o/0699/24

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00003861981

BY MEIZHOU BAOCHANG ELECTRONIC COMMERCE CO., LTD.

TO REGISTER THE TRADE MARK:

TEDIBB

IN CLASS 28

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. 439697

BY TEDI GMBH & CO. KG

BACKGROUND AND PLEADINGS

1. On 22 December 2022, Meizhou Baochang Electronic Commerce Co., Ltd. ("the applicant") applied to register the trade mark shown on the cover page of this decision in the UK. The application was published for opposition purposes on 13 January 2023, and the applicant seeks registration for the following goods:

Class 28 Baby playthings; Baby rattles; Bath toys; Bathtub toys; Draughtboards; Electronic learning toys; Feeding bottles (Dolls' -); Toy cameras; Toy rockets; Toy water guns; Toy whistles; Toys for use in swimming pools; Water polo balls; Water-squirting toys; Water toys.

2. The application was opposed by Tedi GmbH & Co. KG ("the opponent") on 10 March 2023. The opposition is based upon section 5(2)(b) of the Trade Marks Act 1994 ("the Act"). The opponent relies upon the following trade mark:

Comparable UK trade mark (EU) registration no. UK00918165620[1]
Filing date 12 December 2019; Registration date 11 June 2020.
Relying upon some of the goods for which its mark is registered, namely:

Class 28 Games and playthings; Gymnastic and sporting articles, included in class 28; Decorations for Christmas trees; Fishing equipment; Rods for fishing; Practical jokes (novelties); Inflatable animals (toys); Rattles [playthings]; Building games; Building blocks [toys]; Billiard cue chalk; Billiard balls; Billiard cues; Billiard tables; Bingo cards; Bodybuilding

[1] Following the end of the transition period of the UK's withdrawal from the EU, all EU trade marks ("EUTM") registered before 1 January 2021 were recorded as comparable trade marks in the UK trade mark register (and as a consequence, have the same legal status as if they had been applied for and registered under UK law). A 'comparable trade mark (EU)' retains the same filing date, priority date (if applicable) and registration date of the EUTM from which it derives.

apparatus; Bows for archery; Boxing gloves; Board games; Christmas trees of synthetic material; Ornaments for Christmas trees, except illumination articles and confectionery; Christmas tree stands; Dominoes; Kites; Stationary exercise bike; Costume masks; Shuttlecocks; Remote-controlled toy vehicles; Parlour games; Glass pebbles; Bells for Christmas trees; Bar-bells; Card games; Candle holders for Christmas trees; Explosive bonbons [Christmas crackers]; Confetti; Snow for Christmas trees (Artificial -); Puppets; Mobiles [toys]; Marbles; Easter eggs made from plastics; Paddling pools (play articles); Plush toys; Dolls; Dolls' beds; Doll houses; Dolls' clothes; Puzzles; Roller skates; Chess games; Swings; Rocking horses; Party favors; Ice skates; Snow globes; Water wings; Flippers for swimming; Soap bubbles [toys]; Skateboards; Skis; Balls for games; Play money; Card games; Toys; Toy vehicles; Skipping ropes; Teddy bears; Safety whistles; Scale model vehicles; Water pistols; Cups for dice; Air mattresses (playthings).

3. The opponent claims that there is a likelihood of confusion because the marks are visually and aurally similar to a high degree, conceptually neutral and the goods are identical or highly similar.

4. The applicant filed a counterstatement denying the claims made and put the opponent to proof of use.

5. A hearing took place before me on 8 May 2024. The opponent was represented by Theo Barclay of 4 New Square Chambers instructed by Taylor Wessing LLP. Albeit not present at the hearing, the applicant is represented by PENG LIU, and I note that they did not provide any submissions in lieu of attendance. I make this decision having taken full account of the oral and written submissions and all the papers, referring to them below as necessary.

RELEVANCE OF EU LAW

6. 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.

PRELIMINARY ISSUE

7. At the hearing, Mr Barclay drew my attention to opposition number B 3 192 422, which is a case that occurred before the EUIPO involving the same parties. However, I note that the marks are slightly different, and as correctly noted by Mr Barclay, I am not bound by the decisions of the EUIPO. I, therefore, shall not be commenting on this decision any further, unless I consider it necessary.

DECISION

Section 5(2)(b)

8. Section 5(2)(b) 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."

9. The applicant's Notice of Defence (Form TM8) requested proof of use of the opponent's mark. However, as highlighted in the official letter of the Registry dated 12 July 2023, the opponent's mark had not completed its registration process more than

five years before the relevant date. Accordingly, the use provisions at s.6A of the Act do not apply. The opponent may rely on all of the goods it has identified without demonstrating that it has used the mark.

