

O/0514/26

TRADE MARKS ACT 1994

IN THE MATTER OF

TRADE MARK REGISTRATION NO. UK00003866211

IN THE NAME OF

WENFANG LI

IN CLASS 8

AND

AN APPLICATION FOR A DECLARATION OF INVALIDITY

THERE TO UNDER NO. CA000508575

Background and pleadings

1. On 10 January 2023, Wenfang Li (“the registered proprietor”) applied to register the mark shown below (“the later mark”). It was registered in the UK under No. UK00003866211 on 7 April 2023.

Huuskjpn

2. The mark is registered for the following goods:

Class 8 Bread knives; Butcher knives; Carving knives; Chef knives; Cutlery, kitchen knives, and cutting implements for kitchen use; Folding knives; Fruit knives; Hunting knives; Japanese chopping kitchen knives; Kitchen knives; Knife holders; Knife sharpeners; Knife sheaths; Meat choppers [cleavers]; Scissors for kitchen use; Sharpening rods; Steak knives; Utility knives; Vegetable knives; Whetstones.

3. On 5 March 2025, an application to have the above mark declared invalid under section 47(2) of the Trade Marks Act 1994 (“the Act”) was received by the Tribunal from UAB Orbio World (“the cancellation applicant”). The application is based upon section 5(2)(b) of the Act and concerns all the goods that the contested mark is registered for.
4. Under section 5(2)(b), the cancellation applicant relies upon the mark below (“the earlier mark”), registered under No. UK00003649198. The mark was applied for on 31 May 2021 and has a priority date of 13 April 2021. The mark from which the priority is claimed is the EUTM 018451244 registered at the EUIPO.
5. The mark was registered on 15 October 2021.

Huusk

6. The cancellation applicant relies upon all of the goods for which the mark is registered as follows:

Class 8 Knives; Chef knives; Knife holders; Knives for hobby use; Sharpening steels.

7. In its Form TM26(I), the cancellation applicant argues that the marks are similar and that the goods are identical or highly similar.

8. The registered proprietor filed a counterstatement accepting

“... that there is partial identity and similarity between the goods covered by the respective applications, particularly in relation to chef knives and knife holders.

However, the Applicant contests that the marks are similar.”

9. The cancellation applicant is represented by Rytis Rudzinskas and the registered proprietor is represented by Akos Suele, LL.M.

Evidence and submissions

10. The cancellation applicant filed a witness statement from Gintarė Stundytė, Chief Operating Officer, signed and dated as amended on 2 September 2025, to which were annexed Exhibits A to H.¹

11. The cancellation applicant also filed submissions that were dated as amended on 2 September 2025.

¹ Exhibit H is a copy of an EUIPO decision involving the same parties and the same marks which found in part in the cancellation applicant’s favour, but I note that I am not bound by decisions made in other jurisdictions.

12. The registered proprietor filed neither evidence nor submissions.
13. Neither party requested a hearing nor filed submissions in lieu.
14. I will not summarise the evidence and submissions here, but I will refer to them as and where appropriate during this decision. This decision is taken following a careful consideration of the papers.

Relevance of EU law

15. 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.

The law in relation to invalidity

16. Section 5(2)(b) of the Act has application in invalidation proceedings pursuant to Section 47 of the Act.
17. Section 47 reads as follows:

“47(1) [...]”

(2) Subject to subsections (2A) and (2G), the registration of a trade mark may be declared invalid on the ground -

(a) that there is an earlier trade mark in relation to which the conditions set out in section 5(1), (2) or (3) obtain, or

[...]

[...]

(2A) The registration of a trade mark may not be declared invalid on the ground that there is an earlier trade mark unless –

(a) the registration procedure for the earlier trade mark was completed within the period of five years ending with the date of the application for the declaration,

(b) the registration procedure for the earlier trade mark was not completed before that date, or

(c) the use conditions are met.

