

O/0879/25

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00003996519

IN THE NAMES OF CHIOSA GLOBAL E-COMMERCE
LIMITED AND CHEN JIANG

TO REGISTER THE FOLLOWING TRADE MARK:



IN CLASSES 18, 20, 21 AND 28

AND

IN THE MATTER OF OPPOSITION THERETO
UNDER NO. OP000447012

BY DREAMS LIMITED

Background and pleadings

1. On 28 December 2023, CHIOSA GLOBAL E-COMMERCE LIMITED and Chen Jiang (“***the Applicants***”) 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 19 January 2024 in respect of goods in classes 18, 20, 21 and 28 (“***the Contested Mark***”).
2. On 19 April 2024, Dreams Limited (“***the Opponent***”) opposed the application under Section 5(2)(b) of the Trade Marks Act 1994 (“***the Act***”). The partial opposition is directed against the following goods in the application:

Class 20: Dog beds; Cat beds; Beds for pets; Pet cushions; Cushions (Pet -);Pet furniture; Beds for household pets; Portable beds for pets; Pet crates; Bed mattresses; Air bed lounge; Pet grooming tables; Sofa beds; Pet houses; Animal housing and beds; Infant beds; Bed slats; Bed rails; Bed chairs; Cushions for lining pet crates; Beds for animals; Bumper guards for cribs, other than bed linen; Kennels for household pets; Divan beds; Bunk beds; Dog kennels; Feather beds; Bed heads; Chair beds; Portable infant beds; Bed frames; Beds, bedding, mattresses, pillows and cushions; Beds; Inflatable pet beds; Dog houses [kennels]; Cushions; Nap mats [cushions or mattresses];Dog baskets; Cat baskets.

3. The Opponent relies upon the following three marks (“***the Earlier Marks***”):

DREAMS

UK Registration no. UK00917963494¹ (“***The ‘494 Mark***”)

Filing date: 01 October 2018

Date of registration: 15 February 2019

¹ 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 or International Registration designating the EU. As a result, the opponent’s mark was converted into a comparable UK trade mark. Comparable UK marks are now recorded in 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.

Relying upon the following goods and services:

Class 20: Furniture; bedroom furniture; mirrors; beds; water beds; divans; bedsteads; headboards; bedding, other than bed linen; pillows; mattresses; open spring and pocket spring mattresses; memory foam and latex mattresses; futons; air cushions and air pillows; air mattresses; bed casters not of metal; bed fittings not of metal; chairs; armchairs; cabinets; chests of drawers; desks; footstools; cots and cradles; parts and fittings for all the aforesaid goods.

Class 24: Textiles; fabrics and textiles for beds and furniture; bed linen; duvets; bed covers; bed blankets, bed clothes; covers for duvets; mattress covers; covers for pillows and pillow cases; covers for cushions; bedspreads; covers for hot water bottles; furniture coverings of textile; quilts; parts and fittings for all the aforesaid goods.

Class 35: Retail services relating to the sale of bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations, non-medicated soaps, perfumery, essential oils, non-medicated cosmetics, non-medicated hair lotions, scents, fragrances, oils for perfumes and scents, perfumeries, room scenting sprays, scented fabric refresher sprays, scented linen sprays, scented oils, scented room sprays, air fragrance preparations; Retail services relating to the sale of air fragrance reed diffusers, air fragrancing preparations, aromatics for fragrances, cleaning and fragrancing preparations, Cushions filled with fragrant substances, cushions impregnated with fragrant substances, fragrance for household purposes, fragrance preparations, fragrance refills for non-electric room fragrance dispensers, fragrance sachets, refills for electric room fragrance dispensers, room fragrances, room fragrancing products; Retail services relating to the sale of Scientific, measuring, checking (supervision), life-saving and teaching apparatus and instruments, data processing equipment, computer software, computer hardware, mobiles apps, downloadable software applications, wearable monitors, monitoring instruments, monitoring apparatus, other than for medical purposes,

monitoring units [electric], electronic sensors, bio-sensors, movement sensors; Retail services relating to the sale of sensors for scientific use to be worn by a human to gather human biometric data, electronic tracking apparatus and instruments, wearable activity trackers, measuring apparatus and instruments, computer software in the field of tracking, monitoring and analysing of sleep, movement and heart rate, electronic devices for tracking, monitoring and analysing of sleep, movement and heart rate [other than for medical use]; Retail services relating to the sale of mobiles apps in the field of tracking, monitoring and analysing of sleep, movement and heart rate, downloadable software applications in the field of tracking, monitoring and analysing of sleep, movement and heart rate; Retail services relating to the sale of medical and surgical apparatus and instruments, namely medical devices for sensing, measuring, diagnostic and treatment purposes in the field of sleep including wearable medical devices to be worn while sleeping, Pulse rate monitors, medical devices for measuring sleep, precision sensors for medical use, sensor apparatus for medical use; Retail services relating to the sale of apparatus for lighting, lighting, light bulbs, lamps and light sources, lighting connected to alarm clocks, luminaires, controllable light sources and lighting apparatus, filters for lighting appliances; Retail services relating to the sale of horological and chronometric instruments, clocks, alarm clocks, electronic alarm clocks, alarm clocks which use light to wake-up users, alarm clocks with in-built lights; Retail services relating to the sale of furniture, bedroom furniture, mirrors, beds, water beds, divans, bedsteads, headboards, bedding, pillows, mattresses, open spring and pocket spring mattresses, memory foam and latex mattresses, futons, air cushions and air pillows, air mattresses, sleeping bags, bed casters not of metal, bed fittings not of metal, chairs, armchairs, cabinets, chests of drawers, desks, footstools, cots and cradles; Retail services relating to the sale of household or kitchen utensils and containers, articles for cleaning purposes, scent sprays [atomizers], air fragrancing apparatus, aerosol dispensers, not for medical purposes, perfume burners, perfume vaporizers, perfume sprayers, plug-in diffusers for mosquito repellents, plug-in diffusers for

