

O/0665/24

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. 3851208

**BY ZHUHAI TESSAN POWER
TECHNOLOGY CO., LTD**

TO REGISTER THE TRADE MARK:

CHARCO

IN CLASS 12

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 439515**

BY FITES

BACKGROUND AND PLEADINGS

1. On 20th November 2022, Zhuhai Tessian Power Technology Co., Ltd (“the applicant”) applied to register the trade mark shown on the cover of this decision in the United Kingdom. The application was accepted and published in the Trade Marks Journal on 2nd December 2022, in respect of the following goods:

Class 12: *Electric vehicles; remote control vehicles, other than toys; driverless cars [autonomous cars]; self-driving cars; robotic cars; cars; electric vehicles; electric bicycles; self-balancing scooters; mopeds; civilian drones; helicams; remote control vehicles, other than toys; remotely operated vehicles for underwater inspections; air pumps [vehicle accessories].*

2. On 2nd March 2023, FITES (“the opponent”) opposed the application based on Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opposition is directed against all of the above goods in the application, excluding “civilian drones” and “helicams”.

3. The opponent relies upon the earlier mark shown below:

SHERCO

UK00914772388

Filing date: 9th November 2015, Registration date: 15th April 2016

Relying upon the following goods:

Class 12: *Vehicles; Apparatus for locomotion by land, spare parts therefor; Motorbikes; Motors for land vehicles; Mopeds; Motor bikes; Motorbikes; Motorcycle shells; Motorcycle frames; Motorcycle frames; Motorcycle rims; Motorcycle rims; Pedals for motorcycles; Motorcycle pedals; Wheels; Pneumatic tyres or seats for motorcycles; Wheels; Pneumatic tyres or seats for motorcycles; Motorcycle brakes; brakes for motor cycles; Motorcycle motors and engines; Motorcycle engines; Motorcycle chassis; Chassis for motorcycles; Handlebars; Suspension shock absorbers for motorcycles;*

*Handlebars; Suspension shock absorbers for motorcycles.*¹

4. By virtue of its earlier filing date, the above registration constitutes an earlier mark within the meaning of section 6 of the Act. As the mark had completed its registration process more than five years before the filing date of the contested mark, it is subject to the proof of use provisions contained in section 6A of the Act.

5. Under Section 5(2)(b), the opponent claims that the opposed mark is highly similar to the earlier mark, and for goods which are identical or highly similar. It submits that the marks share four out of six letters, “emphasising the highly similar visual impact” which is “particularly important as neither has an obvious conceptual meaning”.² Furthermore, it submits that the earlier mark is “highly distinctive inherently and also enjoys an enhanced level of distinctiveness acquired through significant use” which “increases the potential likelihood of confusion.”³

6. The applicant filed a counterstatement stating that its mark is not sufficiently similar to the earlier mark to create risk of confusion for the relevant public. This also included the following:
 - That the marks differ at the beginning, which is the part which generally catches the consumers attention and is remembered more clearly than the rest of the sign.
 - That the marks are phonetically different.
 - Both marks are invented words, which have no meaning for the public.
 - The goods covered by the applicant’s mark concern vehicle products whereas the opponent’s earlier right is more specific, covering only motorcycle products.

¹ The opponent makes reference to both “motorbikes” and “motorcycles” within various terms in its specification. To note, I consider “motorbike” merely a shorthand term for “motorcycle” therefore I use these words interchangeably within the context of my decision to reference the same type of goods.

² See response to Q5. of TM7.

³ Ibid.

The applicant also put the opponent to proof of use of the earlier mark.

7. In these proceedings, the opponent is represented by Dummett Copp LLP and the applicant by IBE Avocat - Isabelle Bertaux. Only the opponent filed evidence and written submissions, which will be summarised to the extent that it is considered necessary. As no hearing was requested, this decision is taken following a careful perusal of the papers.
8. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (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

9. The opponent's evidence was filed in the form of a witness statement dated 28th July 2023 from Marc Teissier, General Manager for the opponent, and he has been with the company for 21 years. The witness statement includes 12 exhibits. The purpose of the evidence is to speak to the use of the opponent's mark.

Proof of use

10. The applicant has requested proof of use in these proceedings in respect of the opponent's earlier mark. I will begin by assessing whether and to what extent the evidence supports the opponent's statement that it has made genuine use of the earlier mark in relation to the goods relied upon. In accordance with section 6A(1A) of the Act, the relevant period for this purpose is the five years ending on the filing date of the contested application: 21st November 2017 to 20th November 2022.

11. Section 6A of the Act states:

“(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.”

