O/0517/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00004070681
BY HANYING WANG
TO REGISTER:

FEMBW

Fembw

AS A TRADE MARK IN CLASSES 14 AND 16

AND

IN THE MATTER OF THE OPPOSITION THERETO
UNDER NO. 449609
BY SHENZHEN CHUANGFENGYUAN E-COMMERCE CO., LTD.

BACKGROUND AND PLEADINGS

1. On 02 July 2024, Hanying Wang ("the applicant") applied to register the trade mark shown on the cover page of this decision, in the UK. The application was accepted and published in the Trade Marks Journal on 02 August 2024 in respect of the following goods:

> **Class 14:** *Clay beads for bracelet making; Number beads, Alphabet beads, Smile face beads for necklace making; Beads; Bead bracelets; Beads for making jewellery; Beads for making jewellery; Necklaces.*
>
> **Class 16:** *Rhinestone stickers; Stickers; Adhesive stickers.*

2. On 13 September 2024, the application was opposed by Shenzhen Chuangfengyuan E-commerce Co., Ltd. ("the opponent") based upon Sections 5(2)(a), 5(3) and 5(4)(a) of the Trade Marks Act 1994 ("the Act").

3. Under both the Section 5(2)(a) and the Section 5(3) grounds, the opponent relies on (and claim reputation for) the following trade mark and the goods covered by the same as shown below:

UK00918238718[1] FEMBW Filing date: 13 May 2020 Registration date: 30 September 2020 **Class 14:** *jewellery boxes; charms for jewellery; wristwatches; watch bands; clocks and watches, electric; watches; watch glasses; watch cases [parts of watches]; presentation boxes for watches; watch hands.*

[1] The opponent's mark is a comparable mark 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 IRs designating the EU. These comparable marks enjoy the same filing and registration dates as their European counterparts.

4. By virtue of its earlier filing date, the trade mark relied upon by the opponent is an "earlier mark" in accordance with Section 6 of the Act. Since the opponent's mark had not been registered for more than five years at the filing date of the contested mark, it is not subject to the use conditions under Section 6A of the Act.

5. Under Section 5(2)(a), the opponent claims that there is a likelihood of confusion because the goods are highly similar, and the marks are identical.

6. Under Section 5(3), the opponent claims that its earlier mark enjoys a reputation in relation to all of the goods identified above having been used since 2020. Further, the opponent states that use of the applicant's mark will take unfair advantage of, or be detrimental to, the distinctive character or the repute of the opponent's earlier mark.

7. Under Section 5(4)(a), the opponent relies on the sign 'FEMBW' which it claims to have used since 2020 throughout the UK in relation to the following goods:

> **Class 14:** *jewellery boxes; charms for jewellery; wristwatches; watch bands; clocks and watches, electric; watches; watch glasses; watch cases [parts of watches]; presentation boxes for watches; watch hands. Clay beads for bracelet making; Number beads, Alphabet beads, Smile face beads for necklace making; Beads; Bead bracelets; Beads for making jewelry; Beads for making jewellery; Necklaces.*
>
> **Class 16:** *Rhinestone stickers; Stickers; Adhesive stickers.*

8. The applicant filed a defence and counterstatement, denying the opponent's claims. In particular the applicant claims to have used the contested sign since 2017 and to be the owner of goodwill in the sign 'FEMBW'. However, since the applicant did not file any evidence of use and did not apply to invalidate the opponent's earlier mark,[2] this defence is not pertinent, and I will say no more about it.

[2] Tribunal Practice Notice 4/2009 "Trade mark opposition and invalidation proceedings – defences"

9. The opponent is represented by AXIS PROFESSIONALS LTD. The applicant is represented by Mengxuan Wang.

10. Only the opponent filed evidence in these proceedings. Neither party requested a hearing, nor did they file submissions in lieu of a hearing. I make this decision having taken full account of all the papers, referring to them as necessary.

Relevance of EU Law

11. 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

12. The opponent's evidence came in the form of a witness statement from Huanhuan Wang dated 15 May 2025. Huanhuan Wang is the director of the opponent's company, a position they have held since 2019, and their witness statement is accompanied by four exhibits (being those labelled Exhibits 1 - 4).

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

DECISION

Section 5(2)(a)

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

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

(a) it is identical with an earlier trade mark and is to be registered for goods or services similar to those for which the earlier trade mark is protected, or

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark."

15. 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

16. 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 of its judgment that:

"In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended

purpose and their method of use and whether they are in competition with each other or are complementary."

17. 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.

18. 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. In *Boston Scientific Ltd v OHIM,* Case T-325/06, the General Court ("GC") stated that "complementary" means:

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

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

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

20. Whilst on the other hand:

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

21. In *Gérard Meric v Office for Harmonisation in the Internal Market,* Case T- 133/05, the GC 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 fur 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."

