

O/0513/26

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. UK00003871494
BY VOLLEBAK LIMITED TO REGISTER:**

VOLLEBAK

AS A TRADE MARK IN CLASSES 18 & 25

AND

**IN THE MATTER OF THE OPPOSITION THERETO
UNDER NO. 440791 BY
CAMELBAK PRODUCTS, LLC**

BACKGROUND AND PLEADINGS

1. On 26 January 2023, Vollebak Limited (“the applicant”) applied to register the trade mark shown on the cover page of this decision in the UK (“the applicant’s mark”). The applicant’s mark was published on 10 February 2023 and registration is sought for the following goods:

Class 18: All purpose sport bags; articles of luggage; bags; bags for sports clothing; gym bags; holdalls; key cases; purses; sport bags; suitcases; toiletry bags sold empty; tote bags; travel bags; umbrellas and parasols; wallets.

Class 25: Clothing; Footwear; Headgear; Abrasion resistant clothing; Athletic tights; Athletics vests; Bandannas and headbands; Base layer garments; Beach clothes; Beach wear; Beanies; Belts; Camouflage gloves; Camouflage jackets; Camouflage pants; Camouflage shirts; Camouflage vests; Cardigans; Casual footwear; Casualwear; Clothing embedded with ceramics Clothing including base layer garments and clothing for sports, physical activity and swimming; Clothing for men, women, children and babies; Clothing for skiing; Clothing for sports; Coats; Clothing made from recycled materials; Compression clothing and garments; Dressing gowns; Ear muffs; Endurance clothing; Fleece; Flip-flops; Footwear; Gilets; Gloves [clothing]; Glow in the dark clothing; Gym shorts; Head scarves; Head sweatbands; Headgear; Hooded pullovers; Hooded sweatshirts; Jackets [clothing]; Jackets being sports clothing; Jogging outfits; Jogging sets [clothing]; Jumpers; Knitted gloves; Leggings [leg warmers]; Leisurewear; Light-reflecting jackets; Long sleeve pullovers; Long sleeved vests; Mittens; Neck scarves; Nightwear; Outerwear; Outerwear, overcoats, leisure clothing; Padded

clothing for sport; Padded clothing; including padded clothing for men, women, children and babies; Padded pants for athletic use; Padded shirts for athletic use; Padded shorts for athletic use; Pants; Polo knit tops; Printed t-shirts; Pullovers; Pumps [footwear]; Pyjamas; Rainproof jackets; Riding jackets; Running Suits; Running vests; Salopettes; Sandals; Scarfs; Shell suits; Shirts; Shirts and slippers; Shoes and boots including football shoes and boots, gymnastic shoes, other sports shoes and boots; Shorts; Short-sleeved or long-sleeved t-shirts; Ski gloves; Ski jackets; Ski trousers; Sleepwear; Sleeveless jackets; Slippers; Snow boarding suits; Snow suits; Snowboard jackets; Snowboard trousers; Socks; Socks, stockings, tights, including, compression socks and stockings; Solar powered jackets; Sports caps and hats; Sports clothing [other than golf gloves]; Sports jerseys; Sports socks; Sportswear; Sun hats; Sweat shirts; Sweat shorts; Sweat-absorbent stockings; Sweat-absorbent underwear; Sweatbands; Swimwear including bathing trunks and bathing suits; Thermal clothing; Thermal underwear; Thermally insulated clothing; Trainers [footwear]; Trousers; T-shirts; Underwear including compression underwear; Vest tops; Vests; Visors; Warm-up jackets; Warm-up pants; Warm-up tops; Waterproof clothing; Waterproof outer clothing; Weather resistant outer clothing Wetsuits; Wind resistant jackets; Wind vests; Wrist bands; Wrist warmers.

2. On 10 May 2023, the applicant's mark was partially opposed by CamelBak Products, LLC ("the opponent"). The opposition is based on sections 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994 ("the Act") and is aimed at the applicant's class 18 goods only.
3. Under the section 5(2)(b) ground, the opponent relies on the following trade marks:

CHILLBAK

International registration designating the UK under no. 1608405

International registration date: 10 June 2021

Date protection granted in the UK: 23 December 2021

Priority date: 15 December 2020 (USA)

("the opponent's first mark");

CAMELBAK

UK registration no. 905569819¹

Filing date 20 December 2006; registration date 25 October 2011

Seniority dates: 12 May 1993 (UK) and 10 December 1996 (UK)

("the opponent's second mark"); and

BAK

UK registration no. 911355443

Filing date 19 November 2012; registration date 1 May 2013

Priority date: 13 November 2012 (USA)

("the opponent's third mark"); and

GOT YOUR BAK

UK registration no. 914265227

Filing date 17 June 2015; registration date 15 October 2015

Priority date: 22 December 2014 (USA)

("the opponent's fourth mark").

4. The goods relied upon under the section 5(2)(b) ground are set out in **Annex 1** of this decision.

¹ The opponent's second, third and fourth marks are comparable marks based on an earlier EUTM. On 1 January 2021, in accordance with Article 54 of the Withdrawal Agreement between the UK and the European Union, the UK IPO created comparable UK trade marks for all right holders with existing EUTMs. These comparable marks enjoy the same filing and registration dates as their European counterparts.

5. By virtue of relying on section 5(2)(b) of the Act, the opponent's position is that the marks at issue are similar and that the goods at issue are identical and/or similar. As such, it is claimed that there exists a likelihood of confusion on the part of the relevant public.

6. Turning to the section 5(3) ground, the opponent relies only on its second and third marks only. The goods for which a reputation is claimed for these marks are the same as those relied upon under section 5(2)(b) and can, therefore, be found at **Annex 1** of this decision. Under this ground, the opponent claims that its marks are widely known throughout both the industry and the general public. It is claimed that as a result of this use, its marks enjoy a reputation. As such, the opponent's position is that the similarity of the marks and the goods at issue will result in the relevant public believing that they are offered by the opponent or from an economically linked undertaking. As a result, the opponent claims that use of the applicant's mark would take unfair advantage of the opponent's marks. Further, the opponent claims that use of the applicant's mark would cause detriment to the repute and/or distinctive character of the opponent's marks.

7. Lastly, under the section 5(4)(a) ground, the opponent relies on the signs "CAMELBAK" ("the opponent's first sign") and "BAK" ("the opponent's second sign"). It claims to have used both signs throughout the UK, with the first sign being used since approximately 1993 and the second from approximately 2012. It is noted that the opponent claims to enjoy goodwill for the following goods in respect of its first sign:

"Travelling bags; backpacks; knapsacks; rucksacks; waist packs.

Hydration systems comprised of a drinking reservoir, a drinking tube and a mouthpiece; drinking reservoirs for hydration systems comprised of a drinking reservoir, a drinking tube and a mouthpiece; mouthpieces and connectors for

hydration systems comprised of a drinking reservoir, a drinking tube and a mouthpiece; backpack-style canteens; drinking vessels and thermal insulated fanny pack, waist pack and backpack style containers for drinking vessels and beverage dispensers; backpack hydration systems consisting of a pack, a reservoir and a mouthpiece connected to the reservoir by a tube; waist pack hydration systems comprised of a pack, a reservoir and a mouthpiece connected to the reservoir by a tube.”

8. As for the second sign, the opponent claims to enjoy goodwill in the following:

“Backpacks, rucksacks, fanny packs; waist packs; backpack hydration systems consisting of a pack, a reservoir, and a mouthpiece connected to the reservoir by a tube, waist pack hydration systems comprised of a pack, a reservoir, and a mouthpiece connected to the reservoir by a tube; backpacks and rucksacks for military and industrial use; backpack hydration systems for military and industrial use.”

9. Under this ground, the opponent claims that the similarity between its signs and the applicant’s mark will result in a misrepresentation stemming from the relevant public’s belief that the applicant’s goods originate from the opponent. The opponent’s position is that this misrepresentation will lead to damage being caused to the opponent’s goodwill and its business.

