O/0925/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. 4085938

BY XINGJI WU

TO REGISTER:

ancipure

Ancipure

AS A SERIES OF TWO TRADE MARKS IN CLASS 7

AND

IN THE MATTER OF THE OPPOSITION THERETO

UNDER NO. 450302 BY

SHENZHEN YUANPU TECHNOLOGY CO., LTD

BACKGROUND AND PLEADINGS

1. On 9 August 2024, Xingji Wu ("the applicant") applied to register **ancipure** and **Ancipure** as a series of two trade marks in the United Kingdom in respect of the following goods:

> *Class 7*
> *Air compressors; Air compressors for vehicle compressed air systems; Air condensers [compressors]; Compressors for air conditioners; Rotary air compressors; Screw air compressors; Suction valves for air compressors; Air compressors for vehicles; Compressors for air conditioning apparatus; Compressors for air handlers; Air condensers; Air compressors [machines]; Compressed air motors; Compressed air engines; Compressed air machines; Compressors; Gas compressors; Air compressing apparatus.*

2. The series was accepted and published for opposition purposes on 30 August 2024.

3. On 21 October 2024, the application was opposed by Shenzhen Yuanpu Technology Co., Ltd ("the opponent"). The opposition is based on sections 5(2)(a) and 5(4)(a) of the Trade Marks Act 1994 ("the Act") and concerns all the goods in respect of which registration is sought.

4. Under section 5(2)(a), the opponent relies on UKTM No. 4045274, **ancipure**, which has a filing date of 29 April 2024 and was registered on 19 July 2024 for goods in Classes 9 and 12. Under this ground, the opponent is relying on *Air pumps for automobiles* in Class 12 only. This mark qualifies as an earlier mark under section 6(1)(a) of the Act by virtue of its earlier filing date. As it completed its registration process less than five years before the filing date of the contested mark, the opponent does not have to show that it has made genuine use of the mark. Consequently, it may rely on *Air pumps for automobiles*. The opponent claims that the marks are identical and that the contested goods are similar and/or complementary. It argues that the nature, intended purpose and user of the goods are the same. It therefore claims that there is a likelihood of confusion on the part of the public.

5. Under section 5(4)(a), the opponent claims to have used the sign **ancipure** throughout the UK since 18 February 2023 for the following goods and services: *Tyre*

inflator, Air Compressor, Tyre Pump and the retailing of the same. The opponent claims to have acquired goodwill under the sign. According to the opponent, use of the contested marks would constitute a misrepresentation to the public that would damage the goodwill in its business. Consequently, use of the contested marks would be contrary to the law of passing off.

6. The applicant filed a defence and counterstatement denying the claims made. It took no further part in the proceedings.

7. Neither side requested to be heard or filed written submissions in lieu of the same.

EVIDENCE

8. Only the opponent filed evidence. This comes in the form of a witness statement from Wang Chengxi, President of Shenzhen Yuanpu Technology Co., Ltd. It is dated 27 June 2025 and accompanied by two annexes. The second of these contains screenshots taken from the Amazon website, information relating to orders, and a single invoice. I shall discuss this evidence in more detail in due course. The witness statement contains submissions relating to the motives of the applicant in filing the application for the contested mark.[1] Wang Chengxi submits that the applicant's behaviour was not consistent with honest practices and that it lacks a genuine intention to use the mark, but rather seeks to block the opponent from expanding the **Ancipure** mark beyond China. I can make little sense of this, as the opponent is the proprietor of an earlier mark in the UK. However, no claim has been brought under section 3(6) of the Act and so I shall say no more about these submissions.

REPRESENTATION

9. In these proceedings, the opponent is represented by Isabelle Bertaux of IBE Avocat and the applicant is represented by Clark Wu.

RELEVANCE OF EU LAW

10. 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

[1] Curiously, the witness statement gives the name of the applicant as "Wang Chengxi", who is the witness.

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 departure from the EU.

