O/0696/25

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00003943689

IN THE NAME OF AIWA CO., LTD.

TO REGISTER THE FOLLOWING TRADE MARK:

IN CLASSES 8, 10 AND 21

AND

IN THE MATTER OF OPPOSITION THERETO
UNDER NO. OP000443807

BY AIWA ACQUISITIONS LLC

Background and pleadings

1. On 09 August 2023, AIWA CO., LTD. ("***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 25 August 2023 in respect of goods in classes 8, 10 and 21.

2. On 25 October 2023, Aiwa Acquisitions LLC ("***the Opponent***") opposed the application under section 5(2)(b) of the Trade Marks Act 1994 ("***the Act***").[1] The partial opposition is directed against the following goods in the application:

   Class 8: Electric flat irons; Electric razors; Electric hair clippers.

   Class 10: Facial equipment using ultrasonic waves for commercial use; Esthetic massage apparatus for commercial use; Medical apparatus and instruments; Facial equipment using ultrasonic waves for household purposes; Electric massage apparatus for household purposes.

   Class 21: Cleaning tools and washing utensils; Cooking pans, non-electric; Frying pans, non-electric.

3. The Opponent relies upon the following two trade mark registrations ("***the Earlier Marks***"):[2]

1) **AIWA**

   UK Registration no. UK00003242803 ("***The '803 Mark***")

   Filing date: 11 July 2017

   Date of registration: 27 December 2019

   Relying upon the following goods:

   Class 9: Televisions; television tuners; earphones; headphones, earbuds; audio speakers; audio-receivers; boxes specially adapted for housing audio equipment; consumer electronic products, namely, audio speakers,

[1] The Form TM7 was filed on 25 October 2023, subsequently amended a few times and ultimately accepted and served to the applicant on 22 December 2023.

[2] In the initial Form TM7, filed on 25 October 2023, the opponent relied on an additional earlier right (number UK00914755037) as basis for the opposition at hand. This earlier registration was subject to the use conditions under section 6A of the Act. On 18 June 2024 the opponent filed an amended Form TM7 removing this earlier right.

speakers, electric audio playback units; electric audio playback units with lights and speakers; audio cables; audio headphone, loudspeakers, stereo headphones; amplifiers; tuners; electronic docking stations; electronic and electrical apparatus for the remote control of audio amplifiers, audio speakers, audio receivers, home theater systems, audio decoders, video decoders, speakers, power and televisions; lithium ion batteries.

2) **AIWA**

UK Registration no. UK00003502011 ("***The '011 Mark***")

Filing date: 18 June 2020

Date of registration: 05 February 2021

Relying upon the following services:

Class 37: Installation, maintenance and repair of electrical devices; installation, maintenance and repair of electrical equipment; installation, maintenance and repair of kitchen equipment; installation, repair and maintenance of audio and video equipment and apparatus; installation, repair and maintenance of home appliances; camera repair; radio repair; television repair; repair of electrical equipment; repair of electronic apparatus; repair of radios; repair of radio sets; repair of stereo systems; repair of television sets; installation and repair of televisions; television equipment installation and repair; installation and repair of satellite dishes; installation and repair of television apparatus; installation and repair of television equipment; installation and repair of television sets; installation, maintenance and repair of broadcasting apparatus; maintenance and repair of electrical apparatus; maintenance and repair of electrical appliances; maintenance and repair of multimedia apparatus; maintenance and repair of photographic apparatus; repair information.

4. By virtue of their respective earlier filing dates, the Opponent's above registrations constitute earlier marks within the meaning of section 6 of the Act. As the earlier

marks had not completed their registration process more than five years before the filing date of the application in issue, they are not subject to proof of use pursuant to section 6A of the Act. The Opponent can, therefore, rely upon all of the goods and services it has identified without having to demonstrate use.

5. In its statement of grounds the Opponent submitted that the respective marks are nearly identical and the respective goods are highly similar. More specifically, the Opponent contended that the word "AIWA" is phonetically and conceptually identical and that although the Contested Mark features "AIWA" in a specific font, this is minimal and the relevant consumers would not voice it when referring to the marks aurally. Thus, the Opponent contended that the application should be refused under the provisions of section 5(2)(b) of the Act.

