O/0932/26

TRADE MARKS ACT 1994

IN THE MATTER OF UK REGISTRATION NO. UK00004080125
IN THE NAME OF CANGZHOU QIXI TECHNOLOGY CO., LTD
IN RESPECT OF THE FOLLOWING TRADE MARK:

Acepur

IN CLASSES 7, 9, 10 AND 11

AND

AN APPLICATION FOR A DECLARATION OF THE INVALIDITY THEREOF
UNDER NO. 508821
BY ACERPURE INC

Background and pleadings

1. The trade mark shown on the front page of this decision ("contested mark") stands registered in the name of Cangzhou Qixi Technology Co., Ltd. ("the Proprietor"). It was applied for on 26 July 2024 before the UK IPO and was registered on 27 December 2024 for the following goods**:**

Class 7 Electric vacuum cleaners for bedding; Electric fruit presses; Electric fruit squeezers; Electric fruit peelers; Dust removing installations for cleaning purposes; Dust filters and bags for vacuum cleaners; Electric vacuum cleaners; Drycleaning machines; Dishwashers; Compressors for air conditioners; Compressors; Refrigerator compressors; Vacuum cleaners.

Class 9 Air analysis apparatus; Air measuring apparatus; Air pollution measuring devices; Air quality sensors; Apparatus for monitoring gas consumption; Dust masks; Dust protective masks; Dust protective goggles; Dustproof glasses; Electronic weighing scales; Electronic weighing scales for personal use; Face-protection shields; Face shields, other than for medical purposes; Protective masks, not for medical purposes.

Class 10 Humidifying apparatus for medical use; Electric massage apparatus for personal use; Meters for measuring blood glucose; Massage apparatus; Foot massage apparatus; Neck massage apparatus; Back massage apparatus; Massage apparatus for eyes; Massage apparatus, electric or non-electric; Instruments for massage; Electric massage chairs; Massage chairs with built-in massage apparatus.

Class 11 Air cleaning apparatus; Air humidifiers; Electric humidifiers; Dehumidifiers; Electric fans; Electric heaters; Warm air heating apparatus; Gas cleaners and purifiers; Electric dish drying machines for household purposes; Dish sterilizers.

2. On 1 May 2025, AcerPure Inc. ("the Cancellation Applicant") filed an application to have this trade mark declared invalid under the provisions of section 5(2)(b)[1] of the Trade Marks Act 1994 ("the Act")[2]. This ground may be relied upon in invalidation proceedings by virtue of section 47 of the Act. The application is directed against all of the goods and services for which the contested mark stands registered.

3. The Cancellation Applicant relies on the following trade mark ("the Earlier Mark"):

acerpure

UK registration no. UK00003575459

Filing date 6 January 2021; registration date 2 July 2021.

Relying on the following goods:

Class 7 Robotic vacuum cleaners; electric sweepers for floors; washing machines for household purposes; electric coffee grinders; kitchen machines, namely, electric mixers.

Class 11 Air conditioning units; portable electric warmers and heaters; heating pads and electric blankets, not for medical purposes; electric kettles; electric cooking utensils, namely, electric griddles; electric fans; electric air dryers; air purifiers; water purifying apparatus; filters for drinking water; drinking fountains for pets.

4. The Earlier Mark, by virtue of its earlier filing date, constitutes an earlier mark in accordance with section 6 of the Act. The Earlier Mark was registered less than five years before the filing date of the Contested Mark and is therefore not subject to proof

[1] The Cancellation Applicant rescinded its invalidation in relation to Sections 5(3) and 5(4)(a) on 2 September 2025. The Invalidation proceedings are in relation to Section 5(2)(b) only.
[2] 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.

of use in accordance with section 6A of the Act. The Cancellation Applicant can, therefore, rely upon all of the goods it has identified without having to demonstrate use of the mark.

5. The Cancellation Applicant claims in the Notice of Cancellation that the marks are similar and that the respective services are identical or similar. As a result, the Cancellation Applicant claims that there is a risk of confusion between the marks.

6. The Proprietor filed a counterstatement denying the claims made.

7. The Proprietor is represented by Pablo Albert Catala, and the Cancellation Applicant is represented by Groom Wilkes & Wright LLP. Neither party filed evidence. No hearing was requested however, the Cancellation Applicant filed submissions in the evidence rounds, so this decision is taken following a careful consideration of the papers.