DECISION

Section 5(2)(a)

11. Section 5(2)(a) of the Act is as follows:

> "A trade mark shall not be registered if because–
>
> > (a) it is identical with an earlier trade mark and is to be registered for goods or services 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. The following standard summary of the principles applicable to the assessment of the likelihood of confusion was approved by the Supreme Court in *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc & Anor* [2025] UKSC 25:

> 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 they have kept in their mind, and whose attention varies according to the category of goods or services in question;
>
> c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

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

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

f) and beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

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

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

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

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

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

Identity of the Marks

13. In *S.A. Société LTJ Diffusion v Sadas Vertbaudet SA*, Case C-291/00, the Court of Justice of the European Union ("CJEU") held that:

> "54. … a sign is identical with the trade mark where it reproduces, without any modification or addition, all the elements constituting the trade mark or where, viewed as a whole, it contains differences so insignificant that they may go unnoticed by an average consumer."

14. The respective marks are shown below:

Contested marks	**Earlier mark**
ancipure Ancipure	ancipure

15. The first mark in the contested series is clearly identical to the earlier mark. In my view, the fact that the first letter of the second mark in the contested series is capitalised, while the first letter of the earlier mark is in lower case, is an insignificant difference that is likely to go unnoticed by the average consumer. I therefore find that the marks are identical.

Comparison of goods

16. It is settled case law that I must make my comparison of the goods on the basis of all relevant factors. These include the nature of the goods, their purpose, their users and method of use, the trade channels through which they reach the market, and whether they are in competition with each other or are complementary: see *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, paragraph 23, and *British Sugar Plc v James Robertson & Sons Limited (TREAT Trade Mark)* [1996] RPC 281 at [296]. As the General Court ("GC") said in *Boston Scientific Ltd v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06, goods are complementary when:

> "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."

17. The goods to be compared are shown in the table below:

Contested goods	Earlier goods
<u>*Class 7*</u> *Air compressors; Air compressors for vehicle compressed air systems; Air condensers [compressors]; Compressors for air conditioners; Rotary air compressors; Screw air compressors; Suction valves for air compressors; Air compressors for vehicles; Compressors for air conditioning apparatus; Compressors for air handlers; Air condensers; Air compressors [machines]; Compressed air motors; Compressed air engines; Compressed air machines; Compressors; Gas compressors; Air compressing apparatus.*	
	<u>*Class 12*</u> *Air pumps for automobiles.*

18. Section 60A of the Act is as follows:

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

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

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

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

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

19. Neither party has given me any evidence or submissions to help me interpret the terms in the contested specification. My understanding is that an air compressor is a machine that takes in air and compresses it to fit into a smaller space, at a higher pressure. This creates energy that may be used for a variety of different purposes, including in vehicle engines, as indicated by the applicant's specification, or to power tools or inflate objects. The compressed air is stored in the machine until the time that it is needed.

20. Turning to the opponent's term, I note that an air pump may be a vehicle part, but it may also be a portable device used to inflate tyres. These are the goods shown in the opponent's Annex 02. Pumps do not compress or store air and produce lower air pressure than compressors.

21. In *Pathway IP Sarl (formerly Regus No. 2 Sarl) v Easygroup Ltd (formerly Easygroup IP Licensing Limited)* [2018] EWHC 3608 (Ch), Carr J considered whether it was appropriate to take the class(es) in which the trade mark was registered into account in revocation or invalidation proceedings when deciding whether a description covered the goods or services shown in the evidence. After considering the judgments of the High Court in the *Omega 1* and *Omega 2* cases,[2] he stated that in his (provisional) view, the class number should be taken into account where the meaning of the disputed term is not otherwise sufficiently clear and precise. In particular the judge stated that where:

"94. … the words chosen may be vague or could refer to goods or services in numerous classes, the class may be used as an aid to interpret what the words mean with the overall objective of legal certainty of the specification of goods and services."