22. The competing goods are as follows:

The applicant's goods	The opponent's goods
Class 14: *Clay beads for bracelet making; Number beads, Alphabet beads, Smile face beads for necklace making; Beads; Bead bracelets; Beads for making jewellery; Beads for making jewellery; Necklaces.*	**Class 14:** *jewellery boxes; charms for jewellery; wristwatches; watch bands; clocks and watches, electric; watches; watch glasses; watch cases [parts of watches]; presentation boxes for watches; watch hands.*
Class 16: *Rhinestone stickers; Stickers; Adhesive stickers.*	

23. The applicant's goods are in class 14. Whilst some of these goods, i.e. *Clay beads for bracelet making,* make me think about plastic beads enjoyed by children to make bracelets, neckless etc, the class heading of the Nice classification is as follows: *"Class 14 includes mainly precious metals and certain goods made of precious metals or coated therewith, as well as jewellery, clocks and watches, and component parts therefor."* Accordingly, the goods falling within this class are **mainly** precious metals and certain goods made of precious metals or coated therewith.

24. However, significantly, the term *jewellery* in the class heading is not limited to goods being made of precious metal. Further the term 'jewellery' is defined as *"ornaments that people wear, for example rings, bracelets, and necklaces. It is **often** made of a valuable metal such as gold, and sometimes decorated with precious stones"* (Collins online dictionary) - this means that it is conceivable that items of jewellery in class 14 are made of materials other than precious metals, such as for example, handmade jewellery made of plastic or other non-precious materials.

25. Based on these conclusions, I find that both the applicant's goods, namely *Clay beads for bracelet making; Number beads, Alphabet beads, Smile face beads for necklace making; Beads; Bead bracelets; Beads for making jewellery; Beads for making jewellery; Necklaces,* and the opponent's goods *charms for jewellery* can be made of the same material, being precious metal, clay or plastic – this is because neither the opponent's nor the applicant's goods are limited to any specific material.

26. Accordingly, both sets of goods can be used to make jewellery and can be made of the same material even if they have a different shape (i.e. beads versus charms). The goods have the same purpose and have a similar nature, they also have the same uses and method of use, target the same consumers, and are likely to be distributed through the same trade channels. Finally, although the goods are not complementary, they are in competition, as someone who wishes to make handmade jewellery can choose between the opponent's goods and the applicant's goods to make and decorate the jewellery. Overall, I find that all of the applied for goods in class 14 are highly similar to the opponent's *charms for jewellery* goods in the same class.

27. Turning to the applied-for goods in class 16, *Rhinestone stickers* are decorative embellishments made of glass or plastic. These would include self-adhesive jewels for crafting, stick-on gems and other goods used for making handcraft jewellery. Consequently, although these goods and the opponent's charms for jewellery are in different classes, they have a similar use, purpose and method of use, all being items for making handcraft jewellery. In addition, the goods target the same users and are likely to be distributed through the same trade channels. However, the goods have a different nature, are neither in competition nor are they complementary. I find these goods to be similar to a medium degree. The same conclusions apply to the other two terms *Stickers; Adhesive stickers* insofar as they are sufficiently broad to encompass *Rhinestone stickers* for jewellery making.

Average consumer

28. 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.

29. In *Iconix Luxembourg Holdings* (cited above), the Supreme Court approved the comments of Arnold LJ in *Lidl Great Britain Ltd & Anor v Tesco Stores Ltd & Anor (Rev1)* [2024] EWCA Civ 262, where he pointed out that:

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

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

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

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

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

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

30. The average consumer of the goods at issue will be a member of the general public, or a professional in the jewellery making business.

31. The goods are likely to be selected from physical stores where consumers can select and purchase products in person. Consumers will also encounter the marks online as well as in advertising or promotional materials. Consequently, visual considerations will dominate the selection process. However, I do not discount an

aural component to the purchase given that advice may be sought from retail assistants.

32. The price of the goods might vary depending on their quality and material, however, regardless of the costs, when selecting the goods consumers will take into account various factors, including the suitability for the type of jewellery they wish to create, all of which will entail at least a medium degree of attention.

Comparison of marks

33. Both parties' marks consist of the identical sequence of five letters 'FEMBW' presented in capital letters. These marks are self-evidently identical.

34. Although the application is a series of two marks, it is essentially the same sequence 'FEMBW' presented in both capital letters and title case. Since both the application and the earlier mark are word-only marks, the different case of one of the marks in the applicant's series makes no difference. This is because notional use of word-only marks covers use in any font and case.

Distinctive character of the earlier mark

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

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

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

36. Registered trade marks possess various degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words, which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use made of it.