6. On 22 February 2024 the Applicant filed a counterstatement within which it denied all the claims made by the Opponent.

7. The Applicant is represented by Hoffmann Eitle Patent- und Rechtsanwälte PartmbB. The Opponent is represented by HGF Limited.

Relevance of EU law

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 and submissions

9. During the evidence rounds both parties filed evidence. The Opponent filed evidence in the form of a witness statement by Suzan Moss. The witness statement, signed and dated 03 May 2024, is accompanied by Exhibits SM1 – SM2. Suzan Moss is a Chartered Trade Mark Attorney at HGF Limited (the Opponent's representative) and she has covered this role since 2016.

10. The Applicant's evidence comprises of a witness statement of Dr Robin Michael Ghislain de Meyere, signed and dated 19 August 2024, and it is accompanied by Exhibits RDM1 – RDM6. Dr Robin Michael Ghislain de Meyere is a Trade Mark

Attorney at Hoffmann Eitle PartmbB (the Applicant's representative) and he has held this role since September 2021. Both Ms Moss and Dr Ghislain de Meyere are duly authorised to provide submissions on behalf of their respective parties.

11. Neither party requested a hearing, but the Applicant filed submissions in lieu of a hearing. I will not summarise here the evidence and/or submissions, but I will refer to them as and where appropriate in this decision. This decision is taken following a careful perusal of the papers.

Preliminary matters

Prior use of the Contested Mark

12. I note the Applicant submitted that:

> *"[…] Exhibit RDM3 shows that the Applicant asserts they own all variations of the AIWA logos, the logo(s) being the recognisable housemark(s), and thus the registered trademarks. Attached as Exhibit RDM4 is another screenshot taken on August 15th, 2024 from the Aiwa Co. Ltd. Wikipedia page https://en.wikipedia.org/wiki/Aiwa. The screenshot shows the history of the Aiwa Co. Ltd brand since 2015, including ownership of Aiwa Acquisitions LLC affiliated with Sakar International, Inc and licensor Infinity Lifestyle Brands. Exhibit RDM4 thus comes to show that the AIWA logos are affiliated with the original Aiwa Corporation, and that the Opponent Aiwa Acquisitions LLC is instead affiliated with a different housemark (under the Sakar International, Inc. and/or Infinity Lifestyle Brands brands)*".[3]

13. The Earlier Marks were registered, respectively, in 2017 and 2020. Although not clearly stated, the Applicant seems to put forward the defence that it has been using the Contested Mark for a period prior to the Earlier Marks' registration date (i.e., 2015). To this regard, the Applicant provided evidence (Exhibit RDM4) featuring a Wikipedia page where it is reported that "*Aiwa returned as a brand in 2015 and has since been used by various companies globally*" and that "*in April 2015 it launched its first Aiwa product […]*".

[3] Applicant's submissions in lieu dated 11 December 2024, [6].

14. The Applicant's reliance on their prior use of the mark is not a viable argument. Tribunal Practice Notice ("TPN") 4/2009 "Trade mark opposition and invalidation proceedings – defences" explains the position with regard to defences based on use of the trade mark under attack which precedes the date of use or registration of the mark relied upon by the attacker under sections 5(1) and 5(2). It states as follows: (my emphasis):

> "4. The viability of such a defence was considered by Ms Anna Carboni, sitting as the appointed person, in *Ion Associates Ltd v Philip Stainton and Another,* BL O-211-09. Ms Carboni rejected the defence as being wrong in law.
>
> 5. Users of the Intellectual Property Office are therefore reminded that defences to section 5(1) or (2) grounds based on the applicant for registration/registered proprietor owning another mark which is earlier still compared to the attacker's mark, or having used the trade mark before the attacker used or registered its mark are wrong in law. If the owner of the mark under attack has an earlier mark or right which could be used to oppose or invalidate the trade mark relied upon by the attacker, and the applicant for registration/registered proprietor wishes to invoke that earlier mark/right, the proper course is to oppose or apply to invalidate the attacker's mark."