Section 5(2)(b) case law

10. 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:

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

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

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

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

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

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

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

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

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

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

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

Comparison of goods

11. The competing goods are as follows:

Opponent's goods	**Applicant's goods**
Class 28 Games and playthings; Gymnastic and sporting articles, included in class 28;	Class 28 Baby playthings; Baby rattles; Bath toys; Bathtub toys; Draughtboards; Electronic

Decorations for Christmas trees; Fishing equipment; Rods for fishing; Practical jokes (novelties); Inflatable animals (toys); Rattles [playthings]; Building games; Building blocks [toys]; Billiard cue chalk; Billiard balls; Billiard cues; Billiard tables; Bingo cards; Bodybuilding apparatus; Bows for archery; Boxing gloves; Board games; Christmas trees of synthetic material; Ornaments for Christmas trees, except illumination articles and confectionery; Christmas tree stands; Dominoes; Kites; Stationary exercise bike; Costume masks; Shuttlecocks; Remote-controlled toy vehicles; Parlour games; Glass pebbles; Bells for Christmas trees; Bar-bells; Card games; Candle holders for Christmas trees; Explosive bonbons [Christmas crackers]; Confetti; Snow for Christmas trees (Artificial -); Puppets; Mobiles [toys]; Marbles; Easter eggs made from plastics; Paddling pools (play articles); Plush toys; Dolls; Dolls' beds; Doll houses; Dolls' clothes; Puzzles; Roller skates; Chess games; Swings; Rocking horses; Party favors; Ice skates; Snow globes; Water wings; Flippers for swimming; Soap bubbles [toys]; Skateboards; Skis; Balls for games; Play money; Card games; Toys; Toy vehicles; Skipping ropes; Teddy bears; Safety whistles; Scale model vehicles; Water	learning toys; Feeding bottles (Dolls' -); Toy cameras; Toy rockets; Toy water guns; Toy whistles; Toys for use in swimming pools; Water polo balls; Water-squirting toys; Water toys.

pistols; Cups for dice; Air mattresses (playthings).	

12. When making the comparison, all relevant factors relating to the goods 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."

13. 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

14. In *Gérard Meric v OHIM*, Case T- 133/05, the General Court ("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."

Baby rattles.

15. While expressed slightly differently, the applicant's above goods are self-evidently identical to "rattles [playthings]" in the opponent's specification.

Baby playthings; Bath toys; Bathtub toys; Electronic learning toys; Feeding bottles (Dolls' -); Toy cameras; Toy rockets; Toy water guns; Toy whistles; Toys for use in swimming pools; Water-squirting toys; Water toys.

16. The applicant's above goods fall within the broader categories of "games and playthings" and "toys" in the opponent's specification. They are identical on the principle outlined in *Meric*.

Draughtboards.

17. The applicant's above goods fall within the broader category of "board games" in the opponent's specification. They are identical on the principle outlined in *Meric*.

Water polo balls.

18. At the hearing, Mr Barclay submitted that the applicant's above goods would fall within the broader category of "gymnastic and sporting articles, included in class 28"

and “balls for games”. I agree that the goods are identical on the principle outlined in *Meric*. However, if I am wrong in this finding, the goods overlap in trade channels, nature, purpose, method of use and user, making them similar to a high degree.

The average consumer and the nature of the purchasing act

19. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties’ goods. I must then determine the manner in which the 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 (as he then was) 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.”

20. The average consumer for the goods will be members of the general public, specifically children. However, given that children encapsulate a younger age group, it is more likely that adults would be making the purchase. The cost of purchase will likely be relatively low and the goods will be purchased reasonably frequently. Various factors are still likely to be taken into consideration during the purchasing process, such as the aesthetic, durability, safety and suitability for particular age groups. Consequently I consider that a medium degree of attention will be paid during the purchasing process.

21. The goods are likely to be obtained by self-selection from the shelves of a toy store, general retail outlet, or their online equivalents. Alternatively, the goods may be purchased following perusal of advertisements or inspection of a catalogue. Visual

considerations are, therefore, likely to dominate the selection process. However, I do not discount that there may also be an aural component to the purchase through advice sought from sales assistants or word of-mouth recommendations.