22. The heading for Class 12 is *"Vehicles; apparatus for locomotion by land, air or water."* The Explanatory Note states that:

[2] [2010] EWHC 1211 (Ch) and [2012] EWHC 3440 (Ch).

"Class 12 includes mainly vehicles and apparatus for the transport of people or goods by land, air or water.

This Class includes, in particular:

- motors and engines for land vehicles;
- couplings and transmission components for land vehicles;
- air cushion vehicles;
- remote control vehicles, other than toys;
- parts of vehicles, for example, bumpers, windscreens, steering wheels;
- treads for vehicles, as well as tyres for all kinds of vehicle wheels.

This Class does not include, in particular:

…

- motors, engines, couplings and transmission components, other than for land vehicles (Cl. 7);
- parts of all kinds of motors and engines, for example, starters, mufflers and cylinders for motors and engines (Cl. 7)

…

23. I therefore find that the goods covered by the opponent's term *Air pumps for automobiles* are portable pumps that are used to inflate tyres. Having made this finding, I shall now compare the contested terms to this one. Where appropriate, I shall group the contested terms together, recalling that Mr Geoffrey Hobbs QC, sitting as the Appointed Person, said in *SEPARODE Trade Mark*, BL O-399-10, that:

"5. The determination must be made with reference to each of the different species of goods listed in the opposed application for registration; if and to the extent that the list includes goods which are sufficiently comparable to be assessable for registration in essentially the same way for essentially the same reasons, the decision taker may address them collectively in his or her decision."

24. The first group of contested terms consists of *Air compressors; Rotary air compressors; Screw air compressors; Air compressors [machines]; Compressed air machines; Compressors; Gas compressors; Air compressing apparatus.* I have included *Rotary air compressors* and *Screw air compressors* in this group, as I understand that these are types of air compressors, and I have included *Gas compressors* because air is a mixture of gases. I see no reason why these broad terms would not include goods that could be used for inflating tyres. It is therefore my view that the purpose and user are the same. There is some similarity in nature, although the compressors will have a storage tank, while pumps do not, and method of use, as both parties' goods may be attached to objects that are to be inflated. I have no information on trade channels. It is possible that they are sold through some of the same outlets. I consider that there is a degree of competition between the goods, but I find no complementarity in the *Boston Scientific* sense. Taking all these factors into account, I find that there is a medium to high degree of similarity.

25. The next group consists of *Air compressors for vehicle compressed air systems; Air compressors for vehicles.* In my view, these goods are parts of vehicles. The user is a vehicle manufacturer or mechanic who replaces parts in a customer's vehicle. The mechanic is also likely to be a user of *Air pumps for automobiles.* The purpose of the goods is different, as is their method of use. I do not consider it likely that the goods will share trade channels or that their nature is similar. There is no competition between them and I do not consider that there is any complementarity. I find that the goods are dissimilar.

26. The following goods are all likely to be used in heating, ventilation and air-conditioning systems: *Air condensers [compressors]; Compressors for air conditioners; Compressors for air conditioning apparatus; Compressors for air handlers; Air condensers*. The users, purpose, nature and method of use are different. I do not consider that there will be any shared trade channels. There is no competition or complementarity. I find that they are dissimilar to the opponent's *Air pumps for automobiles.*

27. *Suction valves for air compressors, Compressed air motors* and *Compressed air engines* are parts that are used in air compressors. The users are likely to be manufacturers of air compressors or people involved in their maintenance and repair.

There is overlap with the users of the opponent's goods only to the extent that some of the users of the applicant's goods are members of the general public who own vehicles. The purposes of the goods, their nature and method of use are all different, and the goods will not be distributed through the same trade channels. I find no competition or complementarity. In my view, the goods are dissimilar.

