uses, AC and DC motors are used as parts in electric vehicles, such as trucks, lorries, coaches and buses. Therefore, I consider that the applicant's goods are encompassed by the term "Parts and fittings for all the aforesaid goods" in the opponent's specification. Therefore, the goods are identical on the principle outlined in *Meric.*

Automobiles namely a vehicle exclusively used for transporting mobile cranes and cranes, and their parts and fittings;

40. The applicant submits that these goods are essentially vehicles for the transportation of mobile cranes and their mechanical parts and fittings; I agree with this. The applicant goes on to submit that the above goods differ from the opponent's goods on

the basis that they differ in nature, intended purpose, method of use, channels, producer and users. Further, the applicant submits that merely because the goods reside in the same Nice class as the opponent's goods is insufficient to find similarity. Whilst I agree with this submission, as mentioned above, I am not of the view that there is no similarity between the goods.

41. It is my understanding that mobile cranes, which are able to move freely on the ground, are often transported via flatbed trucks or low loader lorries. Taking this into account, I consider that "*Automobiles namely a vehicle exclusively used for transporting mobile cranes and cranes",* are encompassed by the terms 'trucks' and 'lorries' that lie within the opponent's goods. Therefore, I consider the goods to be identical on the principle outlined in *Meric.*

42. I consider that "and their parts and fittings" in the applicant's goods are encompassed by the term "*parts and fittings for all the aforesaid goods"* in relation to trucks and lorries, which appears in the opponent's specification. Therefore, I consider the goods to be identical on the principle outlined in *Meric.* Further, I consider that the applicant's *"mechanical parts and fittings for land vehicles exclusively used for transporting mobile cranes and cranes"* whilst worded differently, would include reference to the aforementioned parts and fittings. Consequently, I consider the goods to also be identical on the principle outlined in *Meric.*

43. For an opposition to succeed under section 5(2)(a) there is a requirement for at least some degree of similarity between the goods to exist to engage the test for a likelihood of confusion.[8] My findings above mean that the opposition will fail against those goods considered to be dissimilar. For ease of reference, the opposition under section 5(2)(a) fails against the following goods in the applicant's specification:

> Class 7: *Loading-unloading machines and apparatus; construction machines and apparatus.*
>
> Class 12: *Traction engine; Aerial work platform, namely, vehicles containing an aerial work platform; Ropeways for cargo or freight handling, being aerial conveyors for the transportation of cargo or freight handling.*

[8] *eSure Insurance v Direct Line Insurance,* [2008] ETMR 77 CA

AVERAGE CONSUMER AND THE PURCHASING PROCESS

44. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer,* Case C-342/97.

45. In *Iconix Luxembourg Holdings SARL v Dream Paris Europe Inc & Anor*, [2025] UKSC 25, the Supreme Court approved the comments of Arnold LJ in *Lidl Great Britain Ltd & Anor v Tesco Stores Ltd & Anor (Rev1)* [2024] EWCA Civ 262, where he pointed out that:

(a) Consumers who are ill-informed or careless, or consumers with specialised knowledge or who are excessively careful are excluded from consideration;

(b) The average consumer provides a standard which enables the courts to strike a balance between the competing interests involved, such as trade mark owners, their competitors and consumers;

(c) The average consumer is neither a single hypothetical person nor a mathematical average; assessment from the perspective of the average consumer does not involve a statistical test. There is no single meaning rule and if, having regard to the perceptions and expectations of the average consumer, the court considers that a significant proportion of the relevant public is likely to be confused, a finding of infringement may properly be made;

(d) Assessment from the perspective of the average consumer is intended to facilitate adjudication of trade mark disputes by providing an objective criterion, by promoting consistency of assessment and by and enabling courts and tribunals to determine such issues so far as possible without the need for evidence;

(e) The average consumer’s level of attention varies according to the category of goods or services in question; and

(f) the average consumer rarely has the opportunity to make direct comparisons between trade marks (or between trade marks and signs) and must instead rely upon the imperfect picture of the trade mark they have kept in their mind.

46. The average consumer of the goods at issue will include business consumers with specific professional knowledge or expertise.

47. The average cost of the goods will vary depending on the exact nature of the goods, with some of the parts and fittings being of a low value and the goods such as lorries and aerial platforms being of high value. Similarly, the frequency of the purchase will vary between low, for goods such as lorries, and high for goods such as tyres. The goods will typically be offered by retailers or their online equivalents. When selecting the goods, the average consumer will consider factors such as reviews from other customers, efficiency, safety ratings and whether the goods will meet their needs. When the average consumer encounters the goods, this will be primarily on a visual level, such as websites, newspapers, advertisements, and reviews. However, the possibility of aural considerations must be recognised for various goods in the form of recommendations, for example.

48. Accordingly, the average consumer's degree of attention will vary from medium to high depending on the goods.

DISTINCTIVE CHARACTER OF THE EARLIER MARK

49. In *Lloyd Schuhfabrik Meyer,* the CJEU stated that:

> "22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C108/97 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)."