15. Therefore, I dismiss this argument put forward by the Applicant as it does not contribute to my assessment of the likelihood of confusion of the marks in object.

Decision

Section 5(2)(b)

16. The opposition is based upon section 5(2)(b) of the Act, which reads as follows:

> "5(2) A trade mark shall not be registered if because -
>
> (a) […]
>
> (b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

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

17. Section 5A reads:

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

Case law

18. The following principles are gleaned from the decisions of the EU courts 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 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, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

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

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other

components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

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

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

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

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

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

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

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

Comparison of goods and services

19. Section 60A of the Act provides:

"(1) For the purpose of this Act goods and services-

(a) are not to be regarded as being similar to each other on the ground that they appear in the same class under the Nice Classification.

(b) are not to be regarded as being dissimilar from each other on the ground that they appear in different classes under the Nice Classification.

(2) In subsection (1), the "Nice Classification" means the system of classification under the Nice Agreement Concerning the International

Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, which was last amended on 28 September 1979."[4]

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

> "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.

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

    a. The respective uses of the respective goods or services;

    b. The respective users of the respective goods or services;

    c. The physical nature of the goods or acts of service;

    d. The respective trade channels through which the goods or services reach the market;

    e. In the case of self-serve consumer items, where in practice they are respectively found or likely to be found in supermarkets and, in particular, whether they are or are likely to be found on the same or different shelves;

    f. The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance, whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

[4] As per Miss Emma Himsworth KC in *Everest Dairies Limited v Everest Food Products Private Limited*, [23] O/0107/23 where she stated, "the question of whether goods are 'complementary' is to be distinguished from use in combination, where goods are merely used together, whether for choice or convenience."

22. In *Gérard Meric v OHIM,* Case T-133/05, the General Court ("GC") stated that:

> "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".

23. 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:

> "82. [...] 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".

24. In *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1)* [2024] UKSC 36, Lord Kitchin set out the proper approach to considering terms in specifications:

> "365. […] The correct approach, as a matter of principle, in considering a specification of services which is defined by terms which are not clear or precise, is to confine the terms used to the substance or core of their possible meanings: see, for example, *Reed Executive plc v Reed Business Information Ltd* [2004] EWCA Civ 159; [2004] RPC 40, at para 43. So too, if a specification of goods is defined by terms which are ambiguous, then it should be confined to those goods which are clearly covered. These principles are consistent with first, the requirement that the specifications of goods and services must be clear and precise so that others know what they can and cannot do; and secondly, general fairness because any ambiguity is the responsibility of the owner of the mark. If despite this, the words used are still unclear so that they cannot be interpreted, then it is permissible to disregard them. But, in my opinion, that will rarely be the case."

25. In *YouView TV Ltd v Total Ltd* [2012] EWHC 3158 (Ch), Floyd J. (as he then was) stated that:

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

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

27. The goods and services for comparison are as follows:

Opponent's goods and services	**Applicant's goods**
("*The '803 Mark*") <u>Class 9:</u> Televisions; television tuners; earphones; headphones, earbuds; audio speakers; audio-receivers; boxes specially adapted for housing audio equipment; consumer electronic products, namely, audio speakers, speakers, electric audio playback units; electric audio playback units with lights and speakers; audio cables; audio headphone, loudspeakers, stereo	<u>Class 8:</u> Electric flat irons; Electric razors; Electric hair clippers. <u>Class 10:</u> Facial equipment using ultrasonic waves for commercial use; Esthetic massage apparatus for commercial use; Medical apparatus and instruments; Facial equipment using ultrasonic waves for household purposes; Electric massage apparatus for household purposes.