28. In *eSure Insurance Limited v Direct Line Insurance Plc* [2008] EWCA Civ 842 CA, Arden LJ said at paragraph 49 of her judgment that *"If there is no similarity at all, there is no likelihood of confusion to be considered."* Therefore, the opposition under section 5(2)(a) fails in respect of the following goods:

> *Air compressors for vehicle compressed air systems; Air condensers [compressors]; Compressors for air conditioners; Suction valves for air compressors; Air compressors for vehicles; Compressors for air conditioning apparatus; Compressors for air handlers; Air condensers; Compressed air motors; Compressed air engines.*

29. It continues in respect of the following goods:

> *Air compressors; Rotary air compressors; Screw air compressors; Air compressors [machines]; Compressed air machines; Compressors; Gas compressors; Air compressing apparatus.*

Average consumer and the purchasing process

30. The average consumer is deemed to be reasonably well informed and reasonably circumspect: see *Hearst Holdings Inc & Anor v A.V.E.L.A. Inc & Ors*, [2014] EWHC 439 (Ch), paragraph 60. 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: see *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel BV*, Case C-342/97, paragraph 26.

31. In *Iconix*, the Supreme Court approved the comments of Arnold LJ in *Lidl Great Britain Ltd & Anor v Tesco Stores Ltd & Anor (Rev1)* [2024] EWCA Civ 262, where he pointed out that:

"16. First, the average consumer is both a legal construct and a normative benchmark. They are a legal construct in that consumers who are ill-informed or careless and consumers with specialised knowledge or who are excessively careful are excluded from consideration. They are a normative benchmark in that they provide a standard which enables the courts to strike a balance between the various competing interests involved, including the interests of trade mark owners, their competitors and customers.

17. Secondly, the average consumer is neither a single hypothetical person nor some form of mathematical average, nor does assessment from the perspective of the average consumer involve a statistical test. They represent consumers who have a spectrum of attributes such as gender, age, ethnicity and social group. … It follows that assessment from the perspective of the average consumer does not involve the imposition of a single meaning rule akin to that applied in defamation law (but not malicious falsehood). … if having regard to the perceptions and expectations of the average consumer, the court considers that a significant proportion of the relevant public is likely to be confused, then a finding of infringement may properly be made.

18. Thirdly, assessing from the perspective of the average consumer is designed to facilitate adjudication of trade mark disputes by providing an objective criterion, by promoting consistency of assessment and by enabling courts and tribunals to determine such issues so far as possible without the need for evidence. …

19. Fourthly, the average consumer's level of attention varies according to the category of goods or services in question.

20. Fifthly, the average consumer rarely has the opportunity to make direct comparisons between trade marks (or between trade marks and signs) and must instead rely upon the imperfect picture of the trade mark they have kept in their mind."

32. The average consumer of *Air pumps for automobiles* is a member of the general public. They may also be purchased by people who service and repair cars. The cost

of such goods is moderate and it is unlikely that they are acquired frequently. They will be bought from specialist retailers of goods for use when maintaining a car, either in physical retail outlets or ordered online or through catalogues. The purchasing process is likely to be largely visual, although I do not discount the possibility of advice being sought from sales staff or orders being made by telephone. The aural element of the mark also has a role to play. The average consumer will consider features such as method of use, portability and power source. In my view, the average consumer will pay a medium degree of attention.

33. The average consumer of the applicant's air compressors is either a member of the public or a tradesperson. These are not goods that will be purchased frequently and their price is likely to vary, depending partly on the technical complexity of the goods in question. In my view, they are likely to be purchased through specialist retailers, either in a physical shop, online or through catalogues. Consequently, I consider that the purchasing process is likely to be predominantly visual, albeit with some role for the aural element of the mark, where advice is sought or orders made by telephone. The average consumer is likely to pay a slightly higher than medium degree of attention, given the complexity of the goods.

Distinctive character of the earlier mark

34. Distinctive character is a measure of how strongly a mark distinguishes the goods or services of one undertaking from those of others. The factors that I must take into account in assessing the level of distinctive character were set out by the CJEU in *Lloyd Schuhfabrik Meyer*:

> "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)."