37. The earlier mark consists of the sequence of five letters 'FEMBW'. The sequence is not an English word. Whilst words which do not belong to the English language and are perceived as invented are normally considered to enjoy a high degree of distinctiveness, 'FEMBW' is more likely to be perceived as a random combination of letters or an acronym as opposed to an invented word. Whilst I bear in mind that distinctiveness is the essential quality of a trade mark that enables it to identify and distinguish the goods or services of one business from those of others, I am also aware that 'FEMBW' being a random sequence of letters is not that easy to remember for the relevant public – this, in turn, means that somehow the capacity of the mark to designate the commercial origin of the goods in question is reduced. Overall, I consider this mark to be distinctive to a low to medium degree.

38. This is the inherent position. In addition, the opponent has filed evidence of use of the earlier mark, which I am going to review in order to establish whether the use made of this mark has enhanced its distinctiveness.

39. Huanhuan Wang, who is the director of the opponent, states that the opponent has been using its trade mark 'FEMBW' since 2019. They also states that the opponent has used the same mark worldwide for a long time, and has US trade marks 6306151 and EU trade marks 018238718. This is the totality of the narrative evidence contained in Huanhuan Wang's witness statement, insofar as it is evidence that I can consider. Whilst Huanhuan Wang also provides a link to Amazon UK, evidence containing references to website links are not acceptable as I will not undertake any independent research.[3]

40. The rest of Huanhuan Wang's evidence is only a vehicle for introducing four exhibits which consist of the following:

- Exhibits 1 - 2: they are described by Huanhuan Wang as examples of the opponent's trade mark "FEMBW" products that are available for purchase through the opponent's website. However, it consists of (a) two undated images of products, with the brand 'FEMBW' displayed in small writing and (b) screenshots from Amazon UK with a printing date of 19 May 2025, neither of which can be taken into account as they are dated after the relevant date of 02 July 2024:

[3] Trade Mark Manual Section 4.8.4

2025/5/19 14:17 1200+ PCS Rhinestone Stickers,Self Adhesive Gem Sticker Bling Jewels for DIY Craft Nail Body Ma

Home & Kitchen › Arts & Crafts › Scrapbooking & Stamping › Stickers

Roll over image to zoom in

1200+ PCS Rhinestone Stickers,Self Adhesive Gem Sticker Bling Jewels for DIY Craft Nail Body Makeup Festival, 14 Sheets Jewels Stickers for Card Making Decorations

Brand: FEMBW

4.5 ★★★★½ 1,242 ratings

100+ bought in past month

£6.99

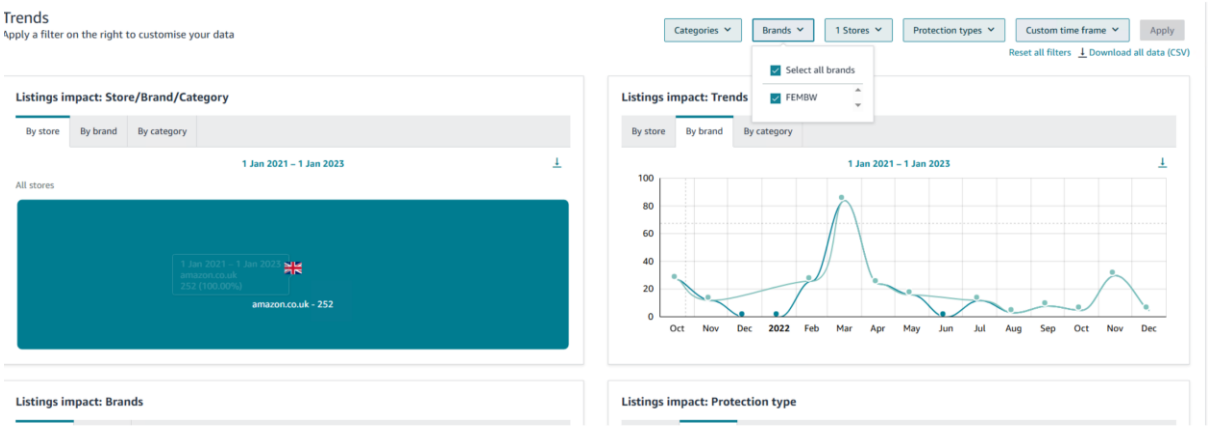
FREE Returns

Save 5% on any 4 Qualifying items › | Terms

Brand	FEMBW
Colour	Multicoloured
Recommended uses for product	Scrapbook
Theme	Cartoon
Cartoon character	Heart

- Exhibit 3: it is described by Huanhuan Wang as a sales record of the opponent in the UK. It consists of copies of two UK Amazon orders to two UK consumers for a total of £8.99 (for 1 unit of rhinestone stickers) and £15.99 (for 1 unit of clay beads bracelet making kit) and two invoices for a total of £12.79 (for 1 unit of clay beads bracelet making kit), £8.99 (for 1 unit of rhinestone stickers). However, they are all dated August 2024 which is after the relevant date of 02 July 2024.