Comparison of the trade marks

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

23. It would be wrong, therefore, to artificially dissect the trade marks, although it is necessary to take into account the distinctive and dominant components of the marks and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

24. The respective trade marks are shown below:

Opponent's trade mark	Applicant's trade mark
	**TEDIBB**

25. The opponent's mark consists of the word "TEDi", with the letters T, E and D presented in upper-case, and the letter "i" in lower-case. This word is presented in a white typeface with a black outline, presented on a grey-filled circle, that also has a black outline. I note that in the applicant's counterstatement, they submit that as it is a figurative mark, it will "leave a deep impression on consumers through the design such as [the] circular dark background". However, the eye is naturally drawn to the element of the mark that can be read, and therefore I consider that the background and stylisation plays a lesser role, with the word "TEDi" playing a greater role in the overall impression.

26. The applicant's mark consists of the word "TEDIBB". There are no other elements to contribute to the overall impression which lies in the word itself.

27. Visually, both marks consist of, or include the letters T, E, D and I. This acts as a visual point of similarity. I also note that these letters are presented at the beginning of the applicant's mark, a position to which the average consumer tends to pay more attention to.[2] However, as noted by Mr Barclay at the hearing, the applicant's mark ends with the letters "BB" which acts as a visual point of difference. I note that the opponent's mark also has the grey circle background element, however, this plays a lesser role in the overall impression of the mark. On this basis, I consider that the marks are visually similar to a medium degree.

28. Aurally, the opponent's mark will most likely be pronounced as TED-EE, and the applicant's mark will most likely be pronounced as TED-IB. Therefore, as the first syllable of the marks are identical, I consider that they are aurally similar to a medium degree.

29. Conceptually, at the hearing, Mr Barclay submitted that both marks are "allusive of teddy bears, particularly when used in relation to the toy goods for which they are registered". I agree that because of the aural pronunciation of the opponent's mark, the conceptual message the mark will convey is "teddy" or "teddy bears" (with the stylisation and circle device not adding to the conceptual message of the mark).

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

However, I do not consider that the applicant's mark will convey the same message. As a whole, the applicant's word mark is "TEDIBB", and the average consumer will see this as an invented word with no conceptual meaning. On this basis, the marks are conceptually dissimilar.

30. For the sake of completeness, I note that within the EUIPO decision, conceptually, they considered that the earlier mark would be perceived by part of the relevant public as a variant of the male name "Teddy" which derives from the names Edward and Theodore. Firstly, in this case, the opponent never made such a submission. Secondly, in the EUIPO decision, the opponent's earlier mark is a word mark, presented in all one case, whereas the mark before me in the current proceedings is a figurative mark, whereby the word is presented in both upper and lower-case. I therefore do not consider that the concept of a name would be assigned to the word "TEDi" in the opponent's earlier mark, by virtue of its presentation.

31. Furthermore, in regard to the applicant's mark, the EUIPO stated that "it cannot be excluded that some members of the public may perceive the component 'BB' as an abbreviation or allusion to 'baby'. However, the majority of the relevant public will not associate 'BB' with any meaning. In any case, this component is distinctive to a normal degree even if perceived as 'baby', because it is not a common abbreviation of this term and it requires mental steps". The opponent has not provided me with any evidence that "BB" is used commonly within the trade to indicate that the goods are for babies, nor have they provided any evidence that this is a well-known shortening of the word. In any event for a conceptual message to be relevant it must be capable of immediate grasp by the average consumer,[3] and I agree with the EUIPO that "BB" is clearly not a common abbreviation for baby. Nonetheless, the letters "BB" appear at the end of the word "TEDIBB", and as highlighted above, the average consumer does not dissect marks. On this basis, I do not consider that the average consumer would dissect the "TEDI" element out of the applicant's mark. Therefore, taking all of the above into account, I consider that the decision of the EUIPO does not assist the opponent.

[3] *Ruiz Picasso v OHIM* [2006] e.c.r.-I-643; [2006] E.T.M.R 29

Distinctive character of the earlier trade mark

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

> "22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C108/97 and C-109/97 Windsurfing Chiemsee v Huber and Attenberger [1999] ECR 1-2779, paragraph 49).
>
> 23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promotion of the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see Windsurfing Chiemsee, paragraph 51)."

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

34. As the opponent has not filed any evidence to show that the distinctiveness of its marks have been enhanced through use, I only have the inherent position to consider.

35. The opponent's mark consists of the word "TEDi", which conceptually, as noted by Mr Barclay, conveys the meaning of "teddy" and "teddy bear". I note that this meaning is highly allusive of the opponent's toys and playthings. However, I also appreciate that the word is not spelt the same as the ordinary dictionary word, and it is composed of the first three letters being presented in upper-case and the last letter presented in lower-case. On this basis, I consider that the mark is inherently distinctive to between a low and medium degree.