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. The distinctiveness of the mark can be enhanced by the use that has been made of it.

36. In my view, the earlier mark would be perceived by the average consumer as an invented word. Consequently, I find that it has a high degree of inherent distinctive character.

37. The opponent has not claimed that the earlier mark has acquired an enhanced degree of distinctive character. However, because it has filed evidence, I shall consider this point.

38. Wang Chengxi states that their company's devices have been available in the UK through the Amazon platform since 2019. I recall that in the pleadings under section 5(4)(a) the opponent claimed to have used the earlier sign since 18 February 2023. (The earlier sign is identical to the earlier mark.) This apparent discrepancy is not explained. Indeed, Wang Chengxi says in their witness statement that the mark was in use in China and that the opponent intended to extend its use beyond China, including in the United Kingdom.[3] The picture is therefore somewhat confusing. However, I have no dated evidence to support use from 2019 and this brief statement from Wang Chengxi does not in itself establish use of the earlier mark from that date.

39. The opponent's documentary evidence of use can be found in Annex 02 to Wang Chengxi's witness statement. This annex contains the following documents:

(a) A printout from the Amazon UK website showing a product described as *"Ancipure Multi-Function Tyre Inflator Air Compressor".* The listing shows that the brand is ancipure and that the Amazon ASIN is B0C77J2VX8. The listing was

[3] Paragraph 3.

captured on 26 June 2025, and all of the product reviews were posted after the relevant date of 9 August 2024;

(b) A printout from the Amazon UK website showing another product described as *"Multi-Function Tyre Inflator Air Compressor"*. The listing shows that the brand is ancipure and that the Amazon ASIN is B0CR3KJY3T. As with printout (a), the listing was captured on 26 June 2025, and all of the product reviews were posted after the relevant date;

(c) A printout from the Amazon UK website showing a further portable tyre inflator air compressor sold by the brand ancipure. The Amazon ASIN is B0CHYNHDMB. The listing was captured on 26 June 2025. There are seven reviews and six of these come from the period 7 November 2023 to 1 April 2024. The seventh is dated after the relevant date. Of the six posted before the relevant date, three are reviews of free products and the other three concern verified purchases;

(d) Undated photographs showing air pumps and tyre inflators with the **Ancipure** mark visible on the product;

(e) An undated printout from the Amazon UK website showing the Ancipure store;

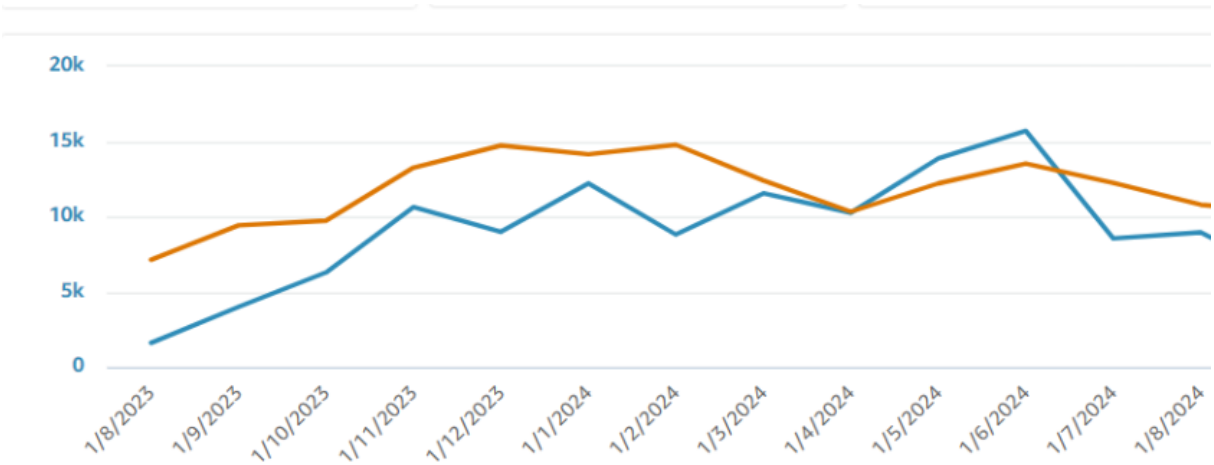
(f) A brief extract headed "Business Report" for ASIN B0C77J2VX8. It states that 11,068 of these units were ordered between 14 May 2023 and 13 May 2025 at a total cost of £272,565. The data covers a period of 2 years, 9 months of which were after the relevant date. I have nothing to enable me to infer the proportion of orders that were made before the relevant date by UK customers;