10. The applicant filed a counterstatement wherein it denied all of the claims against it. In addition, the applicant sought to put the opponent to proof of use for its second, third and fourth marks.

11. The applicant is represented by Charles Russell Speechlys LLP and the opponent is represented by HGF Limited. Only the opponent filed evidence. No hearing was requested and only the opponent filed written submissions in lieu of the same. This decision is taken after careful consideration of the papers.

12. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

EVIDENCE

13. The opponent's evidence was provided in the form of a witness statement of Ms Sonia Katebian dated 10 March 2025. Ms Katebian's evidence is accompanied by 13 exhibits, being SLK1 to SLK13, and was adduced in order to prove that the opponent's second through fourth marks have been genuinely used, that the second and third marks enjoy a reputation and that the signs relied upon benefit from a protectable goodwill.

14. I do not intend to summarise the opponent's 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.

DECISION

Proof of use

15. An earlier trade mark is defined in section 6 of the Act, the relevant parts of which state:

“(6)(1) In this Act an “earlier trade mark” means –

(a) a registered trade mark or international trade mark (UK) which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks,

(aa) a comparable trade mark (EU) or a trade mark registered pursuant to an application made under paragraph 25 of Schedule 2A which has a valid claim to seniority of an earlier registered trade mark or protected international trade mark (UK) even where the earlier trade mark has been surrendered or its registration has expired;

(ab) a comparable trade mark (IR) or a trade mark registered pursuant to an application made under paragraph 28, 29 or 33 of Schedule 2B which has a valid claim to seniority of an earlier registered trade mark or protected international trade mark (UK) even where the earlier trade mark has been surrendered or its registration has expired.

[...]

(2) References in this Act to an earlier trade mark include a trade mark in respect of which an application for registration has been made and which, if registered, would be an earlier trade mark by virtue of subsection (1)(a) or (b), subject to its being so registered.”

16. Section 6A is also relevant. It reads:

“(1) This section applies where:

(a) an application for registration of a trade mark has been published,

(b) there is an earlier trade mark of a kind falling within section 6(1)(a), (aa) or (ba) in relation to which the conditions set out in section 5(1), (2) or (3) obtain, and

(c) the registration procedure for the earlier trade mark was completed before the start of the relevant period.

(1A) In this section “the relevant period” means the period of 5 years ending with the date of the application for registration mentioned in subsection (1)(a) or (where applicable) the date of the priority claimed for that application.

(2) In opposition proceedings, the registrar shall not refuse to register the trade mark by reason of the earlier trade mark unless the use conditions are met.

(3) The use conditions are met if –

(a) within the relevant period the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or

(b) the earlier trade mark has not been so used, but there are proper reasons for non-use.

(4) For these purposes –

(a) use of a trade mark includes use in a form (the “variant form”) differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor), and

(b) use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(5)-(5A) [Repealed]

(6) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services.”

17. Section 100 of the Act is also relevant. It reads:

“100. If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it.”

18. As the opponent’s second, third and fourth marks are comparable marks, paragraph 7 of Part 1, Schedule 2A of the Act is also relevant. It reads:

“7.— (1) Section 6A applies where an earlier trade mark is a comparable trade mark (EU), subject to the modifications set out below.

(2) Where the relevant period referred to in section 6A(3)(a) (the "five-year period") has expired before IP completion day—

(a) the references in section 6A(3) and (6) to the earlier trade mark are to be treated as references to the corresponding EUTM; and

(b) the references in section 6A(3) and (4) to the United Kingdom include the European Union.

(3) Where [IP completion day] falls within the five-year period, in respect of that part of the five-year period which falls before IP completion day —

(a) the references in section 6A(3) and (6) to the earlier trade mark are to be treated as references to the corresponding EUTM; and

(b) the references in section 6A to the United Kingdom include the European Union”.

19. Given their filing dates, the opponent’s marks qualify as earlier trade marks under the above provisions. The opponent’s first mark did not complete its registration process more than five years prior to the filing date of the applicant’s mark. The opponent can, therefore, rely on this mark without having to prove that it has been genuinely used. However, the opponent’s second, third and fourth marks did complete their registration processes more than five years prior to the filing date of the applicant’s mark. As above, the applicant requested proof of use for these marks meaning that they are subject to the use provisions.

20. In *easyGroup Ltd v Nuclei Ltd & Ors* [2023] EWCA Civ 1247, Arnold LJ summarised the law relating to genuine use as follows:

“105. The principles applicable to determining whether there has been genuine use of a trade mark have been considered by the CJEU in a considerable number of cases, the principal decisions being Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, Case C-259/02 *La Mer Technology Inc v Laboratoires Goemar SA* [2004] ECR I-1159, Case C-416/04 P *Sunrider Corp v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237, Case C-442/07 *Verein Radetsky-Order v*

Bundervsvereinigung Kamaradschaft 'Feldmarschall Radetsky' [2008] ECR I-9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Marken BV v Hagelkruis Beheer BV* [EU:C:2012:816], Case C-609/11 *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], Case C-141/13 *P Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089], Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434] and Joined Cases C-720/18 and C-721/18 *Ferrari SpA v DU* [EU:C:2020:854].

106. Ignoring issues which do not arise in the present case, such as use in relation to spare parts or second-hand goods and use in relation to a sub-category of goods or services, the principles may be summarised as follows:

(1) Genuine use means actual use of the trade mark by the proprietor or by a third party with authority to use the mark: *Ansul* at [35] and [37].

(2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Centrotherm* at [71]; *Leno* at [29]; *Ferrari* at [32].

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Centrotherm* at [71]; *Leno* at [29]; *Gözze* at [37], [40]; *Ferrari* at [32].

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: *Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37]; *Verein* at [14]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle* at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23].

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial *raison d'être* of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: *Ansul* at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34]; *Leno* at [29]-[30], [56]; *Ferrari* at [33].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of

creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no *de minimis* rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72]; *Leno* at [55].

(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: *Reber* at [32].”

21. Section 6A of the Act (cited above) sets out that the relevant period for the present assessment is the five-year period prior to the filing date of the applicant’s mark, being 26 January 2023. The relevant period is, therefore, 27 January 2018 to 26 January 2023 (“the relevant period”). For the avoidance of doubt, the relevant territory for genuine use prior to 31 December 2020 (“IP Completion Day”) is the EU at large but, thereafter, it is the UK only.

22. Proven use of a mark which fails to establish that “the commercial exploitation of the mark is real”² because the use would not be “viewed as warranted in the economic sector concerned to maintain or create a share in the mark for the goods or services protected by the mark” is, therefore, not genuine use.

Evidence of use

23. The evidence goes over the history of the CAMELBAK brand and the initial concept behind the brand when it was conceived in 1989. While this is noted, it is not particularly relevant to the issue I must consider in this decision so I will not discuss it in any great detail. In short, it is noted that the opponent developed and deployed hydration backpacks and bags for military use that were extensively used by the

² *Jumpman* BL O/222/16

US and foreign military forces during the conflicts in Iraq and Afghanistan. Those hydration backpacks are confirmed as being developed further for use by athletes and casual runners. In 2006, the opponent expanded its business and released a range of water bottles which are claimed to be a significant part of its product range.

24. Images of the opponent's products are shown via screenshots of its UK website, being 'camelbak.co.uk', dated 2020, 2021 and 2022, all of which fall within the relevant period.³ The screenshots show a range of backpacks with reservoir features for the storage of water, together with tubes/straws so that the wearer can consume said water. In addition, a range of water bottles are shown. Where the branding of the product is shown, it features the word 'CAMELBAK'.

25. In respect of the website discussed in the preceding paragraph, the opponent has provided evidence of its traffic for the years 2022 to 2023. During this time, the website had a total of 789,166 sessions which led to a transaction value of £1,115,786.54. This is supported by a screenshot showing the website's Google Analytics data.⁴ This data is noted but given that the relevant period concluded in January 2023, it is likely that the majority of the 2023 figures are not relevant here. While the graph provided on the screenshot shows a peak of visits in December 2022, there is no actual breakdown showing when the visits were achieved so I am unable to determine how much of this evidence pertains to the relevant period. This is a point that I must bear in mind when considering the overall picture.