(2F) Subsection (2A) does not apply where the earlier trade mark is a trade mark within section 6(1)(c)

...

(5A) An application for a declaration of invalidity may be filed on the basis of one or more earlier trade marks or other earlier rights provided they all belong to the same proprietor.

(6) Where the registration of a trade mark is declared invalid to any extent, the registration shall to that extent be deemed never to have been made: Provided that this shall not affect transactions past and closed.”

Section 5(2)(b)

18. Sections 5(2)(b) and 5A of the Act read as follows:

“5 (2) A trade mark shall not be registered if because –

(a)...

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.”

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

19. 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, international trade mark (UK) or Community trade mark or international trade mark (EC) 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.”

20. The mark relied upon by the cancellation applicant qualifies as an earlier trade mark. Given its registration date, it is not subject to the proof of use provisions contained in Section 47(2A) of the Act.

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

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

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

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

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

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

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

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

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

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

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

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

Comparison of goods

22. When making the comparison, all relevant factors relating to the goods in the specification should be taken into account. In *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, the Court of Justice of the European Union (“CJEU”) stated at paragraph 23 of its judgment:

“In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary.”

23. Guidance on this issue has also come from Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, where he identified the factors for assessing similarity as:

(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.

24. The General Court (“GC”) confirmed in *Gérard Meric v Office for Harmonisation in the Internal Market (“OHIM”)*, Case T-133/05, that, even if goods are not worded identically, they can still be considered identical if one term falls within the scope of another (or vice versa):

“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”.

25. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis

for the existence of similarity between goods/services. In *Boston Scientific Ltd v OHIM*, Case T-325/06, the GC stated that “complementary” means:

“...there is close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking”.

26. In *YouView TV Ltd v Total Ltd* [2012] EWHC 3158 (Ch) at [12] Floyd J said:

"... Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless the principle should not be taken too far. *Treat* was decided the way it was because the ordinary and natural, or core, meaning of 'dessert sauce' did not include jam, or because the ordinary and natural description of jam was not 'a dessert sauce'. Each involved a straining of the relevant language, which is incorrect. Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question."

27. The competing goods are as follows:

Registered proprietor's goods	Cancellation applicant's goods
<u>Class 8</u> Bread knives; Butcher knives; Carving knives; Chef knives; Cutlery, kitchen knives, and cutting implements for kitchen use; Folding knives; Fruit knives; Hunting knives; Japanese chopping kitchen knives; Kitchen knives; Knife holders; Knife sharpeners; Knife sheaths; Meat choppers [cleavers]; Scissors for kitchen use; Sharpening rods; Steak knives; Utility knives; Vegetable knives; Whetstones.	<u>Class 8</u> Knives; Chef knives; Knife holders; Knives for hobby use; Sharpening steels.

28. While the registered proprietor has accepted that the respective goods are identical or similar, it has not stated which goods are which, nor has it said what level of similarity those goods which it considers to be similar have. As such, I will conduct my own analysis of the goods.

29. "Sharpening rods" and the cancellation applicant's "Sharpening steels" are identical.

30. The registered proprietor's "Bread knives", "Butcher knives", "Carving knives", "Chef knives", "... kitchen knives ...", "Folding knives", "Fruit knives", "Hunting knives", "Japanese chopping kitchen knives", "Kitchen knives", "Steak knives" and "Utility knives" are *Meric* identical to the cancellation applicant's "Knives".

31. "Knife sharpeners" are *Meric* identical to the cancellation applicant's "Sharpening steels".

32. "Whetstones" are highly similar to the cancellation applicant's "Sharpening steels". They share the same purpose – that of sharpening knives. They

would both be purchased through the same trade channels and they would also be in close competition. I find these goods to be highly similar.

