O/0842/24

TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK APPLICATION NO. WO0000001709849 BY SAMYANG ECOTECH CORPORATION TO REGISTER AS A TRADE MARK:

RECOPET

IN CLASS 1

AND

OPPOSITION THERETO UNDER NO. 440842 BY COEXPAN, S.A.

Background & Pleadings

1. Samyang EcoTech Corporation ("**the applicant**") is the holder of the International Registration no. WO0000001709849 ("IR") in respect of the mark shown on the front page of this decision with a UK designation date of 28 December 2022. The applicant claims a priority date of 7 November 2022 from the registration in the Republic of Korea with filing number 4020220203252. The IR was accepted and published in the Trade Marks Journal for opposition purposes on 17 February 2023 for the following goods:

> **Class 1:** Unprocessed plastics for industrial use; unprocessed plastics in the form of powder or granules; unprocessed artificial and synthetic resins; unprocessed polymer resins; unprocessed polystyrene resins; unprocessed polyamide resins; unprocessed polyester resins; unprocessed polyethylene resins; unprocessed plastics; unprocessed liquid crystal polymer resins; unprocessed polymerization plastics; unprocessed artificial resins in the form of chips or flakes; unprocessed plastic materials in chips or flakes form; unprocessed plastics in the form of chips or flakes; unprocessed polysulfone resins; unprocessed polyethersulfone resins; unprocessed polyetheretherketone resins; unprocessed polyphenylene oxide resins; unprocessed polyphenyl sulfone resins; unprocessed synthetic resins for use in the manufacture of plastic moulding compounds.

2. On 16 May 2023, COEXPAN, S.A. ("**the opponent**") opposed the application on the basis of Section 5(2)(b) of the Trade Marks Act 1994 ("the Act")[1]. The opponent is the proprietor of the following mark:

Trade Mark no.	UK00917970216[2]
Trade Mark	RECOEX
Goods & Services for which the mark is registered	Classes 16, 17, 39, 40 & 42
Dates	Filing date: 19 October 2018
	Date of entry in register: 30 March 2019

3. Under Section 6(1) of the Act, the opponent's trade mark clearly qualifies as an earlier trade mark. Further, as registration of the opponent's earlier mark was completed less than five years before the designation date of the contested mark, proof of use is not relevant in these proceedings as per Section 6A of the Act.

4. The opponent relies on all goods and services under the earlier mark.

5. The opponent in its notice of opposition claims that the competing marks are confusingly similar, and the contested goods are either identical or similar to the earlier ones.

6. The applicant filed a defence and counterstatement denying the grounds of the opposition in their entirety. Thus, it requests that the opposition

[1] 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.

[2] On 1 January 2021, the UK left the EU. Under Article 54 of the Withdrawal Agreement between the UK and the EU, the UK IPO created comparable UK trade marks for all right holders with an existing registered EUTM. As a result, the opponent's earlier EUTM was automatically converted into a comparable UK trade mark. Comparable UK marks are now recorded on the UK trade mark register, have the same legal status as if they had been applied for and registered under UK law, and the original filing dates remain the same.

under 5(2)(b) be rejected, and the designation be accepted for protection in full.

7. A hearing was neither requested nor was it considered necessary. The opponent filed written submissions in lieu of a hearing, which will not be summarised but will be referred to as and where appropriate during this decision. This decision has been taken following a careful consideration of the papers.

8. In these proceedings, the opponent is represented by Fry Heath & Spence LLP, and the applicant is represented by HGF Limited.

Decision

Section 5(2)(b)

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

> "5(2) 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".

10. The principles, considered in this opposition, stem from the decisions of the European 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 BV* (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-334/05 P) and Bimbo SA v OHIM (Case C-519/12 P):

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 and Services

11. 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 1975."

12. When making the comparison, all relevant factors relating to the goods/services in the specifications should be taken into account. In

Canon Kabushiki Kaisha, the Court of Justice of the European Union (CJEU) stated that:

> "23. In assessing the similarity of the goods or services concerned, […], 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 complementary."

13. Guidance on this issue was also given by Jacob J (as he then was) in *British Sugar Plc v James Robertson & Sons Limited ("Treat")* [1996] RPC 281. At [296], he identified the following relevant factors:

> "(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 *YouView TV Ltd v Total Ltd,* [2012] EWHC 3158 (Ch), paragraph 12, Floyd J (as he then was) gave the following guidance on construing the words used in specifications:

> "[…] 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 of 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."

15. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU held that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods or services. The GC clarified the meaning of "complementary" goods or services in *Boston Scientific Ltd v OHIM*, Case T-325/06, at paragraph 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."