12. The earlier mark is a comparable mark. This means that it is a UK registered mark, derived from an EU trade mark (“EUTM”). The EUTM became a UK registered ‘comparable’ trade mark at 11pm on 31 December 2020.⁴ For the part of the five year period up until then, the opponent is entitled to rely upon use in the EU (which included the UK before that date). For the part of the relevant period of use after that date, the opponent may only rely upon use in the UK because the UK was no longer part of the EU. This is provided for in paragraph 7 of Part 1, Schedule 2A of the Act, which 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 —

⁴ The Trade Marks (Amendment etc.) (EU Exit) Regulations 2019; also see Tribunal Practice Notice 2/2020.

- (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”.

13. Section 100 is also relevant, which reads:

“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.”

14. Consequently, the onus is upon the opponent to prove that genuine use of the registered trade mark was made within the relevant territory in the relevant period, and in respect of the goods as registered.

Relevant case law

15. 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 Laboratories 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 Bunderversvereinigung 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 Merken 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].”

Form of the mark

16. For the sake of completeness, before I move on to assess if the opponent has shown genuine use, I must first consider if I find the use of the mark as shown in the evidence to be use of the mark as registered. As outlined in *Lactalis McLelland Limited v Arla Foods AMBA*, Case O/265/22, the use of the mark in a different form may also constitute use of the mark as registered. Where the opponent has used its ‘SHERCO’ mark in its word only form this is clearly use upon which it may rely. However, I note that some evidence shows use with

stylisation, such as the examples below: depicting a black and yellow italicised colourway with a blue background, the same colourway with “Motorcycles” in white capitalised text underneath, and a black and white variant with a triangular device and the addition of “Motorcycles” underneath in black title case:



In these cases, I consider use of the earlier mark with some stylisation (such as that above) amounts to use of the mark as registered, because the alterations do not alter the distinctive character of the mark which resides in the word ‘SHERCO’. Consequently, it is use upon which the opponent can rely.

Use of the mark

17. Mr Teissier states in his witness statement that the opponent has been using its mark throughout the UK since at least 1999. Its products are offered for sale in the UK via the importer Malcolm Rathmell Sports Ltd. and to the general public via a range of dealers.

18. Exhibit MT1 consists of screenshots from the opponent’s own website. It is noted that this is a “.com” site, rather than a “.co.uk” domain name. Extracts within the relevant period are from the ‘Wayback Machine’ internet archive dated between 18th July 2018 and 6th October 2022. These show promotional pictures of various motorbikes, including where the mark can be seen affixed to the motorcycle itself:⁵



⁵ See page 4 of Exhibit MT1. Further examples of the mark affixed to motorcycles can be found within Exhibit MT9. For example, page 4 of Part 2 and pages 2 and 6 of Part 3. The mark affixed to spares parts can also be seen, e.g. page 7 of Part 3.

19. In a similar vein, exhibit MT7 provides examples of the mark used on products, packaging and in marketing material. Though I note that these extracts are mostly undated.
20. Exhibit MT3 and MT4 show screenshots via the 'Wayback Machine' internet archive of the opponent's products offered for sale by Malcolm Rathmell Sports Ltd. on their UK site. The mark is clearly shown on the general product pages and within the detailed listings. For Exhibit MT3, the pages within the relevant period range from 20th November 2018 to 7th March 2022. In Exhibit MT4, the pages are dated between 16th June 2021 and 3rd August 2021. Detailed product listings include various models of motorcycle under the 'SHERCO' name, and spare parts such as a tank seat and petrol tank. Where the images of the goods have not been reproduced, the text still clearly relates to goods such as cylinder heads, footrests, a radiator, clutch plates, centrifugal wheel, handlebar, side panels and an exhaust system.
21. The importer Malcolm Rathmell Sports Ltd. has been offering the opponent's products for sale online via its UK site since at least February 2011, as evidenced through the screenshots at Exhibit MT2. The opponent's products are offered for sale to the general public via dealerships, spread across the UK, as shown at Exhibit MT5, and per the extract below:



However, this is dated only with the date that the page was accessed (31st July 2023), so it is unclear whether all these dealerships were in operation during the relevant period. By way of example, Exhibit MT6 goes on to provide screenshots from the website of one of the dealerships, where the opponent's mark is visible on motorcycles being offered for sale and on pages listing spare products available for purchase.⁶

22. Annual turnover figures for the UK in Euros (EUR) since 1999 are provided at paragraph 18 of Mr Teissier's witness statement. The figures in relation to 2017-2022 are as follows:

Year	UK turnover (in millions)	UK cumulative turnover⁷ (in millions)
2017	1.6	1.6
2018	1.5	3.1
2019	1.5	4.6
2020	1.6	6.2
2021	3	9.2
2022	2	11.2

23. In support of these figures, a selection of invoices at Exhibit MT8 have been provided demonstrating sales of motorcycles and spare parts made to Malcolm Rathmell Sport Ltd. The invoices clearly display the 'SHERCO' mark. From those within the relevant period, there are eleven invoices itemising a total of more than 125 motorcycles and nine invoices for various parts. Some of the detailed invoices specifically reference recognisable goods such as handlebars, exhaust pipe gaskets, clutch levers, rear brake pedals and petrol tanks.