air fragrancing; Retail services relating to the sale of textiles, fabrics and textiles for beds and furniture, bed linen, duvets, bed covers, bed blankets, bed clothes, covers for duvets, mattress covers, covers for pillows and pillow cases, covers for cushions, bedspreads, covers for hot water bottles, pyjama cases, furniture coverings of textile, eiderdowns, quilts, parts and fittings for all the aforesaid goods; all the aforesaid provided in a retail furniture and bedding superstore, online via the Internet or other interactive electronic platforms, via mail order or catalogues or by means of telecommunications; information, advisory and consultancy services relating to all of the aforesaid.

DREAM BIGGER DREAMS

UK Registration no. UK00003453944 ("***The '944 Mark'***")

Filing date: 24 December 2019

Date of registration: 20 March 2020

Relying upon the following goods and services:

Class 20: Furniture; bedroom furniture; mirrors; beds; water beds; divans; bedsteads; headboards; bedding, other than bed linen; pillows; mattresses; open spring and pocket spring mattresses; memory foam and latex mattresses; futons; air cushions and air pillows; air mattresses; bed casters not of metal; bed fittings not of metal; chairs; armchairs; cabinets; chests of drawers; desks; footstools; cots and cradles; parts and fittings for all the aforesaid goods.

Class 24: Textiles; fabrics and textiles for beds and furniture; bed linen; duvets; bed covers; bed blankets, bed clothes; covers for duvets; mattress covers; covers for pillows and pillow cases; covers for cushions; bedspreads; furniture coverings of textile; quilts; parts and fittings for all the aforesaid goods.

Class 35: Retail services connected with the sale of furniture, bedroom furniture, beds, water beds, sofa beds, divans, bedsteads, headboards, bedding,

pillows, mattresses, open spring and pocket spring mattresses, memory foam and latex mattresses, futons, parts and fittings for all the aforesaid goods, all provided in a retail furniture and bedding superstore, online via the Internet or other interactive electronic platforms, via mail order or catalogues or by means of telecommunications; retail services connected with the sale of air cushions and air pillows, air mattresses, sleeping bags, bed casters not of metal, bed fittings not of metal, chairs, armchairs, cabinets, chests of drawers, desks, footstools, cots and cradles, parts and fittings for all the aforesaid goods, all provided in a retail furniture and bedding superstore, online via the Internet or other interactive electronic platforms, via mail order or catalogues or by means of telecommunications; retail services connected with the sale of textiles, fabrics and textiles for beds and furniture, bed linen, duvets, bed covers, bed blankets, covers for duvets, mattress covers, parts and fittings for all the aforesaid goods, all provided in a retail furniture and bedding superstore, online via the Internet or other interactive electronic platforms, via mail order or catalogues or by means of telecommunications; retail services connected with the sale of covers for pillows and pillow cases, covers for cushions, bedspreads, furniture coverings of textile, eiderdowns, quilts, parts and fittings for all the aforesaid goods, all provided in a retail furniture and bedding superstore, online via the Internet or other interactive electronic platforms, via mail order or catalogues or by means of telecommunications; information, advisory and consultancy services relating to all of the aforesaid.

Dreams

UK Registration no. UK00003849391 ("**The '391 Mark'**")

Filing date: 15 November 2022

Date of registration: 17 March 2023

Relying upon the following goods and services:

Class 20: Furniture; bedroom furniture; mirrors; beds; water beds; divans; bedsteads; headboards; bedding, other than bed linen; pillows; mattresses; open spring and pocket spring mattresses; memory foam and latex mattresses; futons; air cushions and air pillows; air mattresses; bed casters not of metal; bed fittings not of metal; chairs; armchairs; cabinets; chests of drawers; wardrobes; tables; desks; footstools; storage furniture; storage boxes [furniture]; bedside tables; bookcases; cots and cradles; sofa beds; bunk beds; children's beds; cushions; parts and fittings for all the aforesaid goods.