headphones; amplifiers; tuners; electronic docking stations; electronic and electrical apparatus for the remote control of audio amplifiers, audio speakers, audio receivers, home theater systems, audio decoders, video decoders, speakers, power and televisions; lithium ion batteries.	Class 21: Cleaning tools and washing utensils; Cooking pans, non-electric; Frying pans, non-electric.
("*The '011 Mark*") Class 37: Installation, maintenance and repair of electrical devices; installation, maintenance and repair of electrical equipment; installation, maintenance and repair of kitchen equipment; installation, repair and maintenance of audio and video equipment and apparatus; installation, repair and maintenance of home appliances; camera repair; radio repair; television repair; repair of electrical equipment; repair of electronic apparatus; repair of radios; repair of radio sets; repair of stereo systems; repair of television sets; installation and repair of televisions; television equipment installation and repair; installation and repair of satellite dishes; installation and repair of television apparatus; installation and repair of television equipment; installation and repair of television sets; installation, maintenance and repair of	

broadcasting apparatus; maintenance and repair of electrical apparatus; maintenance and repair of electrical appliances; maintenance and repair of multimedia apparatus; maintenance and repair of photographic apparatus; repair information.	

The Applicant's classes 8 and 10 versus the Opponent's class 9

28. The Opponent contended that "*the coverage of personal care electrical items in Classes 8 and 10 are similar to the earlier trade marks coverage across Classes 9 and 37 […] as these goods often originate from the same undertakings, undertakings relating to electrical apparatus often have a very wide range of products that are similar and complementary and consumers are used to expecting these products to originate from the same undertakings, accordingly it is contended that there is similarity*".[5] To this end, the Opponent, in the witness statement of Susan Moss, provided me with screenshots from various websites (i.e., Dyson, Sharkclean, Philips and Panasonic) where a range of products are offered online together. For example, the evidence shows that on the Dyson's website there are offered for sale vacuum cleaners, hair straighteners, headphones, and head dryers.[6] The evidence also contains, for example, extracts from the Philips website showing headings for various categories of goods (i.e., "personal care", "households products", "sound and vision", "mother and child care", "lighting", "health", "automotive", "parts and accessories", "promotions").[7] Under the category heading "sound and vision" the evidence features an image of a television.[8]

29. The Applicant, in its submissions in lieu, contended that:

> "*13. The Opponent asserts that the Applicant's goods in classes 8 and 10 "often originate from the same undertakings" as those that provide the class 9 audio equipment in the specification of goods of the Earlier Marks and that*

[5] Statement of grounds dated 25 October 2023, [8].
[6] Exhibit SM1, pages 3 – 6.
[7] Exhibit SM1, pages 8 – 12.
[8] Exhibit SM2, page 19.

"consumers are used to expecting these products to originate from the same undertakings", The Opponent concludes that this demonstrates similarity between the goods of the Opponent and the Applicant. This argument is clearly flawed as the Opponent has based their conclusion upon a single secondary factor listed in Canon*, and has not considered any of the primary factors to be considered when assessing similarity of goods and services.*

14. The evidence provided in Exhibits SM1 and SM2 by the Opponent purports to demonstrate that the Applicant's goods in classes 8 and 10 often originate from the same undertakings as those that provide the class 9 audio equipment. However, out of many different companies active in this field, this evidence only relates to four companies, one of which, namely sharkclean, does not appear to produce any class 9 audio equipment, thereby undermining the point that the Opponent is trying to make. Of the remaining three companies, namely Philips, Dyson and Panasonic, it can be seen from Exhibits RDM5 and RDM6 that Panasonic and Philips in particular are large multinational companies which produce a wide variety of goods including, inter alia*, defibrillators, hearing aids, nebulisers, breast pumps and baby bottles, electric toothbrushes, and light bulbs, as well as electric shavers, hair straighteners and driers, and televisions, and audio equipment. These goods extend across a wide range of trade mark classes and cannot be said to be similar to each other. The mere fact that they originate from the same undertaking does not make them similar.*

[…]

17. Applying the primary factors set out in Canon for assessing the similarity of goods, it is immediately clear that each and every one of the opposed goods listed above, the goods themselves and their intended purpose and method of use is very different from the audio equipment of the Opponent. Furthermore, none of the opposed goods are in competition with or complementary to the audio equipment of the Opponent. Additionally, even if the goods were to be sold in one building, for example in a hypermarket, then the opposed goods would not be presented on the same shelves or even in the same aisle as audio equipment."