- Exhibit 4 is a screenshot showing “the usage of the opponent's brand "FEMEW" on the Amazon platform in the UK” for the periods 1 January 2023-19 March 2025 and 1 January 2021 - 1 January 2023. I reproduce below the screenshot for the latter period as an example:



41. As it can be seen, the most the evidence shows is that the opponent sold some goods on Amazon UK under the earlier mark prior to and after the relevant date. Whilst the screenshots exhibited at exhibit 1 contains a few customer reviews dated prior to the relevant date, this is the most that the opponent’s evidence shows insofar as evidence dated prior to the relevant period is concerned. However, none of the factors which are relevant for assessing genuine use, reputation and goodwill, including the market share held by the trade mark, the intensity, geographical extent and duration of its use, the turnover generated under the mark and the size of the investment made by the undertaking in promoting the mark are provided in evidence. In particular the absence of turnover and marketing figures means that any use shown is not more than

trivial being that it is limited to 4 sales after the relevant date (which does not count) and a few customer reviews prior to the relevant date.

42. Bearing in mind all of the above, the evidence falls way short of demonstrating that the earlier mark has acquired a degree of enhanced distinctiveness through use in the UK.

Likelihood of confusion

43. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind, including that a lesser degree of similarity between the respective marks may be offset by a greater degree of similarity between the respective goods vice versa. I must keep in mind the distinctive character of the earlier mark, the average consumer for the goods and the nature of the purchasing process. I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between marks and must instead rely upon the imperfect picture of them that they have retained in their mind.

44. Confusion can be direct or indirect. In *L.A. Sugar Limited v By Back Beat Inc*, BL O/375/10, Mr Iain Purvis Q.C., as the Appointed Person, explained that:

> "16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: 'The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark'.

17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:

(a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right ('26 RED TESCO' would no doubt be such a case).

(b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as 'LITE', 'EXPRESS', 'WORLDWIDE', 'MINI' etc.).

(c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension ('FAT FACE' to 'BRAT FACE' for example)."

45. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ approved Mr Purvis's formulation but added:

"13. As James Mellor QC sitting as the Appointed Person pointed out in Cheeky Italian Ltd v Sutaria (O/219/16) at [16] 'a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion'. Mr Mellor went on to say that, if there is no likelihood of direct confusion, 'one needs a reasonably special set of circumstances for a finding of a likelihood of indirect confusion'. I would prefer to say that there must be a proper basis for concluding that there is a likelihood of indirect confusion given that there is no likelihood of direct confusion."

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

47. Earlier in this decision I found that:

- The applicant's marks and the opponent's earlier mark are identical.

- The respective goods are highly similar or similar to a medium degree.

- The average consumer will select the goods mainly visually with a medium degree of attention.

- The earlier mark is inherently distinctive to a low to medium degree. The evidence filed by the opponent is insufficient to establish that the distinctiveness of the earlier mark has been enhanced to any material extent.

48. Given the identity of the marks and the medium and high degree of similarity of the goods, I consider than the relevant public paying a medium degree of attention will directly confuse the marks, even if the earlier mark is distinctive to a lower than medium degree, as there is nothing which would enable the consumer to distinguish between them.

49. There is a likelihood of confusion. The opposition is successful under this ground.

Section 5(4)(a) and 5(3)

50. I can deal with those grounds very briefly. I have already commented on the evidence filed by the opponent and I found that it comes nowhere near establishing enhanced distinctiveness, which refers to an increased recognition and capacity of a trade mark to identify the goods or services for which it is registered as coming from a particular undertaking as a result of extensive use. Further, whilst there is evidence of some customer reviews dated prior to the relevant date, it is only a handful, and there is nothing further which shed some light on the extent of the opponent's use – this would have been insufficient to establish genuine use of the earlier mark in the sense that there has been a real commercial exploitation of the mark,[4] for the reasons I have

[4] easyGroup Ltd v Nuclei Ltd & Ors [2023] EWCA Civ 1247

set out above. It follows that since the evidence does not even establish genuine use of the earlier mark in relation to the registered goods, it cannot establish reputation or goodwill in the same mark/sign which are concepts closely related to genuine use.

OUTCOME

51. The opposition succeeds under Section 5(2)(b) and the application will be refused registration.

COSTS

52. The opponent has been successful and is, therefore, entitled to a contribution towards its cost based upon the scale published in Tribunal Practice Notice 1/2023. In the circumstances, I award the opponent the sum of £800, calculated as follows:

Preparing the notice of opposition and considering the counterstatement: £300
Filing evidence: £300
Official Fees: £200
Total: £800

53. I therefore order Hanying Wang to pay Shenzhen Chuangfengyuan E-commerce Co., Ltd. the sum of £800. This sum is to be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 19th day of June 2026

TERESA PINTO
For the Registrar