Class 24: Textiles; fabrics and textiles for beds and furniture; bed linen; duvets; bed covers; bed blankets, bed clothes; covers for duvets; mattress covers; covers for pillows and pillow cases; covers for cushions; bedspreads; covers for hot water bottles; furniture coverings of textile; quilts; parts and fittings for all the aforesaid goods.

Class 35: Retail services relating to the sale of bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations, non-medicated soaps, perfumery, essential oils, non-medicated cosmetics, non-medicated hair lotions, scents, fragrances, oils for perfumes and scents, perfumeries, room scenting sprays, scented fabric refresher sprays, scented linen sprays, scented oils, scented room sprays, air fragrance preparations; Retail services relating to the sale of air fragrance reed diffusers, air fragrancing preparations, aromatics for fragrances, cleaning and fragrancing preparations, Cushions filled with fragrant substances, cushions impregnated with fragrant substances, fragrance for household purposes, fragrance preparations, fragrance refills for non-electric room fragrance dispensers, fragrance sachets, refills for electric room fragrance dispensers, room fragrances, room fragrancing products; Retail services relating to the sale of Scientific, measuring, checking (supervision), life-saving and teaching apparatus and instruments, data processing equipment, computer software, computer hardware, mobiles apps, downloadable software applications, wearable monitors, monitoring

instruments, monitoring apparatus, other than for medical purposes, monitoring units [electric], electronic sensors, bio-sensors, movement sensors; Retail services relating to the sale of sensors for scientific use to be worn by a human to gather human biometric data, electronic tracking apparatus and instruments, wearable activity trackers, measuring apparatus and instruments, computer software in the field of tracking, monitoring and analysing of sleep, movement and heart rate, electronic devices for tracking, monitoring and analysing of sleep, movement and heart rate [other than for medical use]; Retail services relating to the sale of mobiles apps in the field of tracking, monitoring and analysing of sleep, movement and heart rate, downloadable software applications in the field of tracking, monitoring and analysing of sleep, movement and heart rate; Retail services relating to the sale of medical and surgical apparatus and instruments, namely medical devices for sensing, measuring, diagnostic and treatment purposes in the field of sleep including wearable medical devices to be worn while sleeping, Pulse rate monitors, medical devices for measuring sleep, precision sensors for medical use, sensor apparatus for medical use; Retail services relating to the sale of apparatus for lighting, lighting, light bulbs, lamps and light sources, lighting connected to alarm clocks, luminaires, controllable light sources and lighting apparatus, filters for lighting appliances; Retail services relating to the sale of horological and chronometric instruments, clocks, alarm clocks, electronic alarm clocks, alarm clocks which use light to wake-up users, alarm clocks with in-built lights; Retail services relating to the sale of furniture, bedroom furniture, mirrors, beds, water beds, divans, bedsteads, headboards, bedding, pillows, mattresses, open spring and pocket spring mattresses, memory foam and latex mattresses, futons, air cushions and air pillows, air mattresses, sleeping bags, bed casters not of metal, bed fittings not of metal, chairs, armchairs, cabinets, chests of drawers, desks, footstools, cots and cradles; Retail services relating to the sale of household or kitchen utensils and containers, articles for cleaning purposes, scent sprays [atomizers], air fragrancing apparatus, aerosol dispensers, not for medical purposes, perfume burners, perfume vaporizers, perfume

sprayers, plug-in diffusers for mosquito repellents, plug-in diffusers for air fragrancing; Retail services relating to the sale of textiles, fabrics and textiles for beds and furniture, bed linen, duvets, bed covers, bed blankets, bed clothes, covers for duvets, mattress covers, covers for pillows and pillow cases, covers for cushions, bedspreads, covers for hot water bottles, pyjama cases, furniture coverings of textile, eiderdowns, quilts, parts and fittings for all the aforesaid goods; all the aforesaid provided in a retail furniture and bedding superstore, online via the Internet or other interactive electronic platforms, via mail order or catalogues or by means of telecommunications; information, advisory and consultancy services relating to all of the aforesaid.

4. By virtue of their earlier filing dates, the 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 the use provisions contained in 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 of the marks.
5. In its statement of grounds, the Opponent submits that the respective marks are highly similar, that the goods and services are identical or similar and that the earlier rights have enhanced distinctive character. The Opponent contends that from all this it derives a likelihood of confusion on the part of the public, including a likelihood of association between the marks. For this reason the Opponent requests that the application be refused in its entirety and that a cost award be made in its favour.
6. On 17 July 2024, the Applicants filed a counterstatement within which it admits that the Opponent's goods in Class 20 are similar to the contested goods, but denies all other claims made by the Opponent.
7. Neither party filed evidence. Neither party requested a hearing, however both parties filed submissions in lieu. This decision is taken following careful consideration of the papers.
8. The Applicants are represented by Paweł Wowra; the Opponent is represented by Abion UK Limited.

9. 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.