16. In *Avnet Incorporated v Isoact Limited*, [1998] F.S.R. 16, Jacob J. (as he then was) stated that:

> "In my view, specifications for services should be scrutinised carefully and they should not be given a wide construction covering a vast range of activities. They should be confined to the substance, as it were, the core of the possible meanings attributable to the rather general phrase."

17. The competing goods and services to be compared are shown in the following table:

Opponent's Goods & Services	Applicant's Goods
Class 16: Plastic materials for packaging; Plastic materials for packaging; Plastic materials for wrapping and packaging, in particular flexible and non-flexible plastic materials and extruded plastic materials in the form of sheets for wrapping and packaging; plastic foils for wrapping and packaging; Absorbent sheets of paper or plastic for foodstuff packaging; Plastic films for wrapping and packaging; Plastic film for packaging; Plastic film for packaging; Plastic materials for packaging. **Class 17:** Goods of plastics in extruded form, in particular flexible and non-flexible goods for wrapping and packaging; Recycled plastics; Packing materials; Waterproof packings; Plastic materials in the form of plates and sheets (semi-finished products); Extruded plastic materials in the form of sheets for use in manufacture (semi-finished products); Extruded plastics [semi-finished products]; Semi-processed plastics, In particular semi-processed extruded plastics in the form of sheets for wrapping and packaging; Plastics	**Class 1:** Unprocessed plastics for industrial use; unprocessed plastics in the form of powder or granules; unprocessed artificial and synthetic resins; unprocessed polymer resins; unprocessed polystyrene resins; unprocessed polyamide resins; unprocessed polyester resins; unprocessed polyethylene resins; unprocessed plastics; unprocessed liquid crystal polymer resins; unprocessed polymerization plastics; unprocessed artificial resins in the form of chips or flakes; unprocessed plastic materials in chips or flakes form; unprocessed plastics in the form of chips or flakes; unprocessed polysulfone resins; unprocessed polyethersulfone resins; unprocessed polyetheretherketone resins; unprocessed polyphenylene oxide resins; unprocessed polyphenyl sulfone resins; unprocessed synthetic resins for use in the manufacture of plastic moulding compounds.

fibres for use in the manufacture of packings. **Class 39:** Packaging, wrapping and packing of goods; Advisory services relating to the packing of goods. **Class 40:** Treatment and processing of plastics; Treatment of plastic materials to produce plastic mouldings; Laminating of plastic; Extruding of plastics; Molding of plastic materials; Treatment and recycling of packaging; Transformation of all kinds of packaging, wrapping and containers made of plastic materials; Printing; Letterpress printing; Silk screen printing; Digital printing; Lithographic printing; Offset printing. **Class 42:** Packaging design, in particular design of packaging solutions; Industrial packaging design services; Consultancy relating to the design of packaging.	

18. The opponent in its submissions states the following:

> "18. There is no specific evidence touching on the point, so we must limit our comments to the common general knowledge of the layman, where the Registrar is entitled to exercise judicial notice. In this regard we feel confident asserting that the goods in class 1 of the Applicant are all concerned with plastics. The Opponents goods are all made

from plastic and their services are concerned with the processing and treatment of plastics.

The goods of the application in class 1 cover plastics as raw materials for manufacturing the different kind of plastics protected by the Opponent's earlier mark in classes 16 and 17.

Unprocessed plastics of the opposed application are materials that have a polymeric structure. In class 1 they are unprocessed and they are to be used in many articles. There is a complementary link between these goods and the plastic materials for packaging and plastic films in class 16 and also with goods of plastics in extruded form, in particular flexible and non-flexible goods for wrapping and packaging; recycled plastics and others in class 17 of the earlier mark.

The goods of the opposed application are also similar to the services of the earlier mark ´Treatment and processing of plastics; Treatment of plastic materials to produce plastic mouldings; Laminating of plastic; Extruding of plastics; Molding of plastic materials; Treatment and recycling of packaging; Transformation of all kinds of packaging, wrapping and containers made of plastic materials` in Class 40 are similar to ´Unprocessed plastics for industrial use; unprocessed plastics in the form of powder or granules; unprocessed artificial and synthetic resins; unprocessed polymer resins; unprocessed polystyrene resins; unprocessed polyamide resins; unprocessed polyester resins; unprocessed polyethylene resins; unprocessed plastics; unprocessed liquid crystal polymer resins; unprocessed polymerization plastics; unprocessed artificial resins in the form of chips or flakes; unprocessed plastic materials in chips or flakes form; unprocessed plastics in the form of chips or flakes; unprocessed polysulfone resins; unprocessed polyethersulfone resins; unprocessed polyetheretherketone resins; unprocessed polyphenylene oxide resins; unprocessed polyphenyl sulfone resins; unprocessed synthetic resins for use in the manufacture of plastic moulding compounds´ in class 1. Although they have different natures

(tangible versus intangible), these goods and services can be provided by the same undertakings. These goods and services have the same distribution channels and target the same public.