26. In addition to its own direct sales, the opponent confirms that its goods are sold through various affiliate stores. The locations of these stores are shown on a map of the UK which is taken from the opponent's own website.⁵ The website is undated so it is not clear whether all of these locations were selling the opponent's goods during the relevant period. On the topic of third party retailers, the evidence states

³ SLK2

⁴ SLK3

⁵ SLK5

that the opponent supplies its goods to major UK retailers such as Halfords, Trendz and Millets. This is supported by screenshots of these retailers' websites, taken from within the relevant period (in 2018, 2020 to 2022), that show the opponent's goods listed for sale.⁶ These screenshots show hydration backpacks, hydration belts, water reservoirs (seemingly replacement reservoirs to be placed into a backpack), water bottles, valves and tube traps. While some images do not appear in the screenshots, all of the goods are branded CAMELBAK.

27. In respect of the marks 'BAK' and 'GOT YOUR BAK', the opponent's evidence claims that these are consistently shown on swing tags attached to its clothing and hydration products. Images of a swing tag is provided in evidence.⁷ I have reproduced these images below:



28. The opponent claims to command a significant proportion of the market share for its backpacks, bags and hydration packs in the UK. While this is noted, no actual information is provided as to the actual market share. Further, no information is given as to the size of the market within which the opponent operates. From the claim made in its narrative evidence, it would appear to be that the opponent claims to enjoy a significant proportion of the backpack and bag market at large. It is my

⁶ SLK7
⁷ SLK6

understanding that these are enormous markets and I do not consider that this is necessarily borne out in the evidence.

29. The opponent has provided evidence as to its turnover in the UK for the years 2018 to 2023. While the 2023 figures are noted, the conclusion of the relevant period in January of that year is such that I am minded to discount these figures outright. As for the 2018 figures, I will include these on the basis that the relevant period began in January 2018 meaning that the overwhelming majority of the sales would have likely come after that date.

30. The figures are described as being 'in excess of' those provided, and are as follows:

Year	UK Turnover (£)
2018	1,785,000
2019	1,189,000
2020	985,000
2021	1,609,000
2022	2,225,000
Total	7,793,000

31. In support of the above turnover, a range of invoices from within the relevant period are provided in evidence.⁸ The invoices all show the branding 'CAMELBAK' and are to addresses within the UK.

32. While on the topic of the opponent's turnover, I note that it is not broken down in any way. I appreciate that the invoices provided include descriptions of the goods sold but, in my view, these are relatively vague. They do not particularly assist me in determining precisely what was sold. For example, I note that goods are simply

⁸ SLK8

listed in ways such as 'Classic Light 70oz', 'Rim Runner 22 85oz' and 'Octain 16, Fusion 2L'.⁹ The volume of such goods would indicate high capacity water storage (which could be backpacks or water bottles) but I have nothing to precisely show this. This is a point that I will discuss further when it comes to my assessment of the evidence.

33. The evidence goes on to discuss the opponent's advertising and promotional activity in the UK during the relevant period. This is demonstrated by way of its advertising spend which I note is broken down as follows:¹⁰

Year	UK spend (£)
2018	133,000
2019	135,000
2020	0
2021	145,000
2022	0
Total	413,000

34. Evidence of two social media campaigns are provided in evidence that are confirmed as being active between 2018 and 2023.¹¹ In addition, there are a number of social posts provided from celebrities and influencers who have endorsed the CAMELBAK products.¹² While these are noted, it is not clear the location of the celebrities/influencers included. For example, there is nothing to suggest they were posts aimed at the UK market or whether those people posting had any sufficient following in the UK.¹³

⁹ Having reviewed the printouts of products listed for sale, it does not appear to me to demonstrate such goods to allow me to determine what they are. On this point, I consider it appropriate to suggest that it was for the opponent to direct me to such evidence if it existed.

¹⁰ As was the case with the turnover evidence, I will discount the 2023 figures but include 2018. Further, the figures are described as being 'in excess of' those provided.

¹¹ SLK10

¹² SLK11

¹³ It is noted that the posts are all from after IP Completion Day so only the UK would be relevant here.

35. The evidence then shifts focus to awards won. The evidence discusses an award given in 2022 for the opponent's CamelBak Powderhound 12 by ISPO (being a hydration backpack).¹⁴ This is covered by two publications, one being ISPO itself and the second being the UK-based website 'outdoor-insight'. Both articles are dated in November 2022. While this is noted, it covers just one award given by an award body of which there is no supporting evidence as to its reach. Further, the first article appears to indicate that the product was not available until November 2022, being close to the end of the relevant period.

36. In addition to the above, the opponent's evidence covers reviews from UK-based publications.¹⁵ The first review is from the website 'livefortheoutdoors'. It is undated and concerns the CamelBak Apex Pro Running Vest, awarding a positive four-star review. The second review is also positive and is taken from the website 'ukclimbing'. It discusses the same product as the first review and is dated 8 November 2019. A similar issue arises here as it did with the award evidence in that there is nothing provided to suggest the reach of these publications across the UK (or EU for the 2019 review).

Assessment of the evidence

37. Before considering whether the use described above is sufficient to demonstrate genuine use, I consider it necessary to discuss the opponent's attempts to rely on its third and fourth marks, being 'BAK' and 'GOT YOUR BAK', respectively.

38. The opponent's evidence in support of use for such marks is the assertion that its goods include these marks in their swing tags. An image of this is shown at paragraph 27 above. This image shows the wording 'GOT YOUR BAK' in reference to the fact that the opponent's goods offer a lifetime guarantee. It appears as though the opponent's reliance upon its third mark, being 'BAK', stems from the

¹⁴ SLK12

¹⁵ SLK13

fact that it is included in the phrase 'GOT YOUR BAK'. While this claim is noted, I am of the view that this is not use of the opponent's third mark as registered and neither is it an acceptable variant of the sale. My reasons follow.

39. 'BAK' within 'GOT YOUR BAK' is clearly use of 'BAK' as part of a composite mark. Whilst use of a mark as part of a composite mark can be use of a mark as registered (as per *Colloseum Holdings AG v Levi Strauss & Co.*, Case C-12/12), this is on the basis that said mark continues to be perceived as an indicator of origin for the goods relied upon. In my view, 'GOT YOUR BAK' incorporates the opponent's third mark as part of a unique and unitary phrase and alters its overall conceptual meaning so that 'BAK', solus, no longer retains its role as an indicator of origin.

40. As for the argument as to whether it is a variant mark, I remind myself that section 6A(4)(a) of the Act sets out that such a mark can only be deemed acceptable if it does not alter the distinctive character of the mark. As set out above, the way in which 'BAK' features within the phrase 'GOT YOUR BAK' creates a unique and unitary phrase. Plainly, such an alteration of 'BAK', solus, changes the distinctive character to the point that it cannot be said that 'GOT YOUR BAK' is an acceptable variant of 'BAK'.

41. In any event, even if the use of 'BAK' is acceptable within the phrase 'GOT YOUR BAK', I do not consider that the use of these marks on the back of the swing tags satisfies the essential function of a trade mark. I am of the view that when selecting the goods covered in the opponent's evidence, the average consumer would pick them up from a shelf or a rack, or view an image or description of them online, and immediately perceive the branding as 'CAMELBAK'. I see no reason why they would need to consider the swing tag any further in order to seek to identify another indicator of origin when it is clear what the origin is from the product itself. My primary view is that such branding is unlikely to be noticed but, even if it were, I still do not think that it would be viewed as a trade mark on the basis that the average

consumer would expect any trade mark to feature more noticeably elsewhere on the packaging.

42. As a result of the above, and in light of the lack of any other evidence in support of the opponent's third and fourth marks, I find that the opponent is not permitted to rely on the same. This leaves the opponent's second mark, being 'CAMELBAK'. This is covered extensively in the evidence and I will now proceed to consider whether the use of the same is genuine.