50. Registered trade marks possess varying degrees of inherent distinctive character. The degree of distinctiveness is an important factor as it directly relates to whether there is a likelihood of confusion; the more distinctive the earlier mark, the greater the likelihood of confusion. The distinctive character of a mark may be enhanced as a result of it having been used in the market. The opponent has not filed evidence in support of enhanced distinctive character; therefore, I only have the inherent distinctiveness of the earlier mark to consider.

51. The applicant submits that the opponent's mark is inherently distinctive to a low degree, on the basis that 'E' is a prefix before and in combination with 'VOLT'. The applicant submits that 'E' is an abbreviation of electronic, especially when it is used as a prefix, for example, in E-bike.[9] The applicant goes on to submit that Volt is defined as "a unit of electrical potential difference and electromotive force equal to the difference in potential between two points in a conducting wire carrying a constant current of one ampere when the power used between these two points is equal to one watt."

52. Firstly, I do not consider that the 'E' in the mark is being used in the same way as described by the applicant, for example, in E-bike, E-cigarette, E-car, as there is no separation via a hyphen and the 'E' is not a prefix but merely an aspect of the mark. The assessment of the earlier mark must be made in relation to the mark as a whole, and it is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer does not normally proceed to analyse its various details. This is not what the applicant is suggesting: they are proposing that the marks should be artificially dissected and then compared.

53. The opponent's mark is not an ordinary dictionary word, and invented words usually have the highest degree of inherent distinctive character. I am of the view that the mark will be perceived as an invented word that includes the word 'VOLT'. The opponent's goods consist of various vehicles, parts and fittings that may be electric (but equally may not), and the opponent's mark hints at that possibility. Despite this, it is my view that the overall

[9] Applicant's submissions in lieu, paragraphs 54-56

allusiveness of the mark is not prominent and so the mark will be inherently distinctive to a medium degree. However, for the average consumers who view that mark as purely an invented word with no allusiveness, I find that inherent distinctiveness to be high.

LIKELIHOOD OF CONFUSION

54. Making an assessment of the likelihood of confusion is a matter of considering the relevant factors from the viewpoint of the average consumer of the goods at issue and determining whether they are likely to be confused. When doing this, I am required to bear in mind that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely on the imperfect picture of them that they have in their mind. This means that the global assessment emulates what happens in the mind of the average consumer on encountering the later mark with an imperfect recollection of the earlier mark. The courts have not said what weight should be attached to each of the factors or provided a formula that can be applied to any set of circumstances. However, I am required to take account of the interdependency principle, i.e. that a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods or vice versa.

55. Earlier in my decision, I found the marks to be identical. I have found the distinctive character of the opponent's mark to vary from a medium to high degree of inherent distinctive character. I have found the average consumer to be business consumers. I found the degree of attention to vary from medium to high and that the purchasing process will be primarily visual, although aural considerations must be recognised. For the goods that I have found to be similar, I have found the goods to be identical.

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

57. I take into account all of the above factors. Due to the interdependency principle, given the identity of the marks which will offset the medium to a higher level of attention, the low to medium degree of inherent distinctive character of the opponent's mark and the lower levels of similarity between the goods, I consider there to be a likelihood of direct confusion between the marks in relation to all the goods for which a degree of similarity was found.

CONCLUSION

58. The section 5(2)(a) ground of opposition succeeds in part for the following goods, for which registration is refused, subject to any successful appeal:

> Class 12: *Non-electric prime movers for land vehicles, not including their parts; AC motors or DC motors for land vehicles, not including their parts; Mechanical parts and fittings for land vehicles exclusively used for transporting mobile cranes and cranes; Automobiles namely a vehicle exclusively used for transporting mobile cranes and cranes, and their parts and fittings; none of the aforementioned goods being for or relating to passenger vehicles.*

59. A likelihood of confusion under the 5(2)(a) ground may only exist where goods are found to be identical or similar.[10] Given what I have said above, in that the goods at issue are dissimilar, the opposition must fail at this stage, regardless of the identity between the marks. Consequently, the opposition fails against the following goods, which will proceed to registration:

> Class 7: *Loading-unloading machines and apparatus; construction machines and apparatus.*
>
> Class 12: *Aerial work platform, namely, vehicles containing an aerial work platform; Traction engine; Ropeways for cargo or freight handling, being aerial conveyors for the transportation of cargo or freight handling.*

COSTS

60. The opponent has had the greater degree of success in this instance and is entitled to a contribution towards its costs. Award of costs is governed by Annex A of the Tribunal Practice Notice ("TPN") 1/2023. In accordance with that TPN, I award the following sum:

Preparing a statement and considering the other side's statement	£200
Considering the other side's evidence	£300
Official fee	£100

[10] See paragraph 49 of eSure Insurance v Direct Line Insurance, [2008] ETMR 77 CA

TOTAL	**£600**[11]

61. I therefore order TADANO LTD to pay MCV Bus and Coach Limited the sum of £600. 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 3rd day of June 2026

A KLASS
For the Registrar

[11] The figures have been reduced below the TPN to reflect the partial level of success achieved by the opponent in this opposition.