Likelihood of confusion

36. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods down to the responsible undertakings being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. This includes the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and vice versa. 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 process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he has retained in his mind.

37. The following factors must be considered to determine if a likelihood of confusion can be established:

- I have found the marks to be visually similar to a medium degree.
- I have found the marks to be aurally similar to a medium degree.
- I have found the marks to be conceptually dissimilar.
- I have found the opponent's mark to be inherently distinctive to between a low and medium degree.

- I have identified the average consumer for the goods to be the general public, specifically children (with adults most likely purchasing the goods), who will select the goods primarily by visual means, although I do not discount an aural component.
- I have concluded that a medium degree of attention will be paid during the purchasing process for the goods.
- I have found that the parties' goods are identical.

38. Whilst the beginning of the marks tend to make more of an impact than the ends, and the first four letters of the marks are identical, in *CureVac GmbH v OHIM, T-80/08*, it was determined that this was not always a decisive matter in the finding of a likelihood of confusion. Therefore, taking all of the above into account, bearing in mind the principle of imperfect recollection, I am satisfied that the marks are unlikely to be mistakenly recalled or misremembered as each other. The case law has made it clear that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. Therefore, the average consumer will not pull out the "TEDI" element and overlook the letters "BB" at the end of the applicant's mark. Moreover, the applicant's mark as a whole will be seen as an invented word with no meaning, whereas, as submitted by Mr Barclay, the opponent's mark will be seen to convey the concept of a teddy/teddy bear. Therefore, that marks have a clear and distinct conceptual hook to assist in differentiating between them. Consequently, I do not consider there to be a likelihood of direct confusion.

39. It now falls to me to consider a likelihood of indirect confusion. Indirect confusion was described in the following terms by Iain Purvis Q.C. sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10:

> "16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental

process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: "The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark.

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

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

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

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

40. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ referred to the comments of James Mellor Q.C. (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at [16] that "a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion". Arnold LJ agreed, pointing out that there must be a "proper basis" for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

41. Mr Purvis KC in *L.A Sugar Limited* sets out that there are three main categories, above, of indirect confusion and that indirect confusion 'tends' to fall in one of them. I note that the opponent has not explicitly provided any submissions as to what category this case would fall within. However, at the hearing, Mr Barclay stated that "TEDIBB is likely to be perceived as a sub-brand or a variant of TEDi, perhaps, as a result of the added "BB", a sort of "TEDi or babies". I therefore consider that this submission alludes to category (b).

42. As highlighted above, the opponent has not provided any evidence that "BB" is used commonly within the trade to indicate that the goods are for babies, nor have they provided any evidence that this is a well-known shortening of the word. I therefore do not consider that the average consumer, or even a significant proportion of them, would see the "BB" element at the end of the applicant's mark standing for, or alluding to, the goods being for "babies". I also consider that this is especially the case because the average consumer does not dissect the mark, and the applicant's mark is one word: "TEDIBB". It will, therefore, simply be seen as an invented word. Consequently, I do not consider that the "BB" element is a non-distinctive addition to which the average consumer would expect to find in a sub-brand, and therefore category (b) cannot be satisfied.

43. Category (a) also cannot be satisfied on the basis that the common element is not strikingly distinctive, as it only has between a low and medium degree of inherent distinctiveness for the goods in question. Category (c) cannot be satisfied because the earlier mark only consists of one element.

44. I bear in mind that the examples above set out by Mr Purvis are not exhaustive. However, I do not consider that there are any other logical examples of how the applicant's mark could be indirectly confused with the opponent's. I consider that having noticed that the trade marks are different, I see no reason why the average consumer would assume that they come from the same or economically linked undertakings. As highlighted above, the marks are not natural variants or brand extensions of each other. Consequently, I consider there is no likelihood of indirect confusion.

CONCLUSION

45. The opposition is unsuccessful, and the application may proceed to registration.

COSTS

46. The applicant has been successful and is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice 1/2023. In the circumstances, I award the applicant the sum of **£250** as a contribution towards the costs of the proceedings. The sum is calculated as follows:

Considering the Notice of opposition and preparing a Counterstatement	£250

47. I therefore order Tedi GmbH & Co. KG to pay Meizhou Baochang Electronic Commerce Co., Ltd. the sum of £250. This sum is to be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 24th day of July 2024

L FAYTER

For the Registrar