24. I have also been provided with examples of marketing and promotional material targeted to the UK which includes:

⁶ See page 11 of MT6 (dated 26 September 2021) and page 12 (dated 11 April 2021) of same exhibit.

⁷ These are cumulative figures for 2017-2022. The figures provided at paragraph 18 of the witness statement provides cumulative figures from 1999 to 2022, with the 2022 value totalling 35 million EUR.

- At Exhibit MT9, excerpts from what appears to be a “MY 22” brochure show some of the opponent’s motorbike models with technical specifications and racing parts. I note some of the parts shown include a handlebar, throttle tube and grips, racing wheel, and footpeg. The document is not clearly dated but includes references to products which appear to be new for 2022, which suggests it would sit within the relevant period.⁸ Also shown are excerpts of catalogues from 2018-2021 which are clearly within the relevant period. The 2021 document provides details on competition riders sponsored by the opponent, including three from the United Kingdom. Of note are racing parts itemised in the 2020 and 2019 documents which include an additional carbon fuel tank, carbon pipe guard, clutch cover and shock absorbers.
- Exhibit MT10 consists of social media excerpts from Instagram and Facebook detailing figures for number of posts and followers. However, they are dated from the day accessed (31st July 2023) so it is not possible to determine what proportion of followers were accrued during the relevant period and what proportion of these are from the UK (or prior to IP completion day, the EU).
- Exhibit MT11 provides examples of the opponent’s marketing via athlete sponsorship and the ‘Sherco Factory Racing team’. The majority appear dated from the day accessed (31st July 2023) rather than within the relevant period, however the three articles provided have publication dates within the relevant period.⁹
- Finally, Exhibit MT12 provides examples of media coverage and press articles within the relevant period. These are features regarding ‘SHERCO’ motorcycles held by individuals famous in the motorbiking sport, a first look at a new model and a third party aftermarket replacement seat manufacturer.

25. I have not been provided with any advertising expenditure figures or any indication of the market share enjoyed by the opponent. However, I am mindful that an assessment of genuine use is a global assessment, which includes looking at the evidential picture as a whole, not whether each piece of evidence

⁸ For example the reference to the “New 2022 graphics kit” on page 5.

⁹ “British Sprint Enduro Championship at Hawkstone Park”, “Hamish MacDonald World Champion” and “TrialGP 2020: Emma Bristow Flawless in TrialGP Women”

shows use by itself.¹⁰ I consider that the turnover figures provided represent a significant level of sales and commercial exploitation of the mark in the UK in order to maintain a share in the market. Taking all the above evidence into account, I am satisfied that the opponent has demonstrated genuine use of its earlier mark during the relevant period.

26. I am now required to determine in relation to which goods the mark has been used and, if that use is not on everything relied upon (in the registered specification), or a reasonable range of goods within the terms in the specification, to decide upon a reduced, fair specification represented by the use. In so doing, I am guided by *Property Renaissance Ltd (t/a Titanic Spa) v Stanley Dock Hotel Ltd (t/a Titanic Hotel Liverpool) & Ors*, in which Mr Justice Carr summed up the law relating to partial revocation as follows:¹¹

“iii) Where the trade mark proprietor has made genuine use of the mark in respect of some goods or services covered by the general wording of the specification, and not others, it is necessary for the court to arrive at a fair specification in the circumstance, which may require amendment; *Thomas Pink Ltd v Victoria's Secret UK Ltd* [2014] EWHC 2631 (Ch) (“Thomas Pink”) at [52].

iv) In cases of partial revocation, pursuant to section 46(5) of the Trade Marks Act 1994, the question is how would the average consumer fairly describe the services in relation to which the trade mark has been used; *Thomas Pink* at [53].

v) It is not the task of the court to describe the use made by the trade mark proprietor in the narrowest possible terms unless that is what the average consumer would do. For example, in *Pan World Brands v Tripp Ltd* (Extreme Trade Mark) [2008] RPC 2 it was held that use in relation to holdalls justified a registration for luggage generally; *Thomas Pink* at [53].