Moreover, the goods and services of both party's share the same nature all being in the field of plastics. There will be an assumption that the goods of the Applicant come from the Opponent.

The goods in class 1 of the opposed application are all therefore identical and similar to the goods and services of the Earlier registration."

19. In its counterstatement, the applicant denies that the goods at issue are identical or similar, by claiming the following:

"In particular, the Applicant denies the opponent's contention that the nature, end users, distribution channels, point of sales, producers, uses, customers and advertising channels are the same. On the contrary, it is submitted that the goods are of a different nature, serve different markets, are manufactured and marketed by different entities, are sold in different stores, are not in competition nor are they complementary. The goods are dissimilar."

20. As established in *Les Éditions Albert René v OHIM*,[3] it is clear that just because a particular good is used as a part, element or component of another, it may not result in a finding of similarity between those goods. I note that the contested goods in Class 1 consist of unprocessed raw materials, i.e. synthetic compounds of plastics and resins, used in the manufacturing process rather than as finished products. There is no evidence showing how the earlier goods in Classes 16 and 17 are manufactured which are all finished products of plastic materials. On the face of it, there may be a general similarity in nature, given that the competing goods are made of plastics/resins or their compounds, but the

[3] See *Les Éditions Albert René v OHIM*, Case T-336/03, paragraph 61.

intended purpose is different, and the goods do not compete. Although the contested goods are needed to produce the earlier goods, the opponent did not provide any evidence which would justify a finding that the goods under comparison are produced or traded by the same undertakings. In my view, the contested goods in Class 1 will be sold to manufacturers, including those who manufacture the earlier plastic wrapping, packaging, and filming products, whereas the earlier goods will be sold to different users, namely the end user or the middleman (such as retailers). I do not consider that there is a complementary relationship. I find that there is no similarity between the competing goods, or else any similarity is very low.

21. Nevertheless, I bear in mind the rationale in *Sanco SA v OHIM,* Case T-249/11, where the General Court indicated that goods and services may be regarded as 'complementary' and therefore similar to a degree in circumstances where the nature and purpose of the respective goods and services are very different, i.e. *chicken* against *transport services for chickens*. The purpose of examining whether there is a complementary relationship between goods/services is to assess whether the relevant public are liable to believe that responsibility for the goods/services lies with the same undertaking or with economically connected undertakings. As Mr Daniel Alexander QC (as he then was) noted as the Appointed Person in *Sandra Amelia Mary Elliot v LRC Holdings Limited* BL-0-255-13*:*

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

Whilst on the other hand:

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

22. In light of the above, I consider that there is similarity between the contested goods and the earlier services "*Treatment and processing of plastics*" in Class 40. The earlier services relate to the manufacturing process of plastics including the processing and transformation of raw plastic materials into finished parts. Although the goods and services in question differ in nature (goods v services), I consider that complementarity is more pronounced in this case. This is because one is important for the use of the other, and the competing goods and services can be provided by the same or economically linked undertakings where the manufacturer of the goods could also provide services relating to the processing of such goods. The respective goods and services may also share the same trade channels and users. I find that they are similar to between a low and medium degree.

Average Consumer and the Purchasing Act

23. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purposes of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods and services in question: *Lloyd Schuhfabrik Meyer,* Case C-342/97. In *Hearst Holdings & Anor v A.V.E.L.A. Inc & Ors*, [2014] EWHC 439 (Ch), at paragraph 70, Birss J (as he then was) described the average consumer in these terms:

> "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 word 'average' denotes that the person is typical. The term 'average' does not denote some form of numerical mean, mode or median."

24. In relation to Class 1 goods, the average consumer will be professionals, such as manufacturers. Such goods can be self-selected from stores, including specialist ones, brochures, catalogues, and online. 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. The cost and frequency of purchase is likely to vary. However, the average consumer will take various factors into consideration, such as the materials, cost, durability, quality and suitability for the user's needs. Thus, I consider that both the general public and professionals will pay a higher than a medium degree of attention during the purchasing process.

25. For the services at issue, the average consumer will be primarily professionals, such as manufacturers. The consumers will select such services by looking through brochures, websites, or signs on a physical property so the visual element will be important. However, I do not discount the aural element, as word-of-mouth recommendations may influence consumers' decisions. The cost of some services will be relatively significant, contributing to the selection process of the service provider. Given the more specialist nature of the services in play, especially those selected by business users, I consider that the average consumer will pay a higher than a medium degree of attention in choosing the service provider.

Comparison of Trade Marks

26. 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."

27. 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.

28. The marks to be compared are:

Earlier Mark	Contested Mark
RECOEX	RECOPET

Overall Impression

29. Both of the competing marks are word only marks presented in a standard typeface and upper case. Registration of a word mark protects the word itself.[4] The overall impression of the competing marks lies in the words themselves.