(g) A screenshot from the Amazon Seller website. This presents the information on sales volumes summarised above in a different format;

(h) An extract from a screenshot from a website that I consider is likely to be Amazon, but this is not stated. It appears to show the top selling tyre inflators at 14 May 2025, so is of little value for the purposes of these proceedings;

(i) A graph headed *"YP-Inflator001"*, showing that £147,806.83 of sales were made during the period 1 August 2023 to 1 May 2025 and that £39,528.67 was spent during this period on a campaign. I presume that this was a promotional

campaign. As the graph shows performance on a monthly basis, it is possible to see that there was a peak in June 2024 of over £15k in sales;[4]



(j) Four screenshots from the Amazon Seller website showing brief details of purchases of tyre inflators made on 4 April 2024, 24 July 2023, 27 July 2023 and 28 July 2023. It shows that VAT has been collected and paid to the appropriate authorities. As the relevant legislation is shown as *"UK VAT on eCommerce"*, I infer that these sales were made to a customer in the UK. The ASIN of the goods sold in July 2023 is given as B0C77J2VX8. This product also has an SKU code of "YP-Inflator001". On this basis, I infer that the graph in (i) above shows sales of a tyre inflator. On the orders, there are thumbnail images of the goods, but these are too small for me to be able to see if the goods bear the earlier mark;

(k) A screenshot from the Amazon Seller website showing details of a sale of a tyre inflator at £25.64 to a customer in Lowick, Northumberland on 3 April 2024. As with the orders described above, there is a thumbnail image which is too small for me to be able to discern any details;

(l) A screenshot from Amazon Ads showing that "YP-Inflator001" was a sponsored product on the Amazon website from 1 August 2023, with a daily budget of £30;

[4] This is the lower of the lines at 1 August 2023. The orange line shows ROAS (which I understand is an abbreviation for "Return on Ad Spend") and the scale is a percentage scale which in the exhibit can be seen on the right side of the graph.

(m) A single invoice showing the sale of a tyre inflator (B0C77J2VX8) for £26.99 to a customer in Hertfordshire. The order was made on 28 July 2023. The word "ancipure" does not appear on the invoice, which comes from Amazon itself.

40. The evidence shows that the opponent has made sales through the Amazon platform and the order and invoice evidence shows that at least some of these were to UK customers. However, as I have already noted, I am not able to draw any conclusions about the proportion of sales made to UK customers. The opponent has also spent some money on promoting the goods. However, there is a significant weakness in this evidence as there is nothing that shows me that the mark was actually used before the relevant date. Indeed, Wang Chengxi's witness statement can be reasonably interpreted as saying that at the relevant date the mark was not in use in the UK, but in China. The witness statement simply states that the company's devices have been available in the UK since 2019 on Amazon. The company is called Shenzhen Yuanpu Technology Co., Ltd, not Ancipure. The reviews I referred to in (c) do not mention "Ancipure" either. While I note that the listing on which these reviews appear does use the earlier mark, this was captured in June 2025 and so does not establish that the earlier mark was used when the reviews were written. Whether the distinctive character of an earlier mark has been enhanced must be assessed at the application date of the contested mark. Considering all these matters, I am unable to find that the distinctive character of the earlier mark had been enhanced. Nevertheless, I have found the inherent distinctive character to be high.