¹⁰ *New Yorker SHK Jeans GmbH & Co. KG v OHIM*, General Court of the European Union, Case T-415/09.

¹¹ [2016] EWHC 3103 (Ch).

vi) A trade mark proprietor should not be allowed to monopolise the use of a trade mark in relation to a general category of goods or services simply because he has used it in relation to a few. Conversely, a proprietor cannot reasonably be expected to use a mark in relation to all possible variations of the particular goods or services covered by the registration. *Maier v Asos Plc* [2015] EWCA Civ 220 ("Asos") at [56] and [60].

vii) In some cases, it may be possible to identify subcategories of goods or services within a general term which are capable of being viewed independently. In such cases, use in relation to only one subcategory will not constitute use in relation to all other subcategories. On the other hand, protection must not be cut down to those precise goods or services in relation to which the mark has been used. This would be to strip the proprietor of protection for all goods or services which the average consumer would consider to belong to the same group or category as those for which the mark has been used and which are not in substance different from them; *Mundipharma AG v OHIM* (Case T-256/04) ECR II-449; EU:T:2007:46."

27. The evidence does not support a finding of genuine use across all the goods relied upon, which are:

Vehicles; Apparatus for locomotion by land, spare parts therefor; Motorbikes; Motors for land vehicles; Mopeds; Motor bikes; Motorbikes; Motorcycle shells; Motorcycle frames; Motorcycle frames; Motorcycle rims; Motorcycle rims; Pedals for motorcycles; Motorcycle pedals; Wheels; Pneumatic tyres or seats for motorcycles; Wheels; Pneumatic tyres or seats for motorcycles; Motorcycle brakes; brakes for motor cycles; Motorcycle motors and engines; Motorcycle engines; Motorcycle chassis; Chassis for motorcycles; Handlebars; Suspension shock absorbers for motorcycles; Handlebars; Suspension shock absorbers for motorcycles.

28. Whilst the evidence shows use in relation to motorcycles, this is only a subcategory of “*Vehicles*”. Similarly, “*Apparatus for locomotion by land, spare parts therefor*” would relate to spare parts for all types of land vehicles. The same principle applies to “*Motors for land vehicles*”. Further “*Wheels*” and “*Handlebars*” which would relate to these goods for any type of vehicle under class 12. I consider that use has only been demonstrated for all of these terms within a subcategory of goods relating to motorcycles. I have considered whether the narrower subcategory of off-road motorcycles would be appropriate but conclude that this would excessively cut down the goods, especially in light of the caselaw above.

29. The remaining terms within the specification relating to spare parts for motorcycles are:

Motorcycle shells; Motorcycle frames; Motorcycle rims; Pedals for motorcycles; Motorcycle pedals; Pneumatic tyres or seats for motorcycles; Motorcycle brakes; brakes for motor cycles; Motorcycle motors and engines; Motorcycle engines; Motorcycle chassis; Chassis for motorcycles; Suspension shock absorbers for motorcycles.

Being mindful of the caselaw at paragraph 26 above, in particular against overtly narrowing the specification down (unless that is what the average consumer would do), I am content that the evidence provided, in particular at Exhibits MT4 and MT9, is sufficient to demonstrate genuine use for these terms.

30. I have also considered whether the evidence supports use in relation to “*Mopeds*”. Here, I am guided by the definition of mopeds, which states:

“Originally: a motorized pedal cycle. Now usually: a light two-wheeled motor vehicle with a small engine. In English law defined as one with a kerbside weight not exceeding 250 kg (approx. 550 lb), a maximum design speed not exceeding 30 mph, and an engine capacity of not more than 50 cc.”¹²

¹² Oxford English Dictionary (https://www.oed.com/dictionary/moped_n?tl=true) Accessed 26th June 2024.

Considering the evidence which all points to motorcycles with a cubic capacity (cc) in excess of 125, I do not regard it sufficient to support genuine use of the mark for these particular goods.¹³

31. In summary, I therefore deem the fair specification would be:

Apparatus for motorcycles, spare parts therefor; Motorbikes; Motors for motorcycles; Motor bikes; Motorcycle shells; Motorcycle frames; Motorcycle rims; Pedals for motorcycles; Motorcycle pedals; Wheels for motorcycles; Pneumatic tyres or seats for motorcycles; Motorcycle brakes; brakes for motor cycles; Motorcycle motors and engines; Motorcycle engines; Motorcycle chassis; Chassis for motorcycles; Handlebars for motorcycles; Suspension shock absorbers for motorcycles.