Approach

10. The Opponent relied upon three earlier registrations in the notice of opposition (as set out above in this decision). I find the '494 Mark represents the Opponent's strongest case as it consists of the word-only "DREAMS" with no additional matter and it essentially covers the same specification as the other two earlier rights. The '944 Mark "DREAM BIGGER DREAMS", although it features the word 'DREAM' in the singular form, it contains two additional words creating a unitary meaning that further differs visually, aurally and conceptually from the Contested Mark. The '391 Mark introduces an obvious further point of difference (at least visually) in respect of the '494 Mark due to the '391 Mark's stylised character. Therefore, for the purposes of this opposition, if the opponent cannot succeed on the basis of its earlier word-only mark covered by the '494 Mark, it is clearly in no better position based upon the other earlier marks. I proceed accordingly.

DECISION

Section 5(2)(b)

11. 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”.

12. Section 5A of the Act states that:

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

13. 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 and services

14. 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.

15. 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.

16. 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”.

17. 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.

18. 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”.

19. 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.”

20. 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.”

21. 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.

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

Opponent’s goods and services	Applicants’ goods
<u>Class 20</u>	<u>Class 20</u>
Furniture; bedroom furniture; mirrors; beds; water beds; divans; bedsteads; headboards; bedding, other than bed linen; pillows; mattresses; open spring and pocket spring mattresses; memory foam and latex mattresses; futons; air cushions and air pillows; air mattresses; bed casters not of metal; bed fittings not of metal; chairs; armchairs; cabinets; chests of drawers; wardrobes; tables; desks; footstools; storage furniture; storage boxes [furniture]; bedside tables; bookcases; cots and cradles; sofa beds; bunk beds; children's beds; cushions; parts and fittings for all the aforesaid goods.	Dog beds; Cat beds; Beds for pets; Pet cushions; Cushions (Pet -); Pet furniture; Beds for household pets; Portable beds for pets; Pet crates; Bed mattresses; Air bed lounge; Pet grooming tables; Sofa beds; Pet houses; Animal housing and beds; Infant beds; Bed slats; Bed rails; Bed chairs; Cushions for lining pet crates; Beds for animals; Bumper guards for cribs, other than bed linen; Kennels for household pets; Divan beds; Bunk beds; Dog kennels; Feather beds; Bed heads; Chair beds; Portable infant beds; Bed frames; Beds, bedding, mattresses, pillows and cushions; Beds; Inflatable pet beds; Dog houses [kennels]; Cushions; Nap mats [cushions or mattresses]; Dog baskets; Cat baskets.
<u>Class 24</u>	
Textiles; fabrics and textiles for beds and furniture; bed linen; duvets; bed covers; bed blankets, bed clothes; covers for	

duvets; mattress covers; covers for pillows and pillow cases; covers for cushions; bedspreads; covers for hot water bottles; furniture coverings of textile; quilts; parts and fittings for all the aforesaid goods.

Class 35

Retail services relating to the sale of bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations, non-medicated soaps, perfumery, essential oils, non-medicated cosmetics, non-medicated hair lotions, scents, fragrances, oils for perfumes and scents, perfumeries, room scenting sprays, scented fabric refresher sprays, scented linen sprays, scented oils, scented room sprays, air fragrance preparations; Retail services relating to the sale of air fragrance reed diffusers, air fragrancing preparations, aromatics for fragrances, cleaning and fragrancing preparations, Cushions filled with fragrant substances, cushions impregnated with fragrant substances, fragrance for household purposes, fragrance preparations, fragrance refills for non-electric room fragrance dispensers, fragrance sachets, refills for electric room fragrance dispensers, room fragrances, room fragrancing products; Retail services relating to the

sale of Scientific, measuring, checking (supervision), life-saving and teaching apparatus and instruments, data processing equipment, computer software, computer hardware, mobiles apps, downloadable software applications, wearable monitors, monitoring instruments, monitoring apparatus, other than for medical purposes, monitoring units [electric], electronic sensors, bio-sensors, movement sensors; Retail services relating to the sale of sensors for scientific use to be worn by a human to gather human biometric data, electronic tracking apparatus and instruments, wearable activity trackers, measuring apparatus and instruments, computer software in the field of tracking, monitoring and analysing of sleep, movement and heart rate, electronic devices for tracking, monitoring and analysing of sleep, movement and heart rate [other than for medical use]; Retail services relating to the sale of mobiles apps in the field of tracking, monitoring and analysing of sleep, movement and heart rate, downloadable software applications in the field of tracking, monitoring and analysing of sleep, movement and heart rate; Retail services relating to the sale of medical and surgical apparatus and instruments,

namely medical devices for sensing, measuring, diagnostic and treatment purposes in the field of sleep including wearable medical devices to be worn while sleeping, Pulse rate monitors, medical devices for measuring sleep, precision sensors for medical use, sensor apparatus for medical use; Retail services relating to the sale of apparatus for lighting, lighting, light bulbs, lamps and light sources, lighting connected to alarm clocks, luminaires, controllable light sources and lighting apparatus, filters for lighting appliances; Retail services relating to the sale of horological and chronometric instruments, clocks, alarm clocks, electronic alarm clocks, alarm clocks which use light to wake-up users, alarm clocks with in-built lights; Retail services relating to the sale of furniture, bedroom furniture, mirrors, beds, water beds, divans, bedsteads, headboards, bedding, pillows, mattresses, open spring and pocket spring mattresses, memory foam and latex mattresses, futons, air cushions and air pillows, air mattresses, sleeping bags, bed casters not of metal, bed fittings not of metal, chairs, armchairs, cabinets, chests of drawers, desks, footstools, cots and cradles; Retail services relating to the sale of household or kitchen utensils and