Preliminary matter

8. On the 3 July 2025 the Proprietor filed a TM23 surrendering *"installations for water purification"* from class 11 of the specification, this was recorded on 10 July 2025. The Proprietor states on the TM8 counterstatement that "*this is being done in good faith and as part of an understanding reached between the parties to reduce the potential for overlap or confusion with the Cancellation Applicant's earlier rights.*[3]*"* As the Cancellation Applicant confirmed on 21 July 2025 that this limitation did not materially affect the invalidation proceedings, I shall proceed with my decision as the specifications stand.

Decision

Section 47

9. The relevant parts of section 47 of the Act are as follows:

(2) Subject to subsections (2A) and (2G), the registration of a trade mark may be declared invalid on the ground-

[3] TM8 counterstatement

(a) that there is an earlier trade mark in relation to which the conditions set out in section 5(1), (2) or (3) obtain, or

(b) that there is an earlier right in relation to which the condition set out in section 5(4) is satisfied, unless the proprietor of that earlier trade mark or other earlier right has consented to the registration.

[…]

10. (2A) The registration of a trade mark may not be declared invalid on the ground that there is an earlier trade mark unless –

(a) the registration procedure for the earlier trade mark was completed within the period of five years ending with the date of the application for the declaration,

(b) the registration procedure for the earlier trade mark was not completed before that date, or

(c) the use conditions are met.

[…]

(5) Where the grounds of invalidity exist in respect of only some of the goods or services for which the trade mark is registered, the trade mark shall be declared invalid as regards those goods or services only.

(5A) An application for a declaration of invalidity may be filed on the basis of one or more earlier trade marks or other earlier rights provided they all belong to the same proprietor.

(6) Where the registration of a trade mark is declared invalid to any extent, the registration shall to that extent be deemed never to have been made: Provided that this shall not affect transactions past and closed."

Section 5(2)(b)

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

> "5(2) A trade mark shall not be registered if because-
>
> (b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark".

The Principles

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 Paris 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 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, 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.

Comparison of goods and services

13. The goods and services to be compared are:

Cancellation Applicant's goods	**Proprietor's goods**
Class 7 *Robotic vacuum cleaners; electric sweepers for floors; washing machines for household purposes; electric coffee grinders; kitchen machines, namely, electric mixers.*	Class 7 *Electric vacuum cleaners for bedding; Electric fruit presses; Electric fruit squeezers; Electric fruit peelers; Dust removing installations for cleaning purposes; Dust filters and bags for vacuum cleaners; Electric vacuum cleaners; Drycleaning machines; Dishwashers; Compressors for air conditioners; Compressors; Refrigerator compressors; Vacuum cleaners.*
	Class 9 *Air analysis apparatus; Air measuring apparatus; Air pollution measuring devices; Air quality sensors; Apparatus for monitoring gas consumption; Dust masks; Dust protective masks; Dust protective goggles; Dustproof glasses; Electronic weighing scales ;Electronic weighing scales for personal use; Face-protection shields; Face shields, other than for medical purposes; Protective masks, not for medical purposes.*
	Class 10 *Humidifying apparatus for medical use; Electric massage apparatus for personal use; Meters for measuring blood glucose; Massage apparatus;*

	Foot massage apparatus; Neck massage apparatus; Back massage apparatus; Massage apparatus for eyes; Massage apparatus, electric or non-electric; Instruments for massage; Electric massage chairs; Massage chairs with built-in massage apparatus.
Class 11 *Air conditioning units; portable electric warmers and heaters; heating pads and electric blankets, not for medical purposes; electric kettles; electric cooking utensils, namely, electric griddles; electric fans; electric air dryers; air purifiers; water purifying apparatus; filters for drinking water; drinking fountains for pets.*	Class 11 *Air cleaning apparatus; Air humidifiers; Electric humidifiers; Dehumidifiers; Electric fans; Electric heaters; Warm air heating apparatus; Gas cleaners and purifiers; Electric dish drying machines for household purposes; Dish sterilizers.*

14. When making the comparison, all relevant factors relating to the goods and services in the specification should be taken into account. In *Canon*, the Court of Justice of the European Union ("CJEU") stated at paragraph 23 of its judgment:

> "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 also 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. The General Court ("GC") confirmed in *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T-133/05, that, even if goods are not worded identically, they can still be considered identical if one term falls within the scope of another (or vice versa):

"29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 *Institut fur 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. Further, in *Kurt Hesse v OHIM*[4], the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v Office for Harmonization in the Internal*

[4] Case C-50/15 P

Market (Trade Marks and Designs) (OHIM), Case T-325/06, the GC stated that "complementary" means:

> "...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."