Section 5(2)(b)

32. Section 5(2)(b) of the Act is as follows:

“A trade mark shall not be registered if because—

...

(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.”

Section 5A states:

“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.”

¹³ For example the technical specifications on page 3 of Part 5 of Exhibit MT9.

33. In considering the opposition under this section, I am guided by the following principles which are taken from the decisions of the Court of Justice of the European Union (“CJEU”) in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (“OHIM”)*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P:

The principles

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

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

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

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

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

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

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

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

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

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

34. It is settled case law that I must make my comparison of the goods on the basis of all relevant factors. In the judgment of the 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.”

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.

35. Additionally, in *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, the General Court of the European Union (“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 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.”

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

37. The goods to be compared are as follows:

The applicant's goods	The opponent's goods
<p>Class 12: <i>Electric vehicles; remote control vehicles, other than toys; driverless cars [autonomous cars]; self-driving cars; robotic cars; cars; electric vehicles; electric bicycles; self-balancing scooters; mopeds; remote control vehicles, other than toys; remotely operated vehicles for underwater inspections; air pumps [vehicle accessories].</i></p>	<p>Class 12: <i>Apparatus for motorcycles, spare parts therefor; Motorbikes; Motors for motorcycles; Motor bikes; Motorcycle shells; Motorcycle frames; Motorcycle rims; Pedals for motorcycles; Motorcycle pedals; Wheels for motorcycles; Pneumatic tyres or seats for motorcycles; Motorcycle brakes; brakes for motor cycles; Motorcycle motors and engines; Motorcycle engines; Motorcycle chassis; Chassis for motorcycles; Handlebars for motorcycles; Suspension shock absorbers for motorcycles.</i></p>

38. The opponent claims that the opposed goods are all identical to, encompassed by, or highly similar to the terms covered by the earlier mark.¹⁴ It submits that “even if we were to focus on the more specific terms of the earlier registration”, i.e. those that relate to motorcycles and parts for motorcycles (as I have indeed found as a fair specification) that “these all still fall into the exact same broad categories as the opposed goods and are highly similar to the opposed goods. The trade, manufacturing, and distribution channels would be identical, and so would the target market.”¹⁵ The applicant submits that “the fact that goods or services are listed in the same class of the Nice Classification is not, in itself, an indication of similarity” and that “the goods covered by the Applicant’s mark concern vehicle products whereas the opponent’s trademark covers only motorcycles [*sic*] products which are more specific”.¹⁶

39. I have conducted my own detailed comparison of the goods, as found below. In particular I have borne in mind *Sky v Skykick* [2020] EWHC 990 (Ch), where Lord Justice Arnold considered the validity of trade marks registered for, amongst many other things, the general term ‘computer software’. In the course of his judgment he set out the following summary of the correct approach to interpreting broad and/or vague terms:

“...the applicable principles of interpretation are as follows:

(1) General terms are to be interpreted as covering the goods or services clearly covered by the literal meaning of the terms, and not other goods or services.

(2) In the case of services, the terms used should not be interpreted widely, but confined to the core of the possible meanings attributable to the terms.

(3) An unclear or imprecise term should be narrowly interpreted as extending only to such goods or services as it clearly covers.

(4) A term which cannot be interpreted is to be disregarded.”

¹⁴ Paragraph 31 of the written submissions.

¹⁵ *Ibid*, paragraph 30.

¹⁶ Page 8 of TM8.

Cars; driverless cars [autonomous cars]; self-driving cars; robotic cars;

40. These all relate to cars, with and without driverless functionality. Whilst there are obvious differences between the overall look and operation of motorcycles compared to cars (e.g. number of wheels and steering mechanism), there is some overlap in terms of the nature of the goods. For example, they are typically made up of a chassis or frame combined with automotive components, such as engines and a fuel system (or another power source), brakes and wheels. The users are typically the same – both require a licence to drive (as well as vehicle registration, tax and insurance), though different licence requirements can come into play. While they cannot be considered complementary to each other, they would be deemed in competition with each other for some users. The general methods of use also overlap, insofar as the operation of the vehicle: starting, stopping, controlling the speed and observing the Highway Code, though users of motorcycles require additional safety equipment such as helmets and protective clothing. Both share channels of trade and the purpose of the goods are the same, for example for transport or pursuits such as racing. Overall, I consider these goods to be similar to a low to medium degree.

Electric vehicles;

41. The natural and core meaning of “vehicle” would be reference to a form of transport, which would include a car or motorcycle. The opponent has the term “motorbikes” at large, which would cover non-electric and electric motorbikes. Insofar as this relates to electric motorbikes, the term would be identical to the opponent’s “motorbikes” under the principles outlined in *Meric*.