<p>containers, articles for cleaning purposes, scent sprays [atomizers], air fragrancing apparatus, aerosol dispensers, not for medical purposes, perfume burners, perfume vaporizers, perfume sprayers, plug-in diffusers for mosquito repellents, plug-in diffusers for air fragrancing; Retail services relating to the sale of textiles, fabrics and textiles for beds and furniture, bed linen, duvets, bed covers, bed blankets, bed clothes, covers for duvets, mattress covers, covers for pillows and pillow cases, covers for cushions, bedspreads, covers for hot water bottles, pyjama cases, furniture coverings of textile, eiderdowns, quilts, parts and fittings for all the aforesaid goods; all the aforesaid provided in a retail furniture and bedding superstore, online via the Internet or other interactive electronic platforms, via mail order or catalogues or by means of telecommunications; information, advisory and consultancy services relating to all of the aforesaid.</p>	
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23. In its counterstatement and submissions in lieu, the Applicants conceded that the Opponent's goods in class 20 are similar to the Applicants' goods. I find on this basis that the Opponent's goods in class 20 are similar to the Applicants' goods at least to a minimum degree. I also find there are some goods in the Applicants' class 20 that are either self-evidently or *Merit* identical to the Opponent's goods. For the sake of clarity I indicated below all the contested goods and their respective degree of similarity with the Opponent's goods.

Class 20

- “*Dog beds; Cat beds; Beds for pets; Pet cushions; Cushions (Pet -); Beds for household pets; Portable beds for pets; Cushions for lining pet crates; Beds for animals; Inflatable pet beds; Animal [...] beds; Pet furniture; Pet grooming tables; Pet houses; Animal housing [...]; Kennels for household pets; Dog houses [kennels]; Dog baskets; Cat baskets; Dog kennels; Pet crates*”

24. The Applicants’ terms above are similar at least to a low degree to the Opponent’s goods in class 20 as conceded by the Applicants.

- “*Beds; Sofa beds; Bunk beds; Bed frames; Bed heads; Infant beds; Portable infant beds; [...] bedding, mattresses, pillows and cushions; Bed mattresses; Cushions; Nap mats [cushions or mattresses]; “Bed slats; Bed rails; Bumper guards for cribs, other than bed linen”*

25. The above terms are either identically reproduced or essentially identical to the Opponent’s goods in class 20.

- “*Air bed lounge; Bed chairs; Divan beds; Feather beds; Chair beds; Beds, [...]*”

26. All the above terms fall within the Opponent’s wider term “*beds*” and, thus, are identical in line with the principle outlined in *Meric*.

Average consumer and the purchasing act

27. It is necessary for me to determine who the average consumer is for the goods in question (i.e., beds/furniture for pets and beds, bedding and parts of beds for humans). I must then determine the manner in which the goods are likely to be selected by the average consumer in the course of trade.

28. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion it must be borne in mind that the average consumer’s level of attention is likely to vary according to the category of goods and services in question: *Lloyd Schuhfabrik Meyer, Case C-342/97*. In *Hearst Holdings Inc, Fleischer Studios Inc v A. V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear*

Limited, J Fox Limited, [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

“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.”

29. In its submissions in lieu, the Opponent contends that “*the goods in this opposition are forms of furniture, bed products for both animals and humans, which can be relatively cheap items which can be purchased on the high street, home and domestic stores in retail parks, in supermarkets, discount stores and from mass-market online retailers (such as Amazon). As the goods are not aimed at a technical public, nor are they high value, the average consumer’s level of attention would be low [...]*”. The Applicants did not provide submissions in this regard.

30. I note the Opponent’s submission and consider that the average consumer for the goods will be members of the general public for beds, bedding and parts of beds meant for human use, and animal-owning members of the general public for pet beds/furniture. The goods are likely to vary in cost and frequency of purchase, for example, the price of cushions will be relatively low and purchased frequently (both for people and pets), but the purchase of beds (for people) as well as kennels or grooming tables (for pets) is likely to be infrequent, with the price of the goods relatively high. Regardless, the average consumer will take various factors into consideration such as the cost, quality, materials used, location and the suitability of the goods for the user’s needs (whether for the people’s personal use or for the pet owners’ needs). Therefore, the level of attention paid during the purchasing process will be medium for both sections of the general public (i.e., people and pet owners).