30. I considered both parties' evidence and submissions and I conclusively agree with the Applicant's position. While I appreciate the Opponent's evidence showing that most of the competing goods can share the same trade channels (i.e., undertakings retailing various types of electrical apparatuses), this fact alone is insufficient for the finding of similarity between such goods. The Opponent's evidence merely showed a few companies offering a variety of goods online (under different categories); such degree of similarity is placed at a too-high general level to base a finding of similarity excluisvely on this basis. Accordingly, in *Unicorn Studio Inc v Veronese (Société par Actions Simplifiée)* [2024] EWHC 1098 (Ch), Mr Iain Purvis KC (sitting as a deputy High Court judge) said:

> "23. […] It seems to me the greater the level of generality at which some similarity under *Canon* factors can be found (i.e. both goods are '*sold in large department stores'* or both goods are *'used by ordinary people'*) the less relevant could it be to any question of confusion, and any assessment of similarity of goods should take that into account."

31. In my view, the similarity is at a comparably general level here. I consider that this is not sufficient for me to find that the goods at hand are similar. Therefore, I agree with the Applicant that the Opponent's conclusion on the competing goods' similarity is misguided.

32. From the Opponent's submission above, the Opponent seems to argue that the competing goods have some degree of similarity not only because they share the same trade channels, but also because they are complementary. The Opponent did not provide further clarification on this point. The Opponent's goods in class 9 essentially consist of televisions, headphones, speakers, and batteries whilst the Applicant's goods are electric apparatuses for personal use in class 8 and mainly apparatuses for aesthetic and relaxing purposes for domestic use in class 10. Therefore, I do not see how the relevant consumers may see such goods to be indispensable or important for their respective use to the point of believing that they come from the same, or related, undertakings. For the sake of clarity, the mere fact that all these goods are offered for sale on the same platform does not make them complementary in so far as would be considered indispensable or important for their respective uses.

33. From the above, I find the contested goods in classes 8 and 10 differ from any of the Opponent's goods in class 9 of the '803 Mark.

The Applicant's classes 8 and 10 versus the Opponent's class 37

34. The Opponent also contended that the Applicant's goods in classes 8 and 10 are similar to the Opponent's services in class 37 on the same basis outlined above (i.e. the sharing of common trade channels).[9] The Opponent did not provide further additional submissions on this point. The Opponent's class 37 features the services "*[…] maintenance and repair of electrical devices*" and the Applicant's goods in class 8 can be defined as 'electrical devices' (i.e., "*Electric flat irons; Electric razors; Electric hair clippers*"). The Opponent provided evidence (Exhibit SM2, page 20) showing the screenshot of an online retailer (i.e., Philips) offering some sort of repair services (presumably for its retailed goods). No further evidence was provided showing for what type of goods the repair services are offered. It is my view that for low-cost domestic products such as electric flat irons or electric razors, consumers are in the habit of purchasing new versions once their existing products break or malfunction, rather than seeking to repair them. Furthermore, for this type of item, manufacturers normally replace faulty products (if within the warranty period) instead of repairing them. This view seems to be supported by the Opponent's evidence provided (Exhibit SM2, page 20) wherein information redirecting consumers to the 'repair services' states (my emphasis) "get your broken product repaired or replaced". Additionally, even in the eventuality the competing goods and services did share trade channels (i.e., companies retailing online, for example, razors, were to offer repair services for such goods), this single point of overlap is insufficient to warrant any degree of similarity between the goods and services at hand as already explained in the paragraphs above.

35. Following from the above, and in the absence of further submissions or evidence from the Opponent, I find these goods to be dissimilar from the '011 Mark's class 37 services.

The Applicant's class 21 versus the Opponent's class 37

36. The Opponent submitted that:

[9] Statement of grounds dated 25 October 2023, [8].