Remote control vehicles, other than toys; Remotely operated vehicles for underwater inspections;

42. I have not received submissions from either side regarding these goods. My understanding is that these relate to a device where the user is not present within

the vehicle itself, but operates it via a remote controller (such as a joystick) to perform a particular function. For example, the device may be fitted with cameras for imaging and surveying purposes or sensors for data collection. The vehicles would also be adapted to their operating environment, e.g. may not feature wheels (like a motorbike) but instead runners or tracks to manage uneven terrain, or a propeller system for propulsion in the air or underwater. The nature, purpose and method of use is very different compared to motorcycles which are instead a mode of transport. The users and channels of trade would also be different, with specialist technicians operating the devices and distinct manufacturers producing and selling the goods. The goods would not be complementary or in competition with each other. Therefore, I consider there no similarity between the goods.

Electric bicycles:

43. The opponent has the term “*motorbikes*” at large, which would cover electric motorbikes. The nature of electric bicycles are similar to motorcycles in that both have two wheels, a seat/saddle and steering mechanism using handlebars, however they differ in that bicycles have pedals while motorcycles have footrests for the feet. Electric bicycles and motorcycles are both used as a means of transportation, usually by a single user wearing a helmet sitting astride the vehicle on the seat/saddle. There is a degree of competition between the two, with the choice between using an electric bicycle or a motorcycle, for example in commuting. They may also share channels of trade, though I bear in mind that I have no evidence before me to suggest that motorcycles and electric bicycles are typically manufactured by the same producers in the UK. I am also mindful that a licence (plus registration, tax and insurance) is required to ride the motorcycles whereas this is not the case for electric bicycles. Taking into account all of these factors, and mindful of the discussion by the GC in *Zweirad-Center Stadler GmbH v EUIPO* (Case T-12/18), I consider that there is at least a low degree of similarity between the parties’ goods.¹⁷

¹⁷ In *Zweirad-Center Stadler GmbH v EUIPO* the GC considered an opposition between identical marks for TRIUMPH and found that the EUIPO’s Board of Appeal was right to find a low degree of similarity between

Mopeds:

44. Mindful of the definition already provided at paragraph 30, these share many similarities with motorcycles (nature, method of use, channels of trade and users). Their main difference is that mopeds typically have a different ride position, smaller engine capacity and a simple automatic transmission (without gears and a clutch). There is also a degree of competition between the two, with the choice between using a moped (which is subject to different age requirements) and using a motorcycle. Overall, I consider there a high degree of similarity between the goods.

Self-balancing scooters:

45. My understanding, and I have no evidence to suggest otherwise, is that these relate to two-wheeled self-balancing boards, also sometimes referred to as hover boards, where users stand upright and operate via shifting bodyweight. The goods vary in terms of the method of use (as already described), their nature, e.g. configuration of the wheels (side by side on the scooters versus one behind the other for a motorbike) and the scooter having no seat or brakes. While self-balancing scooters may be used for as a means of transport for short distances, they are primarily for recreation and would not be capable of transporting a user the same distance as a motorcycle. Therefore, I do not consider that they would share users or be in competition with each other. They also vary in terms of channels of trade. Based upon this, I consider there is no similarity between the goods.

Air pumps [vehicle accessories].

46. I consider this as falling into apparatus for motorcycles, as in the opponent's "Apparatus for motorcycles, spare parts therefor". Therefore it would be identical

'bicycles' in Class 12, covered by the mark applied for, and 'motorcycles' in Class 12, covered by the earlier mark.

according to the principles outlined in *Meric*. However, if I am incorrect in this assessment then I consider that it would be similar to the opponent's "*Wheels for motorcycles*" and "*Pneumatic tyres or seats for motorcycles*" to a medium to high degree. An air pump would be required for inflating pneumatic tyres (including those present on motorcycle wheels) therefore the goods are complementary. Furthermore, the users, and channels of trade would be the same.

The average consumer and the nature of the purchasing act

47. As the case law indicates, it is necessary for me to determine who the average consumer is for the respective parties' goods where I have found similarity. I must then determine the manner in which these goods are likely to be selected by the average consumer. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

"60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The words "average" denotes that the person is typical. The term "average" does not denote some form of numerical mean, mode or median".