43. The level of use before me in respect of the opponent's second mark, being the 'CAMELBAK' brand, is in the region of £8 million in turnover over five years and whilst the advertising spend is not substantial (£400,000 from 2018 to 2022), it reflects an attempt by the opponent to market its brand. The problem in the present case, however, is that the turnover is not broken down and given that the opponent relies on a range of different types of goods, this leaves me with some difficulty in determining precisely what goods the opponent has demonstrated use for. On this point, I remind myself of the comments of Professor Phillip Johnson, sitting as the Appointed Person in the case of *Eros Bodyglide* (O/0984/25), namely paragraphs 26 and 27, wherein he set out that where global sales figures are provided for multiple goods sold under one trade mark, this is not going to be evidence of use for any of those goods.

44. In the present case, I do not take the above comments of Professor Johnson to automatically mean that there cannot be genuine use if the turnover is not broken down. Instead, I must be satisfied that, on balance of the evidence as a whole, it is reasonable to infer a level of use that is sufficient to be deemed genuine. For example, if the evidence covered a wide range of different goods, then it would offer great difficulty in being able to appropriately apportion the turnover accurately. However, where the evidence shows just one or two goods prominently, then it is likely to be reasonable to make such an inference so long as the level of use is sufficient. In respect of the 'CAMELBAK' brand, the evidence appears to mostly

focus on the hydration backpack goods and water bottles, the latter of which are not relied upon here.¹⁶ I appreciate that there are some hydration belts shown for sale in evidence but this evidence is limited to just a couple of images showing such goods listed for sale. In light of the limited nature of evidence relating to such goods, I do not consider it reasonable to simply infer that any use in respect of the same is at a sufficient level when the bulk of the evidence points towards other goods.

45. As above, water bottles are not relied upon in these proceedings. This creates problems for the overall evidential picture as these goods are confirmed as having “grown to be a significant part of [the opponent’s] product range”.¹⁷ While it is not expressly confirmed when water bottles grew to this level of significance (for example, was it during the relevant period or by the date of the witness statement), the frequent presence of such goods across the evidence from the relevant period indicates to me that this statement reflects the position during that time. Therefore, I take this to mean that water bottles make up a significant amount of the £8 million turnover provided. This gives me further difficulty in being able to accurately apportion the turnover to the backpack goods sold. In the present case, I do not consider it appropriate to simply conclude that around half of the turnover is applicable to the relevant goods as, to do so, would be a mere supposition. All this being said, I remind myself that, in considering the present assessment, use need not be quantitatively significant in order for it to be deemed genuine. Therefore, given that the turnover sits at around £8 million over a five year period, I consider it reasonable to infer that the level of use of the opponent’s backpack goods is likely to make up enough of the turnover so as to sit at a sufficient level to satisfy the burden for genuine use. Clearly, the opponent has attempted to create or preserve a market share for its hydration backpack goods.

¹⁶ On this point, I consider it necessary to point out that I do not consider that water bottles reasonably fall within any of the class 21 terms relied upon. They are not hydration ‘systems’ and neither are they ‘reservoirs’.

¹⁷ See paragraph 6 of the witness statement of Ms Katebian.

46. In respect of the goods that the opponent may rely on, I appreciate that the backpacks are primarily used for hydration purposes. However, they are still backpacks used for carrying something (being primarily drinking water in this case). Further, there are images of the products having additional pockets for storage of other goods in the same way an ordinary backpack would.¹⁸ As such, I consider it appropriate to grant genuine use for the term “backpacks” at large in class 18. In addition, these backpacks are clearly used as hydration systems meaning that they also satisfy the requirements for genuine use for the term “hydration systems comprised of a drinking reservoir, a drinking tube and a mouthpiece” in class 21.

Section 5(2)(b): legislation and case law

47. Section 5(2)(b) states that:

“(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 or association with the earlier trade mark.”

48. Section 5A of the Act states as follows:

“Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the

¹⁸ See, for example, the images of the products shown in SLK12 and SLK13, both of which showing other storage compartments.

trade mark is applied for, the application is to be refused in relation to those goods and services only.”

49. 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 Pairs 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, 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, in certain circumstances, be dominated by one or more of its components;

(f) and beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite 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; and

(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

50. The competing goods are as follows:

The opponent's goods	The applicant's goods
<p data-bbox="252 309 624 344"><i>The opponent's first mark</i></p> <p data-bbox="252 421 384 456"><u>Class 18</u></p> <p data-bbox="252 474 810 676">Backpacks; sports packs; waterproof sports bags; rucksacks; day backpacks; thermal insulated backpacks.</p> <p data-bbox="252 748 675 784"><i>The opponent's second mark</i></p> <p data-bbox="252 860 384 896"><u>Class 18</u></p> <p data-bbox="252 913 411 949">Backpacks</p> <p data-bbox="252 1025 384 1061"><u>Class 21</u></p> <p data-bbox="252 1079 810 1223">Hydration systems comprised of a drinking reservoir, a drinking tube and a mouthpiece</p>	<p data-bbox="831 309 963 344"><u>Class 18</u></p> <p data-bbox="831 362 1393 676">All purpose sport bags; articles of luggage; bags; bags for sports clothing; gym bags; holdalls; key cases; purses; sport bags; suitcases; toiletry bags sold empty; tote bags; travel bags; umbrellas and parasols; wallets.</p>

51. When making the comparison, all relevant factors relating to the goods and services in the specifications should be taken into account. In the judgment of the Court of Justice of the European Union (“CJEU”) in *Canon*, Case C-39/97, the court stated at paragraph 23 that:

“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”.

52. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, for assessing similarity were:

- (a) The respective uses of the respective goods or services;
- (b) The respective users of the respective goods or services;
- (c) The physical nature of the goods or acts of service;
- (d) The respective trade channels through which the goods or services reach the market;
- (e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be, found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;
- (f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

53. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, the General Court stated that:

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

All purpose sport bags; bags; bags for sports clothing; sport bags; gym bags; travel bags.

54. The above goods cover a wide range of bag types, including backpacks. As “backpacks” appears in both of the opponent’s specifications, it follows that they are identical under the principle outlined in *Meric*.

Articles of luggage; holdalls; suitcases; tote bags.

55. The above goods would not, in my view, ordinarily cover the opponent’s term of “backpacks”. That being said, I consider that the goods are similar. Whilst their natures and methods of use differ on the basis that they are commonly made of different materials and the fact that the opponent’s goods will be worn on the back (whereas the applicant’s will not), there is an overlap in purpose, trade channels and user. In short, both parties’ goods will be used to store and carry items during travel. Further, I consider it likely that the producer of the above goods will also produce and sell backpacks. The goods are targeted at the same user and, on this point, I note that there is a degree of competition between them on the basis that a consumer may, for example, wish to buy a backpack over a holdall, or vice versa. As a result, I find that these goods are similar to between a medium and high degree.

Toiletry bags sold empty.

56. While the above goods are likely to be for the transport/storage of different items to that of a backpack, there is still a degree of overlap between these goods and the opponents “backpacks” because, ultimately, both goods are for carrying and storing items. As such, there is a degree of overlap in purpose. Further, I consider it reasonable to suggest that there is an overlap in trade channels and user for such goods. In respect of trade channels, I consider it likely that an undertaking that provides backpacks for travel will also sell toiletry bags for travel. The goods

are not complementary and neither are they in competition. Overall, I consider these goods are similar to a medium degree.

Key cases; umbrellas and parasols; wallets; purses.