31. The goods are likely to be obtained by self-selection from the shelves (or a display area for bigger goods such as beds) of a retail outlet (including pet stores), or online equivalent. I also consider that the goods may be purchased following perusal of

advertisements. 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 a sales assistant or representative.

Comparison of the marks

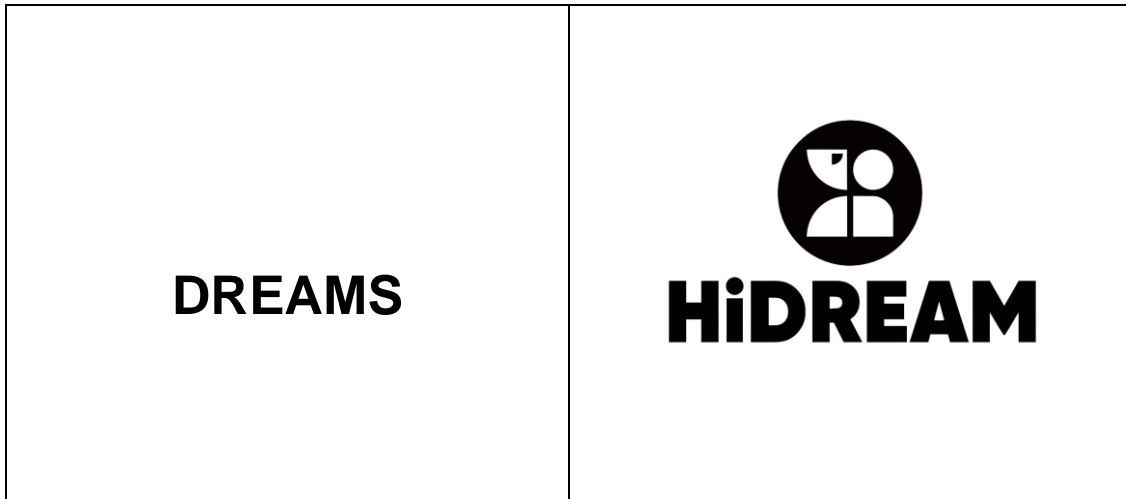
32. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the trade marks must be assessed 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.”

33. 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.

34. The respective trade marks are shown below:

Earlier trade mark	Contested trade mark
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Overall impression

35. The Earlier Mark consists of the word 'DREAMS' in standard characters. The Earlier Mark's overall impression lies in the word itself that forms the mark.

36. The Contested Mark is comprised of the conjoined word combination "HiDREAM" placed underneath a circular figurative device representing a combination of four white geometrical shapes (along with a small black shape placed on the top-left geometric device) placed on a black background. The Opponent argues that *"there are three elements to the mark. The visual device element, the word 'Hi' and the word 'DREAM'. The device has limited impact on the overall impression of the mark given it would not be referred to aurally by consumers and neither does it appear to have any conceptual meaning which consumers would take from it [...] Given DREAM is the longer element of the mark, and as it appears in block capitals, it would be seen as the dominant and distinctive element of the mark"*. The Applicants contend that in the Contested Mark the figurative element is dominant since it *"is located in the upper part of the mark. The device element is round, centred in the middle of the mark, and is significantly bigger than the following word part"*. I considered the parties' arguments, and I find that, although the eye is naturally drawn to the element of the mark that can be read, given the size and position of the figurative device, it plays a roughly equal role with the words "HiDREAM".

Visual similarity

37. The Earlier Mark comprises the six-letter-long word “DREAMS” in standard typeface and all in capital letters. The Contested Mark consists of a black and white figurative device featuring a combination of white geometric shapes (along with a smaller black shape placed on top of the top-left geometric shape) and placed in a black circle. The device is placed at the centre of the mark above the word combination “HiDREAM”. The Opponent states, in its submission in lieu, that the respective marks are visually similar because they both contain the word ‘DREAM/DREAMS’ and the figurative element does not detract from the high similarity of the wording. The Applicants contend, in their submissions in lieu, that the figurative device, given its size and position, creates a substantial visual difference. Whilst I take into account the general rule that the beginnings of words tend to have more visual and aural impact than the ends,² this is no more than a general rule of thumb and does not apply in all cases. In the instant case, the fact that the first two letters (‘Hi’) of the Contested Mark differ from the Earlier Mark is tempered by the fact that the following five letters ‘DREAM’ in the respective marks are identical. There is a point of visual difference arising due to the letter ‘S’ at the end of the Earlier Mark which is not present in the Contested Mark. The stylised device in the Contested Mark further detracts from the marks’ visual similarity. All considered, I find the marks to share a below-medium degree of visual similarity.