33. “Cutlery” is of medium similarity to the cancellation applicant’s “Knives”. While cutlery includes knives used for eating, it does not include knives used for food preparation and other purposes, and cutlery also contains knives and spoons. However, both sets of goods would be available from kitchenware shops.
34. I compare “Knife sheaths” and the cancellation applicant’s “Knife holders”. They differ in nature, the former being portable, the latter not. Both are used to enclose the blades of knives as a safety feature, but knife holders also serve as a place to store knives. They would be bought through the same trade channels but would only be in competition to a limited degree. Overall, I find these goods to be of medium similarity.
35. “... [C]utting implements for kitchen use”, “Meat choppers [cleavers]” and “Scissors for kitchen use” are bladed items used in the kitchen as are the cancellation applicant’s “Chef knives”. All would be purchased through the same trade channels – retailers of kitchenware. However, the goods are not complementary, nor are they in competition as they all perform different functions in a kitchen. The respective goods are of medium similarity.

The average consumer and the nature of the purchasing act

36. It is necessary for me to determine who the average consumer is for the goods in question. I must then determine the manner in which the goods are likely to be selected by the average consumer in the course of trade.
37. 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 in question (*Lloyd Schuhfabrik Meyer, Case C-342/97*).

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

- a) Consumers who are ill-informed or careless, or consumers with specialised knowledge or who are excessively careful are excluded from consideration;
- b) The average consumer provides a standard which enables the courts to strike a balance between the competing interests involved, such as trade mark owners, their competitors and consumers;
- c) The average consumer is neither a single hypothetical person nor a mathematical average; assessment from the perspective of the average consumer does not involve a statistical test. There is no single meaning rule and if, having regard to the perceptions and expectations of the average consumer, the court considers that a significant proportion of the relevant public is likely to be confused, a finding of infringement may properly be made;
- d) Assessment from the perspective of the average consumer is intended to facilitate adjudication of trade mark disputes by providing an objective criterion, by promoting consistency of assessment and by 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.

39. The goods at issue – knives and associated kitchenware – would vary in price according to their quality but are essentially practical items. Where the consumer was a member of the public, they would pay a medium level of attention during the purchasing process. If the consumer was a professional chef buying the tools of their trade, they would pay a medium to high level of attention.
40. Visual considerations would predominate during the purchasing process, particularly where the purchase was made online, but if buying from a bricks and mortar retailer, verbal factors could also come into play.

Comparison of the trade marks

41. It is clear from *Sabel BV v. Puma AG*, Case C-251/95 (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

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

42. 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.

43. The respective marks are shown below.

The earlier mark	The later mark
Huusk	Huuskjpn

The parties' arguments and evidence

44. In its counterstatement, the registered proprietor:

“... contests that the marks are similar.

The marks "Huusk" and "Huuskjpn" are visually and aurally different: The addition of the letters "jpn" changes the look, sound, and structure of the mark, even if "jpn" itself has no meaning.

Consumers will perceive "Huuskjpn" as a distinctive, invented word, different from "Huusk".

The Applicant developed "Huuskjpn" independently and in good faith.”

45. The cancellation applicant considers its mark to be visually and aurally similar to the later mark. As per paragraph 8.2 of its witness statement, “both include the word 'Huusk'. Both marks coincide in the letter sequence “huusk-“ and in their sound. The Earlier Trademark is made up of this word in its entirety while the Challenged Trademark includes this word at the beginning followed by three letters “jpn”.

46. Further, at paragraph 14.2, it says:

“Contrary to what the Defendant states, the three-letter conjunction “jpn” has a meaning and it serves a specific purpose in the Challenged Trademark. It must be noted the abbreviation “jpn” is an internationally recognized and ISO (International Organization for Standardization) approved identifier of the country name of Japan ... The Defendant was intentionally seeking to refer to Japan, using the abbreviation as a geographical indication of the alleged origin of the products marked by the Challenged Trademark”.