57. The above goods have different natures and methods of use when compared to any of the opponent's goods. While some of them (wallets and purses, for example), may be used to carry items, I do not consider that the context of the goods is such that leads to any overlap in purpose being to a meaningful degree. I say this because a wallet will be used to carry cash or cards and placed in a user's pocket whereas a backpack (or any other goods in the opponent's specifications, for that matter) would not routinely be used to carry such goods and would certainly not be placed in a pocket. In terms of trade channels, I note that the opponent's submissions argue that this overlaps due to the fact that it is common for a shop selling bags to also sell the above goods. While I appreciate that some larger stores may sell all of these goods, I have nothing before me to suggest that this is common in the trade. If this was an acceptable basis to find an overlap here, it would mean that frozen goods would overlap in trade channels with greetings cards on the basis that both are sold in larger retailers such as supermarkets. In respect of user, I accept that this will overlap but is somewhat fleeting due to the sheer size of the consumer base for both sets of goods. Lastly, the goods are not in competition and neither are they complementary. Overall, I consider that a fleeting overlap in user is insufficient to warrant a finding that these goods are similar. They are, therefore, dissimilar.

Conclusion of the goods comparison.

58. Under the present ground, a likelihood of confusion can only exist where there is at least some similarity between the parties' goods.¹⁹ This means that as a result

¹⁹ *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA

of my findings above, the present ground fails against the goods I have discussed at paragraph 57 above. It will, however, proceed in respect of all remaining goods in the applicant's specification.

The average consumer and the nature of the purchasing act

59. 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.

60. In *Iconix Luxembourg Holdings*, 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 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.

61. The opponent submits that the goods at issue will be selected by members of the general public. I agree and find that those consumers will predominantly select the goods via physical retail stores or online. In stores, the goods will be placed on shelves or racks where they will be self-selected by the consumer. A similar process will apply online where the consumer will select them after viewing images of the goods on a website. As a result, I consider that the selection process will primarily be visual but I do not discount the aural component also playing a role via word of mouth recommendations.

62. Turning to the cost of the goods, the opponent submits that this will vary. I agree on the basis that some bags (such as tote bags) will be relatively cheap whereas some items of luggage (such as suitcases) may be more expensive. In respect of the frequency of selection, I find that this will vary as something like a tote bag will be selected with a higher degree of frequency when compared to a suitcase, for example. The opponent's position in respect of the level of attention paid is that it will be low to moderate. While I agree with this submission insofar as it relates to a moderate degree of attention (which I would categorise as medium), I do not agree that the attention paid will include a low degree. I say that because,

regardless of the cost of the goods being selected, the consumer will still consider factors such as suitability, material used, durability and design. All of these, in my view, point to a medium degree of attention.

Comparison of the marks

63. It is clear from *Sabel v Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the trade marks must be assessed by reference to the overall impressions created by the trade marks, bearing in mind their distinctive and dominant components.

64. 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.”

65. 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.

66. The respective trade marks are shown below:

The opponent's marks	The applicant's mark
<p style="text-align: center;">CHILLBAK (the opponent's first mark)</p> <p style="text-align: center;">CAMELBAK (the opponent's second mark)</p>	<p style="text-align: center;">VOLLEBAK</p>

67. I have submissions from the opponent regarding the similarity of the marks. While these are noted, I do not intend to reproduce them here but, for the avoidance of doubt, can confirm that I have given them due consideration.

Overall impression

68. The opponent's marks are word only marks that consist of the words 'CHILLBAK' and 'CAMELBAK', respectively. In giving its submissions in respect of confusion, the opponent argues that 'BAK' is the distinctive element of the marks. To me, this mirrors an argument that 'BAK' dominates the overall impression of the marks. I appreciate that the consumer will view the opponent's marks as being two elements conjoined, being 'CHILL BAK' and 'CAMEL BAK' on the basis that 'CHILL' and 'CAMEL' form readily identifiable words. However, the opponent has not provided any reasons as to why this would be the case and, without anything further, I see no reason why 'BAK' would be the distinctive or dominant element of these marks. Instead, it is my view that their overall impressions lie in the marks as wholes.

69. As for the applicant's mark, this is also a word only mark that consists solely of the word 'VOLLEBAK'. I find that the overall impression of this mark lies in the word itself. Before proceeding, I consider it necessary to set out that unlike the case

above with the opponent's marks, 'VOLLE' does not form a readily identifiable word so I see no reason why consumers would break the mark down in the same way.

Visual comparison

70. All of the marks at issue are eight letters in length. While the parties' marks all share their last three letters, being 'BAK', their first five letters differ significantly (despite there being some coincidence in the letters used). In comparing the marks visually, I note that not only are the points of difference longer in the respective marks but they sit at their beginnings, being where consumers tend to focus.²⁰ That being said, the shared element does create some visual similarity but, in my view, the points of difference are considerable. Overall, I consider that the marks are visually similar to between a low and medium degree.

Aural comparison

71. The opponent's marks consist of two and three syllables, respectively. They will be pronounced as 'CHILL-BAK' and 'CAM-UHL-BAK'. The applicant's marks will either be pronounced as 'VOLL-BAK' or 'VOLL-EH-BAK'. As such, it will consist of either two or three syllables depending on how it will be pronounced. The last syllables of the marks are identical but the other syllables (whether that's just one syllable, or two) are largely different. Overall, I find that the marks are aurally similar to a medium degree regardless of whether it is just one or two syllables as a point of difference.

Conceptual comparison

72. The opponent's first mark is the word 'CHILLBAK'. As above, this will be understood as being the conjoining of the words 'CHILL' and 'BAK'. I accept that

²⁰ *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

these words carry their own meanings, namely 'CHILL' being understood as a reference to keeping something cold and 'BAK' being understood as a play on the word 'back', especially when considered on 'backpack' goods. However, when the mark is viewed as a whole, I do not consider that the words combine to form any unitary meaning, instead simply being viewed as a conjoining of two elements, one being a known words and the other being a misspelling of a known word.

73.As for the opponent's second mark, this is the word 'CAMELBAK' and, again, this will be understood as being the conjoining of the words 'CAMEL' and 'BAK'. 'CAMEL' will be understood as the desert animal and 'BAK' will, as above, be understood as a play on the word 'back'. Unlike its first mark, the words in the opponent's second mark combine to form a unitary meaning. I say this because the opponent's second mark will evoke the idea of the back of a camel, which is a notable reference due to the presence of the humps on a camel's back which, as I understand it, are used to store energy reserves and regulate the animal's body temperature.

74.I turn now to the applicant's mark. I have set out above that unlike the opponent's marks, this mark will not be broken down as 'VOLLE' and 'BAK'. Instead, the applicant's mark will be viewed as a whole and, in my view, understood as either a made-up or foreign language word with no obvious meaning to the consumer. Therefore, while the letters 'BAK' are noted (and the goods applied for include backpacks), I see no reason why the consumer would view them as a misspelling of the word 'back' in this context.

75.While the opponent's marks carry some form of identifiable concepts, the applicant's mark does not. As a result, I do not consider that a conceptual comparison is possible.

Distinctive character of the opponent's marks

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

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

77. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of marks can be enhanced through use, and I note that the opponent has filed evidence of use. I will, therefore, consider whether the

opponent's evidence is sufficient to give rise to a finding that the distinctiveness of its marks has been enhanced through use. Before doing so, I will consider the inherent position.

78. The opponent's first mark is the word 'CHILLBAK' which, as I have discussed above, will be viewed as two conjoined words, being 'CHILL BAK'. When viewed as a whole, this has no obvious meaning outside of the two words within it (being 'chill' and 'back' misspelled).²¹ While these words do not directly connect to the goods at issue, I do consider that there is a slight degree of allusiveness. This is on the basis that the reference to 'back' will indicate that the opponent's goods (which are backpacks) are intended to be worn on the user's back and 'CHILL' will allude to the fact that the hydration element of the backpacks will remain chilled, hinting at some form of insulation, for example. However, 'CHILLBAK' is still a somewhat unusual phrasing and, together with the fact that this connection is not particularly direct, I do not consider it reduces the distinctiveness of the mark to a significant degree. In my view, the inherent distinctiveness of the mark as a whole sits at just below a medium degree.