Aural similarity

38. The Earlier Mark consists of the one-syllable word ‘DREAMS’. The Contested Mark comprises the two-syllable word combination ‘HiDREAM’. The Opponent, in its submissions in lieu, contends that the marks overlap in the word ‘DREAM’ which will be pronounced identically in both marks and the addition of ‘Hi’ in the Contested Mark is insufficient to outweigh the similarity created by the shared word ‘DREAM’. The Applicants state, in their submissions in lieu, that the Contested Mark’s verbal component ‘HiDREAM’ forms a unitary meaning, and consumers will not artificially dissect it into ‘Hi’ and ‘DREAM’. The Applicants also point out that the relevant consumers will pay more attention to the beginning of the marks, which is where the marks’ aural difference mostly lies. I acknowledge the parties’ submissions and albeit I appreciate that the average consumer normally perceives a mark as a

² *El Corte Ingles, S4 v OHIM*, Cases T-183/02.

whole and does not proceed to analyse its various details,³ they will nevertheless, perceiving a verbal sign, break it down into verbal elements which, for them, suggest a concrete meaning or which resemble words known to them.⁴ This may also be the case when a mark contains elements that would encourage such a split, such as irregular capitals. Given the different capitalisation of the words ‘Hi’ and ‘DREAM’ and that such words are common English terms, I find that consumers will recognise these two words within the Contested Mark and voice them in line with the common English pronunciation for ‘Hi’ and ‘DREAM’. Consumers will not attempt to articulate the figurative element in the Contested Mark. Therefore, taking into consideration the relevant consumers will read the Contested Mark as the combination of ‘Hi’ and ‘DREAM’, and that they will voice the Earlier Mark ‘DREAMS’ as the plural form of the dictionary word ‘DREAM’, the consumers will voice identically ‘DREAM-’ in both marks. Thus, I find, overall, the marks to be aurally similar to a medium degree.

Conceptual similarity

39. The Earlier Mark is the plural form of the English dictionary word “dream”. The Opponent, in its submissions in lieu, contends that the relevant consumers will understand the prefix ‘Hi’ in the Contested Mark as a purely laudatory reference to “high quality” and the relevant consumers will understand ‘DREAM’ and ‘DREAMS’ in both marks as meaning “a series of thoughts, images, and sensations occurring in a person’s mind during sleep”. The Opponent also states that the figurative device does not appear to have any conceptual meaning. The Applicants, in their submissions in lieu, disagree that ‘Hi’ would be understood as abbreviation indicating the “high” quality of the goods. The Applicants do not articulate further on the potential meaning of “Hi” or of the marks in general. I do not find that ‘Hi’ is likely to be understood as referring to the short version of “high”, but rather it is likely to be perceived as the informal way to say “hello”. I also find that the relevant consumers could understand ‘DREAM’ and ‘DREAMS’ in both marks with the same dictionary meaning: either a series of thoughts one experiences whilst asleep (as

³ *Lloyd Schuhfabrik Meyer*, paragraph 25.

⁴ Case T-356/02 *Vitakraft-Werke Wührmann v OHIM – Krafft (VITAKRAFT)* [2004] ECR II 3445, paragraph 51; Case T-256/04 *Mundipharma v OHIM – Altana Pharma (RESPICUR)* [2007] ECR II 0000, paragraph 57.

the Opponent submits) or as indicating an aspiration. The Earlier Mark, though, will be understood as the plural form of the Contested Mark's 'DREAM' (in whichever meaning it is perceived). I also bear in mind that in respect of, for example, beds, the meaning the Opponent submitted (i.e., thoughts one experiences whilst asleep) may be more readily brought to mind. Therefore, as the marks share the same dictionary meaning conveyed by the word "dream" (whether in singular or plural form) and taking into consideration the addition of the word 'Hi' in the Contested Mark, overall, I find the marks have a medium conceptual similarity.

Distinctive character of the earlier trade mark

40. The distinctive character of a trade mark can be appraised only, first, by reference to the goods and services in respect of which registration is sought and, secondly, by reference to the way it is perceived by the relevant public – *Rewe Zentral AG v OHIM (LITE)* [2002] ETMR 91. In *Lloyd Schuhfabrik*, the CJEU stated that:

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

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

41. Registered trade marks possess varying degrees of inherent distinctive character. These range from the very low, such as those which are suggestive or allusive of the services, to those with high inherent distinctive character, such as invented words.
42. In its statement of grounds, the Opponent claimed the Earlier Mark's enhanced distinctiveness as a result of it having been used in the market. However, the Opponent has filed no evidence of use of its mark to support this claim. Consequently, I have only the inherent position to consider.
43. The Earlier Mark is the English dictionary word "DREAMS". In its counterstatement, the Applicants argue that "*the word "DREAMS" not only has a laudatory meaning, but also has a reference to the characteristics of the goods in question*" and "[it] can be definitely be seen as allusive when considered in the context of goods related to beds, bedroom furniture, mattresses, and bedding. It is hence noted that the marks are very weakly distinctive". I do not find that "DREAMS" conveys a laudatory meaning (i.e., it communicates a positive promotional message) in relation to the goods. I believe that as dreams are what one has while asleep, the word "DREAMS" is clearly suggestive in relation to goods such as beds. Its inherent distinctiveness would, for such goods, be fairly low (i.e. between low and medium). For items of furniture which have no connection to sleeping, "DREAMS" does not have any particular connotations which would put its distinctive character at below a normal level. It is inherently distinctive to a medium degree.