"[…] *the Class 21 coverage of the Application, relating to "Cleaning tools and washing utensils; Cooking pans, non-electric; Frying pans, non-electric" is similar to the earlier trade marks, in particular Class 37 […] covers services related to "installation, maintenance and repair of kitchen equipment" and further, the earlier trade marks coverage of electrical items would often originate from the same undertakings as the applied for Class 21 goods and so overall there is complementarity and similarity between these services and the goods covered under the Application*".[10]

37. I also note that Exhibit MS2 of Ms Moss's witness statement contains an extract from the Wayback Machine database (dated April 2023) featuring a screenshot from the Philips website providing a list of services under the heading "most visited support topics". At the top of the list the evidence shows a category titled "Troubleshooting and repair" and underneath the additional wording "get your broken product repaired or replaced" as shown below:

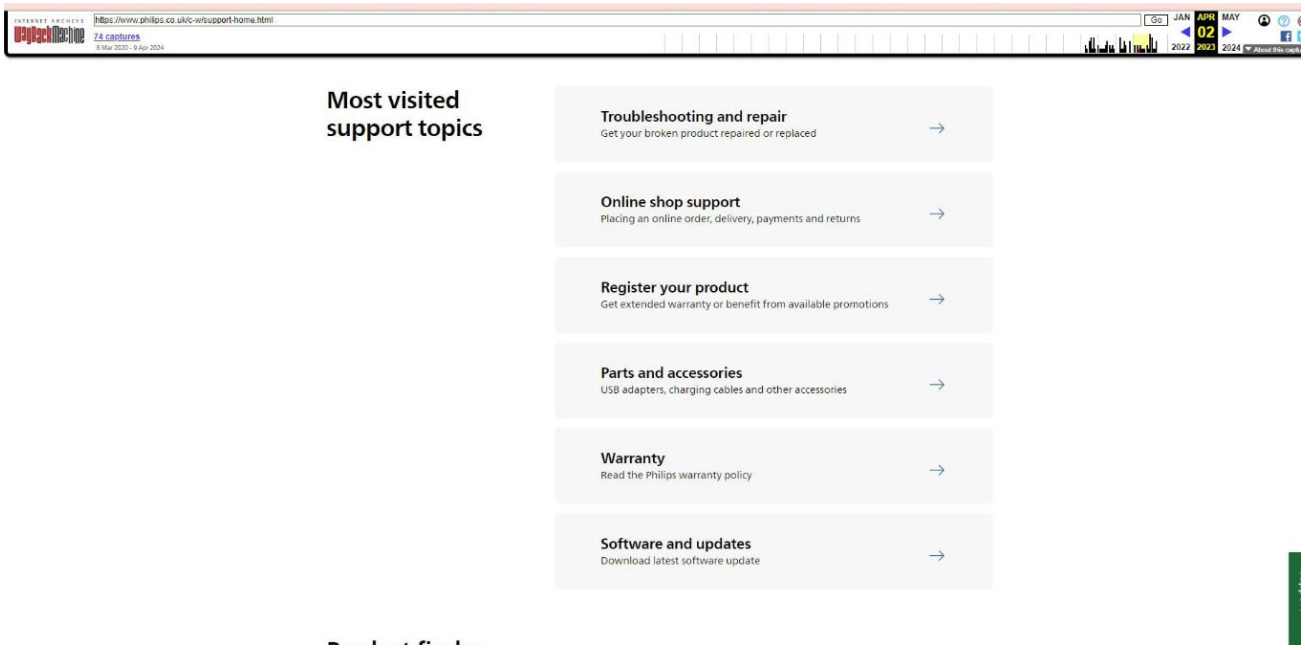

Exhibit SM2, page 20

38. The Opponent did not provide further clarification on this piece of evidence. However, based on its submissions and evidence referred to above, the Opponent appears to contend that its services "*installation, maintenance and repair of kitchen equipment*" in class 37 have some degree of similarity with the Applicant's goods

[10] Opponent's statement of grounds dated 25 October 2023, [9].

in class 21 because undertakings would offer both the Applicant's goods and the Opponent's services via the same retail outlet (i.e., overlapping in their respective trade channels).