Visual comparison

30. The earlier mark "RECOEX" is six letters long, whilst the contested mark "RECOPET" is seven. Bearing in mind, as a rule of thumb, that the beginnings of words tend to have more impact than the ends,[5] the

[4] See *LA Superquimica v EUIPO*, T-24/17, para 39; and *Bentley Motors Limited v Bentley 1962 Limited*, BL O/158/17, paragraph 16.

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

competing marks share the first four letters, i.e. “RECO-”, but differ in the rest, i.e. “-PET/-EX”. Taking into account the above factors, including the overall impression of the competing marks, I find that the marks are visually similar to a medium degree.

Aural comparison

31. The competing marks consist of three syllables. The contested mark will be articulated as “RE-CO-PET” and the earlier mark as “RE-CO-EX”. Although the articulation of the first two syllables will be identical in both marks, the last syllable creates a different sound for each mark. Thus, I find them to be aurally similar to a higher than medium degree.

Conceptual comparison

32. In its submissions, the opponent states the following:

> “13. For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer (*Ruiz Picasso v OHIM* [2006] E.T.M.R 29). Conceptually the marks as a whole are perceived as fanciful terms. Neither mark has any conceptual meaning.
>
> 14. The marks are […] conceptually similar.”

33. I disagree with the opponent that there is a conceptually similarity. The competing marks will be seen as invented words having no identifiable meaning. Therefore, I find the marks to be conceptually neutral.

Distinctive Character of the Earlier Trade Mark

34. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97, paragraph 22 and 23, the CJEU stated that:

> “In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the

mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

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

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

36. The opponent has not shown use of its mark and, thus, it cannot benefit from any enhanced distinctiveness. In this respect, I have only the inherent distinctiveness of the earlier mark to consider. The earlier mark consists of the invented word "RECOEX" which has no allusive or suggestive significance in relation to the goods and services for which the mark is registered. Thus, I consider that the earlier mark is inherently distinctive to a high degree.

Likelihood of Confusion

37. In assessing the likelihood of confusion, I must adopt the global approach set out in the case law to which I have already referred above in this decision. Such a global assessment is not a mechanical exercise. I must also have regard to the interdependency principle, that 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.[6] It is essential to keep in mind the distinctive character of the opponent's trade mark since the more distinctive the trade mark, the greater may be the likelihood of confusion. I must also keep in mind that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon imperfect recollection.[7]

38. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other. Indirect confusion is where the consumer notices the differences between the marks but concludes that the later mark is another brand of the owner of the earlier mark or a related undertaking.

39. Earlier in this decision I have concluded that:

    - the goods at issue are similar to the earlier services to between a low and medium degree;
    - the average consumer for the goods and services at issue will be professionals, and the selection process is predominantly visual

[6] See *Canon Kabushiki Kaisha*, paragraph 17.

[7] See *Lloyd Schuhfabrik Meyer*, paragraph 27.

without discounting aural considerations. The level of attention paid for the goods and services will be higher than a medium degree;

- the competing marks are visually similar to a medium degree, aurally to a higher than medium, and conceptually neutral;
- the earlier mark has a high degree of inherent distinctiveness.

40. Taking all of the above into consideration, including the similar goods in play, the factors persuade me that there is a likelihood of confusion. Although I found that the goods and services will be selected with a higher than a medium degree of attention which may reduce, but not rule out, the effect of imperfect recollection. Set against that, however, is the highly distinctive character of the earlier word mark, which is an invented word, and the visual and aural similarity of the marks. Further, the marks share common beginnings, namely "RECO-", which is considered a much more impactful positioning than if it were at the end of the marks. Additionally, the respective marks are conceptually neutral. The absence of conceptual meaning contributes to the effect of imperfect recollection, as there is no conceptual hook to aid recall. Therefore, the increased level of attention of the average consumer during the purchasing process will not be sufficient to counteract the similarities between the marks and goods/services or militate against imperfect recollection. This leads me to conclude that there is a likelihood of direct confusion against all of the applicant's goods.

Outcome

41. The opposition on the basis of the claim under Section 5(2)(b) **is successful in its entirety.** Therefore, subject to appeal, the application will be refused.

Costs

42. The opponent has been successful and is entitled to a contribution towards its costs. Awards of costs are governed by Annex A of Tribunal Practice Notice (TPN) 1/2023. I award costs as follows:

Official opposition fee	**£100**
Preparing a statement and considering the counterstatement	**£250**
Preparing and filing submissions in lieu of a hearing	**£350**
Total	**£700**

43. I, therefore, order Samyang EcoTech Corporation to pay to COEXPAN, S.A. the sum of £700. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 30th day of August 2024

Dr Stylianos Alexandridis

For the Registrar,

The Comptroller General