Likelihood of confusion

44. There is no simple formula for determining whether there is a likelihood of confusion. The factors considered above have a degree of interdependency (*Canon* at [17]). I must make a global assessment of the competing factors (*Sabel* at [22]), considering the various factors from the perspective of the average consumer and deciding whether the average consumer is likely to be confused. In making my assessment, I must keep in mind 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 he has retained in his mind (*Lloyd Schuhfabrik* at [26]).

45. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other (*L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10).
46. I have found the respective goods' degree of similarity to range from at least low to identical. The level of attention is medium for both sections of the general public (i.e., people and pet owners). The distinctiveness of the Earlier Mark varies from between low and medium to medium according to the goods the mark refers. The visual similarity is below medium, the aural and conceptual similarity is medium. The purchase of the contested goods is considered to be mainly visual but the potential for aural use is borne in mind. The respective marks overlap in the word 'DREAM' but they differ in the additional letter 'S' (placed at the end of the Earlier Mark) as well as in the initial letters 'Hi-' and the figurative device contained in the Contested Mark. Therefore, I find that the marks are unlikely to be mistakenly recalled or misremembered as each other and I do not consider there to be a likelihood of direct confusion.
47. It now falls to me to consider the likelihood of indirect confusion. The concept of 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)".

48. These three categories are not exhaustive; rather, they were intended to be illustrative of the general approach, as has been confirmed by the Court of Appeal.⁵ I recognise that a finding of indirect confusion should not be made merely because the competing marks share a common element. In this connection, it is not sufficient that a mark merely calls to mind another mark: this is mere association not indirect confusion.⁶ The Court of Appeal has also emphasised that, where there is no direct confusion, there must be a "proper basis" for finding indirect confusion.⁷

49. The Applicants contend, in its submissions in lieu, that "*due to the distinctive suffix "Hi" and the overall differences in structure along with the device part of the Applicant's mark, it is unlikely that the public would perceive the Applicant's mark as a sub-brand or brand extension of the Opponent's marks*". The Opponent, in its submissions in lieu, argues that "*in relation to the likelihood of indirect confusion, applying the options laid out by Mr Purvis, the marks share common elements which are particularly striking (the word element DREAM). In addition, the word 'Hi' at the beginning of the Subject Mark could be a brand extension by the Opponent which could naturally fall within their other brands, DREAMS and DREAM BIGGER*

⁵ *Liverpool Gin Distillery and others v Sazerac Brands, LLC and others* [2021] EWCA Civ 1207.

⁶ *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17.

⁷ *Liverpool Gin Distillery*.

DREAMS, and/or be seen by consumers are a high quality range of DREAM goods originating from the Opponent. Likewise, there is a further risk of indirect confusion as the Subject Mark will be seen either as a sub-brand for DREAMS/ DREAM BIGGER DREAMS or as a variation, companion, sub-brand per LA Sugar Ltd V Back Beat Inc., BL 0-375-10. It is therefore submitted that a likelihood of confusion exists, and the opposition should succeed under this ground”.

50. I found above that in both competing marks the relevant consumer will understand ‘dream’ as the thoughts one has while sleeping (or as meaning one’s aspirations). The relevant consumer is likely to perceive ‘DREAMS’ in the Earlier Mark as the house mark and, when confronted with the addition of ‘Hi’ and the figurative logo in the Contested Mark, the consumer will likely perceive them as elements of a rebranding or sub-branding linked to the ‘DREAMS’ brand. For example, consumers may perceive ‘Hi’ as a welcoming, conversational and promotional variation of the house mark ‘DREAMS’ conveying a sense of greeting or invitation to the consumers aimed at engaging more directly with them and aimed at giving to the house brand a sense of approachability and positivity. Additionally, house brands can also be used in plural or singular form. It follows that a significant proportion of the relevant consumers will likely see the Contested Mark as a sub-brand or brand extension deriving from the Earlier Mark and will likely believe that both marks originate from the same or economically linked undertakings. As a result, I find that there is a likelihood of indirect confusion.

CONCLUSION

51. The opposition under section 5(2)(b) succeeds in full and the application, subject to any appeal, will be refused for all the goods in class 20.

52. The application may proceed to registration for the other goods applied for in classes 18, 21 and 28 which were not opposed.

COSTS

53. As the Opponent has been successful it is entitled to a contribution towards its costs. Bearing in mind the relevant scale set out in the Tribunal Practice Notice (TPN) 1/2023 I award costs as follows:

Official fee	£100
Preparing a statement and considering the other side's statement	£250
Preparing submissions in lieu	£350
Total	£700

54. I order CHIOSA GLOBAL E-COMMERCE LIMITED and Chen Jiang to pay the sum of **£700**. This sum is to be paid within 21 days of the expiry of the appeal period or within 21 days of the final determination of this case, if any appeal against the decision is unsuccessful.

Dated this 23rd day of September 2025

Andrea Rossi

For the Registrar