79. As for the opponent's second mark, this is the word 'CAMELBAK'. When discussing the concept of this mark above, I found that it would be seen as a reference to a camel's back. In this context, I do not consider the mark necessarily indicates that the goods will be worn on the back. This is because the reference to camel back specifically refers to an animal's back and not the back of the user. That being said, I do not consider that the known reference to the back of an animal is particularly remarkable as it is not a novel concept to the consumer. As a result, I consider that the opponent's second mark is inherently distinctive to a medium degree.

²¹ For the avoidance of doubt, I do not consider that the fact that 'BACK' is misspelled as 'BAK' does not contribute to the distinctiveness of this mark, or the opponent's second mark for that matter.

80. For the avoidance of doubt, I have considered the fact that the hump of a camel's back assists in regulating the temperature of a camel and whether that alludes to the fact that the opponent's goods are backpacks worn for hydration which can assist in regulating the wearer's temperature. While such a connection may eventually be made, I am of the view that it requires too much of a mental process in order for it to be something that is readily apparent to the consumer. As a result, I do not consider that this connection is such to impact upon the inherent distinctiveness of the opponent's second mark.

81. I turn now to consider whether the distinctiveness of the marks has been enhanced through use. As per my summary of the evidence above, the opponent's sole focus appears to be on its second mark, being 'CAMELBAK'. As such, there is no evidence pointing towards use of the brand 'CHILLBAK' meaning that the position in respect of the opponent's first mark remains at the inherent level. The evidence in respect of the opponent's second mark is summarised above. I do not intend to reproduce that evidence here but remind myself that it covered a turnover of around £8 million with an advertising spend of around £400,00 prior to the relevant date (over a five-year period).

82. While the opponent's turnover is noted, I have discussed above that it is not wholly attributable to the relevant goods. On this point, I remind myself that there is no breakdown of the turnover provided and, further, the invoice evidence is not particularly helpful in determining how I can apportion the turnover to the goods sold. This is a problem for the opponent because the evidence has a significant focus on two types of goods, one being hydration backpacks and the other being water bottles. Given that water bottles are not relevant to the present proceedings, any turnover attributable to such goods is of no assistance here. Without anything further from the opponent, it is just not possible for me to determine how much of the turnover can be attributed to the opponent's backpack goods and it would, in my view, be unreasonable to infer that the sales associated can be mostly attributed to the relevant goods. I appreciate that I made a similar inference in

respect of genuine use, but I remind myself that the burden for proving use is far less onerous than that for an enhanced distinctiveness. For example, use need not be quantitative in order for it to be deemed genuine whereas distinctive character is a measure of how strongly the mark identifies the goods/services of a single undertaking. Therefore, I consider that attributing at least some of the turnover to the relevant goods so as to result in genuine use was reasonable. However, to support a finding of an enhanced distinctive character would require an inference that the majority of the turnover is applicable to the relevant goods. This is not reasonable in the circumstances.

83. As a result of the above, I find that the evidence does not satisfy that the opponent's second mark benefits from an enhanced degree of distinctiveness. Therefore, the inherent position applies.

Family of marks

84. Despite not relying on this argument in its pleadings, the opponent has raised an argument that the marks relied upon constitute a family of marks. In respect of this argument, I refer to the case of *Il Ponte Finanziaria SpA v OHIM*, Case C-234/06, wherein the CJEU stated that:

“62. While it is true that, in the case of opposition to an application for registration of a Community trade mark based on the existence of only one earlier trade mark that is not yet subject to an obligation of use, the assessment of the likelihood of confusion is to be carried by comparing the two marks as they were registered, the same does not apply where the opposition is based on the existence of several trade marks possessing common characteristics which make it possible for them to be regarded as part of a ‘family’ or ‘series’ of marks.

63 The risk that the public might believe that the goods or services in question come from the same undertaking or, as the case may be, from economically-linked undertakings, constitutes a likelihood of confusion within the meaning of Article 8(1)(b) of Regulation No 40/94 (see *Alcon v OHIM*, paragraph 55, and, to that effect, *Canon*, paragraph 29). Where there is a ‘family’ or ‘series’ of trade marks, the likelihood of confusion results more specifically from the possibility that the consumer may be mistaken as to the provenance or origin of goods or services covered by the trade mark applied for or considers erroneously that that trade mark is part of that family or series of marks.

64 As the Advocate General stated at paragraph 101 of her Opinion, no consumer can be expected, in the absence of use of a sufficient number of trade marks capable of constituting a family or a series, to detect a common element in such a family or series and/or to associate with that family or series another trade mark containing the same common element. Accordingly, in order for there to be a likelihood that the public may be mistaken as to whether the trade mark applied for belongs to a ‘family’ or ‘series’, the earlier trade marks which are part of that ‘family’ or ‘series’ must be present on the market.

65 Thus, contrary to what the appellant maintains, the Court of First Instance did not require proof of use as such of the earlier trade marks but only of use of a sufficient number of them as to be capable of constituting a family or series of trade marks and therefore of demonstrating that such a family or series exists for the purposes of the assessment of the likelihood of confusion.

66 It follows that, having found that there was no such use, the Court of First Instance was properly able to conclude that the Board of Appeal was entitled to disregard the arguments by which the appellant claimed the protection that could be due to ‘marks in a series’.”

85. In short, I do not see any merit in this argument and I say this primarily for two reasons. Firstly, the opponent is permitted to rely on just two marks and, in short, two marks does not constitute a family of marks. Secondly, there is no evidence of the first mark, being 'CHILLBAK', being present on the market and given that this is a requirement to rely on the present argument, it means that the first mark is not capable of being relied upon here. This leaves just one mark and, plainly, this is insufficient for the present argument to succeed.

86. Even if the opponent was permitted to also rely on its third and fourth marks, being 'BAK' and 'GOT YOUR BAK', this would not advance this argument any further. I say this because two of the four marks relied upon are preceded by one known word, being 'CAMEL' and 'CHILL'. One of these forms a unitary meaning with 'BAK', the other does not. Another mark is just the word 'BAK', solus, and the other includes the word 'BAK' at the end of a longer unitary phrase. As such, even at its best case, I do not consider that opponent's marks show a consistent pattern that consumers would view as a family of marks.

Likelihood of confusion

87. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods down to the responsible undertakings being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the earlier marks, the average consumer for the goods and the nature of the purchasing process. In doing so, I must be alive to the

fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that they have retained in their mind.

88. I found the goods at issue to be either identical or similar to varying degrees. The average consumer base for the goods at issue will be members of the general public who will select the goods via primarily visual means (though I do not discount an aural component) whilst paying a medium degree of attention. I have found the marks at issue are visually similar to between a low and medium degree, aurally similar to a medium degree and conceptually incapable of being compared. Lastly, I concluded that the opponent's first mark enjoys a slightly lower than medium degree of inherent distinctiveness and that its second mark enjoys a medium degree of inherent distinctiveness.

89. Taking all of the above factors into account, I do not consider that the marks at issue will be misremembered or inaccurately recalled for one another. Whilst the shared use of their last three letters is noted, the other points of difference across the marks will not be overlooked. On this point, I appreciate that common elements at the ends of marks may be sufficient to create a likelihood of confusion²² but, in the present case, I see no reason why this would apply as it is the entirety of each mark that the consumer will seek to pin their recollection on. Consequently, I do not consider that there exists a likelihood of direct confusion, even where the marks are viewed on identical goods.

90. I will now proceed to consider indirect confusion. In doing so, I remind myself of the case of *L.A. Sugar Limited v By Back Beat Inc*, BL O/375/10, wherein Mr Iain Purvis Q.C., as the Appointed Person, explained that:

²² *Bristol Global Co Ltd v EUIPO*, T-194/14

“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)”.