48. Only the opponent provided submissions on the average consumer of the goods. I agree with its assessment with regards to this being a member of the general public and the cost of the goods impacting the degree of attention that is paid to the purchase.¹⁸ However, I do not agree with its conclusion that there "would not be a strong level of expertise or discernment involved". Rather, I consider that the high value of the goods would lead to a high degree of attention and selectivity. This would also extend to the selection of spare parts, even with a low value,

¹⁸ Paragraph 36 of written submissions.

where the consumer would demonstrate a level of expertise to ensure the suitability of the replacement part and compatibility with their exact model of motorcycle. Overall, the goods are likely to be purchased relatively infrequently and are likely to be selected visually from brochures (or their online equivalents), or from displays within a dealership. Therefore, visual considerations are dominant. That said, word-of-mouth recommendations and discussions with salespersons may also play a part in the selection process, so aural considerations play a role.

Comparison of the marks

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

50. It would be wrong, therefore, to dissect the marks artificially, 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.

51. The respective marks are shown below:

Applicant's contested mark	Opponent's earlier mark
CHARCO	SHERCO

Overall Impression

52. The opponent's mark consists of the word 'SHERCO' in uppercase, whereas the applicant's mark consists of the word 'CHARCO' in uppercase. As word only marks, each mark's overall impression resides solely in the words.

Visual similarity

53. The marks are the same length and share all but two of their six letters. They both end in "RCO" and share their second letter, "H". Therefore, differing only in terms of their first letter ("C" versus "S") and first vowel ("A" versus "E"). The opponent submits that even though the first letter differs, they "both have curving forms, and so have a degree of resemblance".¹⁹ However, I disagree on this point and do not consider the first letters similar visually (despite both being curvy). I am mindful of *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02, where the GC noted that the beginnings of word tend to have more visual and aural impact than the ends. Taking all of this into account and bearing in mind the overall impression of the marks, I find the marks are visually similar to a medium degree.

Aural similarity

54. In terms of the pronunciation, the opponent's mark would be articulated as two syllables, 'SHER-CO'. Regarding the contested mark, the opponent argues that the 'CH' sound could viably be articulated with a soft 'SH', as 'SHAR-CO' in a similar manner as in the word 'charades'. However, I also consider likely the opponent's alternative (as in their written submissions) that it would be

¹⁹ Paragraph 20 of written submissions.

pronounced with a hard 'TCH-' sound.²⁰ Therefore, being verbalised 'CHAR-CO', with the "CH" sound articulated in the same manner as in the word, 'chocolate'. I consider the marks aurally similar to a high degree if pronounced "SHAR-CO" and a medium to high degree when pronounced "CHAR-CO".

Conceptual similarity

55. Both sides are in agreement that each mark is an invented word, with no discernible conceptual meaning. The marks are conceptually neutral.

Distinctive character of the earlier mark

56. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are descriptive or highly allusive of a characteristic of the goods, to those with high inherent distinctive character, such as invented words which have no allusive qualities.

57. Distinctive character is a measure of how strongly the earlier mark identifies the goods of services for which it is registered (and on which it may rely), determined, according to *Lloyd Schuhfabrik Meyer & Co.*, partly by assessing the proportion of the relevant public which, because of the mark, identifies the goods as originating from a particular undertaking. At paragraph 23, of its judgment, the CJEU stated:

"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

²⁰ Paragraph 23 of opponent's written submissions.

associations (see *Windsurfing Chiemsee*, paragraph 51).

58. In terms of inherent distinctiveness, the earlier mark is an invented word and is not descriptive or allusive of its goods, or any of their characteristics. I consider it to have high inherent distinctiveness.

59. The assessment as to whether there is a likelihood of confusion includes considering whether the distinctive character of the earlier mark has been enhanced (i.e. more distinctiveness has been acquired) through the use made of it. The opponent also submits that its mark has enhanced distinctiveness acquired through significant use. In my assessment of this, I rely on the relevant parts of the opponent's evidence as summarised in paragraphs 17 to 24 above, bearing in mind that the relevant date for the assessment regarding enhanced distinctiveness is the filing date of the contested application (20th November 2022) and that the assessment is made from the perspective of the UK average consumer.

60. The turnover figures for the UK are significant and demonstrate consistent growth. The turnover for 2022 was 2 million EUR and the figures provided from 1999 onwards demonstrate a cumulative turnover of 35 million EUR at end of 2022.²¹ Whilst I have no evidence regarding advertising spend for the UK, the social media reach for the UK or UK market share, I am mindful of the geographical breadth of UK dealerships provided at Exhibit MT5 and the UK-centric professional riders sponsored by the opponent, as seen via the profiles provided at Exhibit MT9. With respect to the goods on which I find enhanced distinctiveness, I note that I have no breakdown of the turnover figures with respect to motorbikes versus spare parts. On balance, I am satisfied that the evidence is sufficient to demonstrate enhanced distinctiveness through use for off-road motorbikes.