18. For the purposes of considering the issue of similarity of goods and services, it is permissible to consider groups of terms collectively where they are sufficiently comparable to be assessed in essentially the same way and for the same reasons (see *Separode Trade Mark (BL O/399/10) and BVBA Management, Training en Consultancy v. Benelux-Merkenbureau* [2007] ETMR 35 at paragraphs 30 to 38).

Class 7

Vacuum cleaners; Electric vacuum cleaners;

19. "*Robotic vacuum cleaners*" in the Cancellation Applicant's specification will fall within the broader category of "*vacuum cleaners*" and "*Electric vacuum cleaners*" in the Proprietor's specification. The goods are clearly identical on the principle outlined in *Meric*.

Electric vacuum cleaners for bedding;

20. I compare the above to "*Robotic vacuum cleaners*" in the Cancellation Applicant's specification. Although the contested goods are specialised vacuum cleaners intended primarily for cleaning bedding, they remain vacuum cleaning machines. They share the same nature, broad purpose, users and trade channels as the earlier goods. Further, they may be regarded as competing products within the wider vacuum cleaner market. I therefore find the goods highly similar.

Dust removing installations for cleaning purposes

21. I bear in mind that the comparison between the goods ought to be carried out based on the ordinary and natural, or core, meaning[5] of the terms as they are

[5] *YouView TV Ltd v Total Ltd* [2012] EWHC 3158 (Ch)

registered and applied-for. The contested goods are apparatus for the removal of dust for cleaning purposes. To my mind and in the absence of evidence to the contrary, I would consider the contested goods to be directed primarily at the industrial sector. Whilst the term is not restricted to industrial use, the reference to 'installations' suggests that the goods are likely to include fixed or large-scale dust extraction systems of the type commonly used in industrial or commercial environments rather than portable domestic appliances.

22. The Cambridge English Dictionary defines “robotic” as “equipment that can perform task automatically” and “vacuum cleaner” as “an electric machine which sucks up dust and dirt from carpets”.[6] the terms in the Proprietor’s specification are not limited and could, cover both domestic and industrial cleaning apparatus. There may be some overlap in nature (such as where they are all electric goods) and method of use. The specific purpose of the goods are similar in that they all have the general purpose of cleaning up dust. They are not in competition, nor are they complementary in the strict sense, as neither is indispensable or important for the use of the other. Any similarity arises only from their broad functional overlap, therefore I find them similar to a low to medium degree.

Dust filters and bags for vacuum cleaners

23. The above contested goods are component parts for vacuum cleaners. I compare the contested goods to the Cancellation Applicant’s “*Robotic vacuum cleaners”.* I bear in mind that the fact that the Proprietor’s goods may be used as components or accessories of the Cancellation Applicant’s goods is not sufficient, in itself, to establish similarity.[7] Whilst there may be some overlap in end users and trade channels, the goods differ in nature, with the Proprietor’s goods being consumable components and the Cancellation Applicant’s goods being machines. There is complementarity in that the Cancellation Applicant’s “robotic vacuum cleaner(s)” is important or indispensable to the Proprietor’s component parts as they cannot function other than in conjunction with each other. The nature of the relationship is one where the average consumer may think the responsibility for those goods lies with the same undertaking, since

[6] Collins English dictionary definition “robotic” and “vacuum cleaner” accessed 28/05/2026 12.57
[7] *Les Éditions Albert René v OHIM*, Case T-336/03

replacement parts can be ordered from the manufacturer. I consider these goods to be similar to at least a medium degree.

Electric fruit presses; Electric fruit squeezers; Electric fruit peelers

24. *"Electric fruit presses"* and *"Electric fruit squeezers"* are used to pulp fruits in order to extract fruit juice. They have the same users as "kitchen machines, namely, electric mixers" and share the same trade channels. They are not in competition, but there is some complementarity, as they may be available as attachments for food mixers or kitchen machines and the average consumer would expect them to be produced by the same business. I find these goods to be similar to no more than a medium degree. The same applies for *"Electric fruit peelers",* they are used to remove the skin, but in all other respects the analysis is the same. They are also similar to "kitchen machines, namely, electric mixers" to no more than a medium degree.