39. The Applicant contended that:

"*[…] we note that the Opponent's class 37 services are generally related to electrical equipment, and Applicant's opposed class 21 goods are non-electric. This in itself clearly indicates that the Applicant's class 21 goods are not similar to the class 37 services offered by the Opponent. We also note that the Opponent's class 37 services "installation, maintenance and repair of kitchen equipment" is highly unlikely to be applicable in any way to Applicant's opposed class 21 goods as cleaning and washing utensils, pans and frying pans are never normally subject to installation, maintenance, and repair. It is normally class 11 electrical kitchen equipment and appliances such as dishwashers, washing machines, fridges, ovens, etc which are subject to such services, and these electrical kitchen goods are in no way similar to Applicant's class 11 goods*".[11]

40. Following from the submissions and evidence above, firstly, as already outlined above in this decision, I do not find the goods and services at hand are similar on the sole basis that a few undertakings seem to offer them both on their platform (i.e., the competing goods and services share the same trade channels). Such similarity would be at a too-high general level.

41. In second instance, I note that 'kitchen equipment' normally refers to the tools, utensils, and appliances used in food preparation and cooking (e.g., pots, pans, knives, ovens, and refrigerators). Therefore, in line with *YouView*, I must attribute to "*Cleaning tools and washing utensils*" its ordinary meaning and, as correctly indicated by the Applicant, this term does not fall within the ordinary definition of 'kitchen equipment'. Thus, I do not see any overlap between the competing goods and services.

42. In third instance, whilst "*Cooking pans, non-electric*" and "*Frying pans, non-electric*" can, indeed, be defined as 'kitchen equipment', I do not find that consumers ordinarily seek repair or maintenance services for their pans when they break, are damaged or following natural wear and tear. Conversely, such goods are normally

[11] Applicant's submissions in lieu dated 11 December 2024, [20].

replaced with new ones. Thus, absent further evidence or submissions from the Opponent, I do not find any level of similarity between any of the Opponent's services in class 37 and the Applicant's goods in class 21.

The Applicant's class 21 versus the Opponent's class 9

43. For the sake of completeness, although the Opponent did not contend any degree of similarity between the Applicant's class 21 and the Opponent's class 37, I now turn to assess their level of similarity (or lack thereof). The Applicant's goods in class 21 are cleaning/washing utensils and non-electric pans, whilst the Opponent's goods in class 9 are consumer electronic products (e.g., televisions, headphones, audio speakers, home theatre systems). Therefore, as these goods are different in nature, method of use, intended purpose, do not address the same users and are not in competition with each other, absent further submissions from the Opponent, I find these goods to be dissimilar.

Conclusion on the goods and services similarity

44. Under section 5(2)(b), a degree of similarity between the goods (and services) is essential for there to be a finding of a likelihood of confusion. In the case of *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA, Lady Justice Arden stated that:

> '49 […] I do not find any threshold condition in the jurisprudence of the Court of Justice cited to us. Moreover, I consider that no useful purpose is served by holding that there is some minimum threshold level of similarity that has to be shown. If there is no similarity at all, there is no likelihood of confusion to be considered. If there is some similarity, then the likelihood of confusion has to be considered but it is unnecessary to interpose a need to find a minimum level of similarity'.

45. In light of the above considerations, I find there is no similarity between any of the Applicant's goods and the Opponent's goods and services. On these premises, no likelihood of confusion (either direct or indirect) can be found.

Outcome of the section 5(2)(b) opposition

46. As I have found no similarity between the goods and services at hand, the opposition under section 5(2)(b) must fail in its entirety.

47. The Applicant has been successful. Subject to any successful appeal, the application by AIWA CO., LTD. may proceed to registration for all the applied for goods.

Costs

48. The Applicant is entitled to an award of costs. The relevant scale is contained in Tribunal Practice Notice ("TPN") 1/2023. Bearing that scale in mind, I award costs to the applicant as follows:

Considering the notice of opposition and preparing the counterstatement	£250
Preparing evidence and considering and commenting on the other side's evidence	£600
Submissions in lieu of a hearing	£350
Total:	**£1,200**

49. I order Aiwa Acquisitions LLC to pay AIWA CO., LTD. the sum of **£1,200**. This sum is to be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 25th day of July 2025

Andrea Rossi

For the Registrar