91. While the above examples in *L.A. Sugar* are noted, they are not intended to be treated as an exhaustive list of the only instances whereby indirect confusion occurs.
92. Further, I note the case of *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, wherein Arnold LJ referred to the comments of James Mellor Q.C. (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at paragraph 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.
93. In its submissions, the opponent bases its argument in support of indirect confusion on the fact that ‘BAK’ is the distinctive element of the earlier marks. I do not agree that this is the case because the distinctiveness of the opponent’s marks lies equally across these marks as wholes. In any event, this element takes on a different concept across the opponent’s marks, which is not shared in the applicant’s mark. I have explained above that the consumer will view these letters as a reference to ‘back’ in the opponent’s marks (be that a camel’s back or a reference to something being worn on the back) but, in the applicant’s mark, it will form part of a made-up or foreign language word with no obvious meaning. As such, consumers may notice the shared letters but this will be as part of an entirely different and unconnected word. This may result in a calling to mind of the opponent’s marks but this is mere association and not a likelihood of confusion.²³ Lastly in respect of the common element, I am of the view that even if it were the distinctive element across the marks, I do not consider that it is so strikingly distinctive that consumers would believe that only one undertaking would use it.

²³ *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17

94. It is also noted that the opponent argues that 'VOLLEBAK' will be seen as a sub-brand of 'CHILLBAK' or 'CAMELBAK'. Outside of a mere assertion that it will be seen as a sub-brand, the opponent has offered no actual reasoning. It has not explained what the consumer would take away from 'VOLLE' to allow them to believe it was a logical indication of a sub-brand to 'CAMELBAK' or 'CHILLBAK'. In short, I see no merit in this argument. I say this because the element that sits before the letters 'BAK' in the opponent's marks are known English language words whereas 'VOLLE' is not. I see no justification as to why consumers would believe that an undertaking responsible for the marks 'CAMELBAK' or 'CHILLBAK' would extend its brand to include the letters 'BAK' preceded by an entirely unknown word. Consequently, I do not consider that there exists a likelihood of indirect confusion, even when viewed on identical goods.

95. Lastly, I consider it necessary to point out that even if there was a degree of enhanced distinctiveness associated with the opponent's second mark, this would not alter the above findings. This is because any distinctiveness would remain in the 'CAMELBAK' mark as a whole and the conclusions I have reached above would be equally applicable regardless of whether the opponent's mark was distinctive to a higher than medium degree.

Final remarks under section 5(2)(b)

96. For the avoidance of doubt, even if I was incorrect to dismiss the opponent's reliance upon 'BAK' and 'GOT YOUR BAK' when considering proof of use, I do not consider that a likelihood of confusion would exist for these marks either. I say this for reasons similar to those given above. Essentially, the different element of 'VOLLE' (whether this is in front of 'BAK' solus or replacing the words 'GOT YOUR') creates a made-up or foreign language word and it is, plainly, not something that consumers would misremember/overlook or consider a logical addition/alteration that indicates a sub-brand or brand extension.

97. The section 5(2)(b) ground fails and I will now proceed to consider the section 5(3) ground.

Section 5(3)

98. Section 5(3) of the Act states:

“5(3) A trade mark which –

is identical with or similar to an earlier trade mark, shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom (or, in the case of a European Union trade mark or international trade mark (EC), in the European Union) and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or repute of the earlier trade mark.”

99. The relevant case law can be found in the following judgments of the CJEU: Case C-375/97, *General Motors*, Case 252/07, *Intel*, Case C-408/01, *Adidas-Salomon*, Case C-487/07, *L’Oreal v Bellure*, Case C-323/09, *Marks and Spencer v Interflora*, Case C383/12P, *Environmental Manufacturing LLP v OHIM*. The law appears to be as follows:

(a) The reputation of a trade mark must be established in relation to the relevant section of the public as regards the goods or services for which the mark is registered; *General Motors*, paragraph 24.

(b) The trade mark for which protection is sought must be known by a significant part of that relevant public; *General Motors*, paragraph 26.

(c) It is necessary for the public when confronted with the later mark to make a link with the earlier reputed mark, which is the case where the public calls the earlier mark to mind; *Adidas Salomon*, paragraph 29 and *Intel*, paragraph 63.

(d) Whether such a link exists must be assessed globally taking account of all relevant factors, including the degree of similarity between the respective marks and between the goods/services, the extent of the overlap between the relevant consumers for those goods/services, and the strength of the earlier mark's reputation and distinctiveness; *Intel*, paragraph 42

(e) Where a link is established, the owner of the earlier mark must also establish the existence of one or more of the types of injury set out in the section, or there is a serious likelihood that such an injury will occur in the future; *Intel*, paragraph 68; whether this is the case must also be assessed globally, taking account of all relevant factors; *Intel*, paragraph 79.

(f) Detriment to the distinctive character of the earlier mark occurs when the mark's ability to identify the goods/services for which it is registered is weakened as a result of the use of the later mark, and requires evidence of a change in the economic behaviour of the average consumer of the goods/services for which the earlier mark is registered, or a serious risk that this will happen in future; *Intel*, paragraphs 76 and 77 and *Environmental Manufacturing*, paragraph 34.

(g) The more unique the earlier mark appears, the greater the likelihood that the use of a later identical or similar mark will be detrimental to its distinctive character; *Intel*, paragraph 74.

(h) Detriment to the reputation of the earlier mark is caused when goods or services for which the later mark is used may be perceived by the public in such a way that the power of attraction of the earlier mark is reduced, and occurs

particularly where the goods or services offered under the later mark have a characteristic or quality which is liable to have a negative impact of the earlier mark; *L'Oreal v Bellure NV*, paragraph 40.

(i) The advantage arising from the use by a third party of a sign similar to a mark with a reputation is an unfair advantage where it seeks to ride on the coat-tails of the senior mark in order to benefit from the power of attraction, the reputation and the prestige of that mark and to exploit, without paying any financial compensation, the marketing effort expended by the holder of the mark in order to create and maintain the mark's image. This covers, in particular, cases where, by reason of a transfer of the image of the mark or of the characteristics which it projects to the goods identified by the identical or similar sign, there is clear exploitation on the coat-tails of the mark with a reputation (*Marks and Spencer v Interflora*, paragraph 74 and the court's answer to question 1 in *L'Oreal v Bellure*).

100. The conditions of section 5(3) are cumulative. Firstly, the opponent must show that the marks at issue are similar. Secondly, the opponent must show that its marks have achieved a level of knowledge/reputation amongst a significant part of the public throughout the relevant territory. Thirdly, it must be established that the level of reputation and the similarities between the parties' marks will cause the public to make a link between them. Finally, assuming the first three conditions have been met, section 5(3) requires that one or more of the pleaded types of damage will occur. It is unnecessary for the purposes of section 5(3) that the goods or services be similar, although the relative distance between them is one of the factors which must be assessed in deciding whether the public will make a link between the marks.

101. I remind myself that the present ground is reliant upon the opponent's second and third marks only. Further, I remind myself that the issue of proof of use is as relevant to section 5(3) as it is to section 5(2)(b) and given that the applicant

requested proof of use for both of these marks, the findings in respect of that point are equally applicable here. As such, the present ground is limited to a reliance upon the opponent's second mark only and in respect of the following goods:

Class 18: Backpacks.

Class 21: Hydration systems comprised of a drinking reservoir, a drinking tube and a mouthpiece.

Reputation

102. I have summarised the opponent's evidence at paragraphs 23 to 36 above. I do not intend to repeat this here but remind myself, briefly, that it covers a turnover of around £8 million for the five years leading up to the relevant date (being 26 January 2023) as well as an advertising spend of around £400,000 for that same time period. Whilst reputation and enhanced distinctiveness are different, the factors relevant to both are the same. For the reasons given above when discussing the issue of enhanced distinctiveness at paragraphs 81 to 83 above, my primary view is that I do not consider it to be sufficient to establish the requisite reputation and the claims under this ground fall at the first hurdle.

103. The above being said, even if there were to exist a reputation in the opponent's mark, it would only be of a low to moderate strength. Such a level of reputation would not be sufficient to result in a link. My reasons follow.

Link

104. As noted above, my assessment of whether the public will make the required mental 'link' between the marks must take account of all relevant factors. The factors identified in *Intel* are:

The degree of similarity between the conflicting marks.