Drycleaning machines;

25. The Cancellation Applicant submits that these are similar to "*washing machines for household purposes*" on the basis that they are white goods. I accept that there is some overlap in nature, as both are machines used for cleaning textiles and laundry. They also share a similar purpose, namely the cleaning of garments and other textiles, although they achieve that purpose using different cleaning methods. There is some overlap in method of use, as both involve loading textiles into a machine and operating a cleaning cycle. The goods differ, however, in their typical users and trade channels, as drycleaning machines are generally intended for commercial establishments whereas washing machines for household purposes are directed at domestic consumers. They are not complementary and any competitive relationship is limited. Taking all factors into account, I consider the goods to be similar to a medium degree.

Dishwashers;

26. The Cancellation Applicant makes the same statement as above in relation to the contested goods. I accept that there may be some limited overlap in trade channels at

a high level due to all of these goods being sold by general retailers selling a variety of white goods for the home. Clearly, there will be an overlap in user. However, the method of use and purpose of the goods clearly differ. Any overlap in nature by virtue of them all being electrical goods is minimal. They are neither in competition, nor complementary. I consider them to be similar to a low degree.

Compressors for air conditioners; Compressors;

27. The definition of 'compressor' is '*a machine or part of a machine that squeezes gas or air and makes it take up less space*'.[8] The Cancellation Applicant submits that these are similar to *"washing machines for household purposes"* on the basis that they are parts for white goods. As above I bear in mind that the fact that the Proprietor's goods may be used as components or accessories of the Cancellation Applicant's goods is not sufficient, in itself, to establish similarity.[9] Furthermore, I find the closest comparator to be "*Air conditioning units"* in the Cancellation Applicant's class 11 specification and so I make the comparison accordingly. Whilst there may be some overlap in end users and trade channels, the goods differ in nature, with the Proprietor's goods being component parts and the Cancellation Applicant's goods being an air conditioning unit. There is complementarity in that the Proprietor's contested goods are important or indispensable to the Applicant's finished product as they cannot function other than in conjunction with each other. The nature of the relationship is one where the average consumer may think the responsibility for those goods lies with the same undertaking, since replacement parts can be ordered from the manufacturer. I consider these goods to be similar to at least a medium degree.

Refrigerator compressors;

28. On application of the *Canon* and *Treat* case law, I cannot see any overlap with the above goods with the Cancellation Applicant's goods and therefore find them to be dissimilar.

[8] Collins dictionary definition of 'compressor'
[9] *Les Éditions Albert René v OHIM*, Case T-336/03

Class 9

29. The Cancellation Applicant submits that all of the contested Class 9 goods are similar and/or associated with the Cancellation Applicant's Class 11 goods as they relate to air and purification. [10]

Air analysis apparatus; Air measuring apparatus; Air pollution measuring devices; Air quality sensors

30. The above goods are all scientific or environmental apparatus. They differ from the goods in the Cancellation Applicant's specification in respect of method of use, nature and core purpose. As highly specialised items, the trade channels would also differ significantly as retailers of such equipment have a narrow focus when compared with the broad trade channels through which "air conditioning units" are sold. I do not consider these to be in competition or complementary to the earlier goods and the average consumer would not see that the responsibility for those goods lies with the same undertaking. Overall, I find these goods to be dissimilar.

Apparatus for monitoring gas consumption;

31. I can see no overlap with the Cancellation Applicant's goods as set out in the above principles and therefore find these goods to be dissimilar.

32. *Dust masks; Dust protective masks; Dust protective goggles; Dustproof glasses; Face-protection shields; Face shields, other than for medical purposes; Protective masks, not for medical purposes.*

33. I can see no overlap with the Cancellation Applicant's goods as set out in the above principles and therefore find these goods to be dissimilar.

Electronic weighing scales;

34. The Cancellation Applicant compares the contested goods to the Proprietor's goods in Class 7 on the basis that they are 'electronic kitchen apparatus.'[11] The

[10] CA submissions – para 10
[11] CA submissions – para 11

contested goods are broad terms and I bear in mind that broad terms should be given their literal meaning.[12] I compare the above to '*kitchen machines, namely, electric mixers'.*[13] I accept that they may be sold through the same kitchen appliances stores (at a very general level), this is not enough to find similarity, furthermore, the actual businesses that produce the goods are likely to differ. In my view the contested goods would not fall within the literal meaning of the compared terms, nor can I see any reason for them to be similar when taking account of the case law cited above. In my view, they are dissimilar.

Electronic weighing scales for personal use;

35. The Cancellation Applicant makers the same comparison as above. Firstly, I bear in mind that I am entitled to treat the class number as relevant to the interpretation of the scope of application[14], and that 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".[15] In this instance, the Proprietor's goods are registered in Class 9. NICE's explanatory note of Class 9 is that it "includes mainly apparatus and instruments for scientific or research purposes, audiovisual and information technology equipment, as well as safety and life-saving equipment" and provides examples such as 'baby scales', 'bathroom scales' and 'scales with body mass analysers / scales with body mass analyzers'.