²¹ Noting that the relevant date is 20th November 2022, a proportion of these annual figures could fall beyond the relevant date. Though I have nothing to suggest this would be significant.

GLOBAL ASSESSMENT – conclusions on likelihood of confusion

61. I have found that there is no similarity for the following goods: “*Remote control vehicles, other than toys*”, “*Remotely operated vehicles for underwater inspections*” and “*Self-balancing scooters*”. Therefore, there cannot be any likelihood of confusion and the opposition with regards to these goods fails.²²

62. With regards to the remaining goods and classes, 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 undertaking being the same or related.

63. 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 goods may be offset by a greater degree of similarity between the trade marks, and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the earlier mark, the average consumer for the goods and the nature of the purchasing act. In doing so, I must take into account the fact that the average consumer rarely has an opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he has retained in his mind.

64. The opponent’s written submissions focus on the imperfect recollection of consumers and that they are unlikely to be comparing the marks side by side. It submits that the marks are visually similar enough to be easily mistaken for each other and phonetically that a “small mispronunciation or incorrect memorisation would result in the other mark being said”.²³ It also emphasises the high inherent distinctiveness of the earlier mark, along with the enhanced distinctiveness acquired by use. The applicant focusses on the argument that it is the first part of

²² *Canon*, Case C-39/97, paragraph 22. See also *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA, paragraph 49.

²³ Paragraph 24.

a mark that generally captures the consumer's attention and is remembered more clearly than the rest of the sign. It deems that the marks are not similar enough to create a risk of confusion and that "any possible similarity between the goods is not sufficient to offset the differences between the signs".²⁴

65. To summarise my global assessment, I have identified the average consumer to be a member of the general public who will select the goods primarily by visual means but where word-of-mouth recommendations and discussions with salespersons (and thus aural considerations) may also play a part. The goods are likely to be purchased infrequently but that the degree of attention paid will be high. I have found the parties' goods to range between no similarity to high similarity, or to be identical. I have found the parties' marks to be visually similar to a medium degree and to be aurally similar to, at least, a medium to high degree (this becomes high if the alternative pronunciation is used). The marks are conceptually neutral. The earlier 'SHERCO' mark, as an invented word, has a high level of inherent distinctive character, which I have found to be further enhanced through use for off-road motorbikes.

66. Taking all of this into account, I consider it likely that the marks will be mistakenly recalled or misremembered as each other, especially as there is no conceptual hook to separate the two from each other. In my view, there is a likelihood of direct confusion, even when used in relation to goods with a low similarity and allowing for the high attention to detail associated with purchasing decisions for these goods. Further, I consider that this direct confusion would be likely even had I not found enhanced distinctiveness through use, due to the high level of inherent distinctive character in the earlier mark.

67. The opponent has not made any specific claims with respect to indirect confusion, therefore I will comment on this only briefly for the sake of completeness. In this case, I consider that the only likely type of confusion would be direct confusion, i.e. that resulting from the differences between the marks going unnoticed. In circumstances where the differences were noticed and

²⁴ Page 8 of TM8.

recognised by the average consumer, I do not think the marks have anything in common which would suggest a likelihood of indirect confusion. For example, I do not think the applicant's mark could be considered a logical brand evolution, or extension, of the earlier mark.

CONCLUSION

68. The opposition is successful in relation to the following goods, for which the application is refused:

Class 12: *Electric vehicles; driverless cars [autonomous cars]; self-driving cars; robotic cars; cars; electric vehicles; electric bicycles; mopeds; air pumps [vehicle accessories].*

69. The opposition is unsuccessful in relation to the following goods, for which the application may proceed to registration:

Class 12: *self-balancing scooters; remote control vehicles, other than toys; remotely operated vehicles for underwater inspections.*

Therefore, when including the unopposed terms, the final specification proceeding to registration is:

Class 12: *civilian drones; helicams; self-balancing scooters; remote control vehicles, other than toys; remotely operated vehicles for underwater inspections.*

COSTS

70. The opponent has enjoyed the greater degree of success and is therefore entitled to a contribution towards its costs based upon the scale published in Tribunal

Practice Notice 2/2016. In the circumstances, I award the opponent the sum of £1305.00, calculated as follows:

Fee for opposition form	£100
Preparing a statement and considering the other side's statement	£250
Preparing evidence	£800
Less 20% at £230 for partial success	
Total	£920

71. I therefore order Zhuhai Tessian Power Technology Co., Ltd to pay FITES the sum of **£920.00**. This 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 12th day of July 2024

C IRELAND

For the Registrar