105. The marks at issue are visually similar to between a low and medium degree, aurally similar to a medium degree and conceptually incapable of being compared.

The nature of the goods or services for which the conflicting marks are registered, or proposed to be registered, including the degree of closeness or dissimilarity between those goods or services, and the relevant section of the public.

106. My findings in respect of the comparison of the goods under the section 5(2)(b) ground are applicable here. As such, the applicant's goods are either identical or similar to varying degrees with the opponent's reputed goods. As for the dissimilar goods, they will be selected by the same section of the relevant public and are ordinary consumer goods meaning that there is a degree of closeness between them.

The strength of the earlier mark's reputation

107. The opponent's mark enjoys a low to moderate reputation.

The degree of the earlier mark's distinctive character, whether inherent or acquired through use

108. The inherent distinctiveness of the opponent's mark sits at a medium level. I appreciate that I have proceeded to this point on the basis that the opponent's mark does enjoy a reputation and I remind myself that, as I have set out above, the tests for enhanced distinctiveness and reputation are based on the same factors. However, if any reputation exists it is at a relatively low level and I do not consider this to mean that there must also be an enhanced degree of distinctive character. The inherent position already sits at a medium level and I find that the evidence

remains insufficient to justify the opponent's mark enjoying any higher degree, even though I may have proceeded on the basis that there exists a reputation.

Whether there is a likelihood of confusion

109. I have found there to be no likelihood of confusion between the marks.

Conclusion on link

110. I appreciate that the requirement for a link under the present ground is less onerous than the assessment for a likelihood of confusion. However, this does not automatically mean that there exists a link between the marks at issue just because the earlier mark enjoys a reputation. I must, instead, take all of the relevant factors into account.

111. Taking all of the above into account, I do not consider that the reputation of the opponent's mark is at a sufficient enough degree to lead the relevant public into believing that there was a link between the marks. I say this because whilst the goods at issue are mostly identical or similar, the marks are not at a similar enough degree to result in consumers believing them to be linked. In addition, the lack of any shared conceptual hook would not result in a member of the relevant public (who is aware of the opponent's mark) viewing the applicant's mark as being one that is linked to the 'CAMELBAK' brand. I say this because the applicant's mark would immediately be viewed as a made-up or foreign language word whereas the opponent's mark carries a conceptual hook referring to the back of a camel. The reputation of the opponent's mark vests in the mark as a whole and, in any event, it is not such that the relevant public would view any use of 'BAK' in another mark as being connected to it. As a result, I find that there exists no link. Even if there were, it would only be fleeting and insufficient to give rise to any damage.

112. To summarise, my primary finding under the present ground is that there exists no reputation in the opponent's mark but, even if there were, it would not give rise to a link. Without a link there can be no damage.

113. The present ground, therefore, fails. I will now proceed to consider the section 5(4)(a) ground.

Section 5(4)(a)

114. Section 5(4)(a) of the Act states as follows:

“5(4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented -

a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, where the condition in subsection (4A) is met,

aa)...

b) ...

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of “an earlier right” in relation to the trade mark”.

115. Subsection (4A) of section 5 of the Act states:

“(4A) The condition mentioned in subsection (4)(a) is that the rights to the unregistered trade mark or other sign were acquired prior to the date of application for registration of the trade mark or date of the priority claimed for that application.”

116. I am of the view that I can deal with the present ground relatively briefly. I say this because whilst my primary view was that the evidence was insufficient to find a reputation, the bar for proving a protectable level of goodwill is lower. As such, I find that there exists a protectable level of goodwill in the opponent's business. That being said, for reasons similar to those discussed above when considering the genuine use of the 'BAK' trade mark, I find that it is only the sign 'CAMELBAK' that is associated with or distinctive of that goodwill. In the present case, I accept that the opponent's use is sufficient to prove that it enjoys a protectable level of goodwill in "backpacks" and "backpack hydration systems consisting of a pack, a reservoir, and a mouthpiece connected to the reservoir by a tube". In respect of the level of the goodwill associated with the sign, I consider this to be moderate.

117. Under the 5(2)(b) ground, I found there to be no likelihood of confusion between the parties' marks. In assessing the present ground, I remind myself of the case of *Comic Enterprises Ltd v Twentieth Century Fox Film Corporation* [2016] EWCA Civ 41, wherein Kitchin LJ set out that it was doubtful whether the difference between the legal tests for likelihood of confusion and misrepresentation will (all other factors being equal) produce different outcomes. As the opponent's sign is identical to the second mark relied upon under the 5(2)(b) ground, and is protected for essentially the same goods, I am of the view that this principle applies here. As such, I find that there exists no misrepresentation and I say this for the same reasons given when discussing a likelihood of confusion under the section 5(2)(b) ground above. The present ground, therefore, fails.

CONCLUSION

118. The opposition fails and, subject to any successful appeal against my decision, the applicant's mark may proceed to registration for all of the goods applied for.

COSTS

119. The applicant has succeeded 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 appreciate that the applicant did not file any evidence. However, I am of the view that it would have incurred costs associated with reviewing the same and, therefore, is entitled to costs in respect of the same.

120. I award the applicant the sum of £900 as a contribution towards its costs. The sum is calculated as follows:

Considering a notice of opposition and preparing the counterstatement:	£300
Reviewing evidence:	£600
Total:	£900

121. I hereby order CamelBak Products, LLC to pay Vollebak Limited the sum of £900. The above sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 17th day of June 2026

A COOPER
For the Registrar

ANNEX 1

The opponent's first mark

Class 18

Backpacks; sports packs; waterproof sports bags; rucksacks; day backpacks; thermal insulated backpacks.

Class 21

Non-electric portable coolers worn as backpacks.

The opponent's second mark

Class 18

Travelling bags; backpacks; knapsacks; rucksacks; waist packs.

Class 21

Hydration systems comprised of a drinking reservoir, a drinking tube and a mouthpiece; drinking reservoirs for hydration systems comprised of a drinking reservoir, a drinking tube and a mouthpiece; mouthpieces and connectors for hydration systems comprised of a drinking reservoir, a drinking tube and a mouthpiece; backpack-style canteens; drinking vessels and thermal insulated fanny pack, waist pack and backpack style containers for drinking vessels and beverage dispensers; backpack hydration systems consisting of a pack, a reservoir and a mouthpiece connected to the reservoir by a tube; waist pack hydration systems comprised of a pack, a reservoir and a mouthpiece connected to the reservoir by a tube.

The opponent's third mark

Class 18

Backpacks, rucksacks, fanny packs; waist packs; backpack hydration systems consisting of a pack, a reservoir, and a mouthpiece connected to the reservoir by a tube, waist pack hydration systems comprised of a pack, a reservoir, and a mouthpiece connected to the reservoir by a tube; backpacks and rucksacks for military and industrial use; backpack hydration systems for military and industrial use.

Class 21

Hydration systems comprised of a drinking reservoir, a drinking tube, a mouthpiece; drinking reservoirs for hydration systems comprised of a drinking reservoir, a drinking tube, and a mouthpiece; and mouthpieces and connectors for hydration systems comprised of a drinking reservoir, a drinking tube, and a mouthpiece.

The opponent's fourth mark

Class 18

Backpacks, rucksacks, fanny packs; waist packs; backpack hydration systems consisting of a pack, a reservoir, and a mouthpiece connected to the reservoir by a tube, waist pack hydration systems comprised of a pack, a reservoir, and a mouthpiece connected to the reservoir by a tube; backpacks and rucksacks for military and industrial use; backpack hydration systems comprised of a pack, a reservoir, and a mouthpiece connected to the reservoir by a tube for military and industrial use.

Class 21

Hydration systems comprised of a drinking reservoir, a drinking tube, a mouthpiece; drinking reservoirs for hydration systems comprised of a drinking reservoir, a drinking tube, and a mouthpiece; and mouthpieces and connectors for hydration systems comprised of a drinking reservoir, a drinking tube, and a mouthpiece.