My analysis

47. The earlier mark is the single word mark “Huusk” which as a word mark could be rendered in any case.²

48. The later mark is a single word mark, “Huuskjpn” which as a word mark could be rendered in any case.

49. The overall impressions made by the marks derives from the words alone.

50. Visually, the first five letters of both marks are identical, with the later mark having an additional three letters – “-jpn”. Overall, I find the marks to be visually similar to a medium to high degree.

51. Aurally, the marks begin identically – “Hoosk”. The end of the later mark would be pronounced “juhpuhn”. It would not be pronounced as the initial letters “j-p-n”. This would have been a possibility had the last three letters been presented separately, but they are not and so the second part of the word would be articulated as a whole. Overall, I find the marks to be aurally similar to a medium to high degree.

² *LA Superquimica v EUIPO*, Case T-24/17, (paragraph 39).

52. Conceptually, the earlier mark would be perceived as an invented or foreign language word from which the average UK consumer would take no meaning and so the average consumer would derive no concept from the mark.
53. The later mark would be perceived as an invented word from which no concept derives. Because it would be seen as a single invented word, there would not be a significant proportion of average consumers who would see the three letters “jpn” as the country code for Japan (as asserted by the cancellation applicant in its evidence).
54. The marks are conceptually neutral.

Distinctive character of the earlier mark

55. 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).”

56. 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.
57. I start with an assessment of the inherent distinctive character of the earlier mark.
58. The earlier mark, “Huusk”, would be perceived as an invented or foreign language word from which the average UK consumer would take no meaning and hence the mark is not suggestive of the goods for which it is registered. It is inherently distinctive to a high degree.
59. The cancellation applicant claims at paragraph 3 of its submissions that “the Earlier Trademark has been in use for around 4 years to date in the UK market which grants it an enhanced distinctiveness degree”.
60. The cancellation applicant filed the following evidence to support this claim:
- It created its website on 25 February 2021 (Exhibit A)
 - Its first sale in the UK was on 22 February 2021 (Exhibit B)
 - The first reference to its goods on its website was on 7 May 2021 (Exhibit C)
 - It established an Amazon UK listing on 14 June 2022 (Exhibits D, E, F and G)
61. This evidence does not amount to enough to lead to a finding of enhanced distinctiveness and in any event, I have already found that the mark is inherently distinctive to a high degree.

Likelihood of confusion

62. 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 vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the opponents' trade mark, the average consumer for the goods and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that they have retained in their mind.
63. I have found the respective goods to range from identical to being of medium similarity. The marks are visually and aurally similar to a medium to high degree and conceptually neutral. The earlier mark is inherently distinctive to a high degree. The average consumer for the goods at issue would be a member of the public or a professional chef in the latter case paying a medium to high level of attention during the purchasing process with visual considerations predominating, but with verbal factors potentially coming into play.
64. Even allowing for when the consumer of the goods at issue (which range from being identical to being of medium similarity) is a professional chef, paying a medium to high level of attention, the earlier mark is inherently distinctive to a high degree and I consider that this is a case where direct

confusion is likely, particularly when the principle of imperfect recollection is borne in mind. As previously stated, 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. Imperfect recollection is emphasised in this case given the conceptual neutrality that exists between the marks, with the consequence that neither provides a conceptual hook on which to base future recall. This, together with the closeness of the marks as I have assessed them, leads me to the conclusion that there is a likelihood of direct confusion.

Conclusion

65. Subject to appeal, the cancellation application has succeeded in full, and the contested mark is hereby declared invalid and, in accordance with section 47(6) of the Act, it is deemed never to have been made.

Costs

66. In accordance with Tribunal Practice Notice 1 of 2023, I award the cancellation applicant costs as follows:

67. Preparing a statement and	
considering the other side's statement:	£250
Preparing evidence:	£600
Preparation of submissions in lieu:	£350
Official fees:	£200
Total:	£1400

68. I order Wenfang Li to pay UAB Orbio World £1400. This sum is to be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 17th day of June 2026

JOHN WILLIAMS
For the Registrar