Conclusions on likelihood of confusion

41. Making an assessment of the likelihood of confusion is a matter of considering the relevant factors from the viewpoint of the average consumer of the goods at issue and determining whether they are likely to be confused. When doing this, I am required to bear in mind that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely on the imperfect picture of them that they have in their mind. This means that the global assessment emulates what happens in the mind of the average consumer on encountering the later mark with an imperfect recollection of the earlier mark. The courts have not said what weight should be attached to each of the factors or provided a formula that can be applied to any set of circumstances. Because this is a global assessment, there is some

interdependence between the factors and so a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods or vice versa.

42. There are two types of confusion that may occur. Direct confusion is where the average consumer mistakes one mark for the other, while indirect confusion is where the average consumer recognises that the marks are different but assumes that the later mark also identifies the goods or services of the owner of the earlier mark, or that the two undertakings are related: see *L.A. Sugar Limited v Back Beat Inc*, BL O/375/10, paragraph 16.

43. I found that the marks in the contested series are identical to the earlier mark, which has a high degree of inherent distinctive character. I also found that the contested goods that are still in play are similar to a medium to high degree to the earlier goods. In the light of these findings, I consider that the average consumer is likely to mistake one mark for the other and so be directly confused between them.

44. The opposition under section 5(2)(a) is successful in relation to the following goods:

> *Class 7*
> *Air compressors; Rotary air compressors; Screw air compressors; Air compressors [machines]; Compressed air machines; Compressors; Gas compressors; Air compressing apparatus.*

Section 5(4)(a)

45. Section 5(4)(a) of the Act states that:

> "A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented –
>
> > (a) by virtue of any rule or law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, where the condition in subsection (4A) is met
> >
> > …"

46. Subsection (4A) is as follows:

> "The condition mentioned in subsection (4)(a) is that the rights to the unregistered trade mark or other sign were acquired prior to the date of application for registration of the trade mark or date of the priority claimed for that application."

47. In *Reckitt & Colman Products Limited v Borden Inc. & Ors* [1990] RPC 341, HL, Lord Oliver of Aylmerton described the "classical trinity" that must be proved in order to reach a finding of passing off at [406]:

> "First, he must establish a goodwill or reputation attached to the goods or services which he supplies in the mind of the purchasing public by association with the identifying 'get-up' (whether it consists simply of a brand name or a trade description, or the individual features of labelling or packaging) under which his particular goods or services are offered to the public, such that the get-up is recognised by the public as distinctive specifically of the plaintiff's goods or services. Secondly, he must demonstrate a misrepresentation by the defendant to the public (whether or not intentional) leading or likely to lead the public to believe that the goods or services offered by him are the goods or services of the plaintiff. Thirdly, he must demonstrate that he suffers or, in a quia timet action, that he is likely to suffer damage by reason of the erroneous belief engendered by the defendant's misrepresentation that the source of the defendant's goods or services is the same as the source of those offered by the plaintiff."

48. *Halsbury's Laws of England* Vol. 97A (2021 reissue) provides further guidance with regard to establishing the likelihood of deception. In paragraph 636 it is noted (with footnotes omitted) that:

> "Establishing a likelihood of deception generally requires the presence of two factual elements:
>
> > (1) that a name, mark or other distinctive indicium used by the claimant has acquired a reputation among a relevant class of persons; and

(2) that members of that class will mistakenly infer from the defendant's use of a name, mark or other indicium which is the same or sufficiently similar that the defendant's goods or business are from the same source or are connected.

While it is helpful to think of these two factual elements as two successive hurdles which the claimant must surmount, consideration of these two aspects cannot be completely separated from each other.

The question whether deception is likely is one for the court, which will have regard to:

(a) the nature and extent of the reputation relied upon,

(b) the closeness or otherwise of the respective fields of activity in which the claimant and the defendant carry on business;

(c) the similarity of the mark, name etc. used by the defendant to that of the claimant;

(d) the manner in which the defendant makes use of the name, mark etc. complained of and collateral factors; and

(e) the manner in which the particular trade is carried on, the class of persons who it is alleged are likely to be deceived and all other surrounding circumstances.

In assessing whether deception is likely, the court attaches importance to the question whether the defendant can be shown to have acted with a fraudulent intent, although a fraudulent intent is not a necessary part of the cause of action."

Relevant Date

49. In *Maier & Anor v ASOS plc & Anor* [2015] EWCA Civ 220, Kitchin LJ (as he then was) said:

> "165. … Under the English law of passing off, the relevant date for determining whether a claimant has established the necessary reputation or goodwill is the date of the commencement of the conduct complained of (see, for example, *Cadbury-Schweppes Pty Ltd v The Pub Squash Co Ltd* [1981] RPC 429). The jurisprudence of the General Court and that of OHIM is not entirely clear as to how this should be taken into consideration under Article 8(4) (compare, for example, T-114/07 and T-115/07 *Last Minute Network Ltd* and Case R 784/2010-2 *Sun Capital Partners Inc*). In my judgment the matter should be addressed in the following way. The party opposing the application or the registration must show that, as at the date of application (or the priority date, if earlier), a normal and fair use of the [contested] trade mark would have amounted to passing off. But if the [contested] trade mark has in fact been used from an earlier date then that is a matter which must be taken into account, for the opponent must show that he had the necessary goodwill and reputation to render that use actionable on the date that it began."

50. The applicant has not claimed that it has used the contested mark prior to filing the application. In addition, it has filed no evidence. The application date of 9 August 2024 is the only one that I need to take into account when assessing whether the opponent has shown the required goodwill.

Goodwill

51. The concept of goodwill was considered by the House of Lords in *Inland Revenue Commissioners v Muller & Co's Margarine Ltd* [1901] AC 217 at [224]:

> "What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantages of the good name, reputation and connection of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a new business at its first start. The goodwill of a business must emanate from a particular centre or source. However widely extended or diffused its influence may be, goodwill is worth nothing unless it has the power of

attraction sufficient to bring customers home to the source from which it emanates."

52. I have already summarised the opponent's evidence of use in [paragraph 39] above and shall not repeat myself. The criticisms I made of the evidence under section 5(2)(a) are also relevant here. While I can accept from the evidence that the opponent had customers in the UK for its tyre inflators, the absence of dated evidence showing the sign relied upon means that I am unable to find that that sign was distinctive of any goodwill that the opponent may have accrued through its sales activity on Amazon. Consequently, the opposition fails under section 5(4)(a).

OUTCOME

53. The opposition has been partially successful. Subject to a successful appeal, registration is refused for the following goods:

Class 7

Air compressors; Rotary air compressors; Screw air compressors; Air compressors [machines]; Compressed air machines; Compressors; Gas compressors; Air compressing apparatus.

54. Subject to a successful appeal, Application No. 4085938 may proceed to registration for the following goods:

Class 7

Air compressors for vehicle compressed air systems; Air condensers [compressors]; Compressors for air conditioners; Suction valves for air compressors; Air compressors for vehicles; Compressors for air conditioning apparatus; Compressors for air handlers; Air condensers; Compressed air motors; Compressed air engines.

COSTS

55. Both parties have had a share of success in these proceedings, with the greater share going to the applicant. In the circumstances, I consider that the applicant is entitled to a contribution towards the costs of these proceedings, with the total amount awarded reflecting the proportional share of success. After filing a defence and

counterstatement, the applicant took no further part in the proceedings and so I award the applicant the sum of **£125** as a contribution to the costs of preparing the defence and counterstatement and considering the notice of opposition.

56. I therefore order Shenzhen Yuanpu Technology Co., Ltd to pay Xingji Wu the sum of £125. This sum is to be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 13th day of October 2026

Clare Boucher,
For the Registrar