36. Therefore, I consider that the contested goods to be digital floor devices that measure an individual's body weight and display the results on a digital screen. Consequently, I cannot agree with the Cancellation Applicant submissions that they 'similar and/or associated'[16] to the Cancellation Applicant's electronic kitchen apparatus in Class 7. The respective goods differ in their nature, purpose and method of use. They are neither in competition, as consumers would not substitute one for the

[12] *Sky v Skykick* [2020] EWHC 990 (Ch)
[13] The use of the words 'namely' or must be understood as a restriction to the specific goods listed thereafter- '*kitchen machines, namely, electric mixers'* means that the application only covers *'electric mixers'* and not any other type of *'kitchen machines'.*
[14] *Altecnic Ltd's Trade Mark Application* [2002] RPC 34
[15] *Pathway IP Sarl (formerly Regus No. 2 Sarl) v Easygroup Ltd (formerly Easygroup IP Licensing Limited),* [2018] EWHC 3608 (Ch)
[16] Cancellation Applicant's Submissions – para 11

other, nor are they complementary in the sense that one is indispensable or important for the use of the other. I accept that they may be sold through the same retail outlets, such as department stores, home goods retailers and online marketplaces offering a broad range of household electrical products, but that is not enough to find a level of similarity. In my view, they are dissimilar.

Class 10

Humidifying apparatus for medical use;

37. I compare these goods to the Cancellation Applicant's *"air conditioning units"*. Whilst the respective goods differ in nature and specific purpose, there are points of similarity between them. Both are apparatus used to control aspects of the surrounding air environment and may in certain circumstances be used to improve air quality or comfort. There may also be an overlap in users and trade channels, particularly where such goods are supplied through businesses specialising in environmental control equipment. However, I bear in mind that the contested goods are specifically intended for medical use, whereas the earlier goods are not so limited. The goods are neither in competition nor complementary in the strict sense. Taking all these factors into account, I find the goods to be similar to a low degree.

Meters for measuring blood glucose;

38. I can see no overlap with the Cancellation Applicant’s goods as set out in the above principles and therefore find these goods to be dissimilar.

Electric massage apparatus for personal use; Massage apparatus; Foot massage apparatus; Neck massage apparatus; Back massage apparatus; Massage apparatus for eyes; Massage apparatus, electric or non-electric; Instruments for massage; Electric massage chairs; Massage chairs with built-in massage apparatus

39. The Cancellation Applicant compares the above to their Class 7 goods on the basis that they are also electric apparatus. The contested goods above include a range

of massage devices. I find the nature and method of use of these devices to be different to the Cancellation Applicant's goods. I do not find the goods to be complementary, and I find it unlikely that there will be competition between the goods. Furthermore, I find the closest comparator to be *'heating pads and electric blankets, not for medical purposes'* in Class 11. Whilst there may be some overlap in users and the goods may occasionally be sold through the same general retail outlets, they differ significantly in their nature, purpose and method of use. The earlier goods are intended primarily to provide warmth and thermal comfort, whereas the contested goods are intended to provide massage treatment. The goods are neither complementary nor in competition with one another and I do not consider that the average consumer would expect them to originate from the same undertaking. Taking all relevant factors into account, I find the goods to be dissimilar.

Class 11

Air cleaning apparatus;

40. The contested goods are devices that improve air quality and circulate clean air back into atmosphere. By definition this is an air purifier, therefore, "*Air cleaning apparatus"* is identical to *"air purifiers*" in the Cancellation Applicant's Class 11.

Air humidifiers; Electric humidifiers; Dehumidifiers;

41. I find that the contested goods are highly similar to, at least, the Cancellation Applicant's "*Air conditioning units*". The respective goods are likely to share users and trade channels. They also have some overlap in purpose because both parties' goods are intended to improve air quality. Their respective method of use and nature may also be similar.

Electric fans;

42. I find that the term *"Electric fans"* are identical in both parties' class 11 specifications.

Electric heaters; Warm air heating apparatus;

43. The Cancellation Applicant's *"portable electric warmers and heaters"* fall within the broader category of the contested good in the Proprietor's specification. The goods are clearly identical on the principle outlined in *Meric*.

Gas cleaners and purifiers;

44. The contested goods appear to me to be specialist goods that are unlikely to be sold through the same retailers as the Cancellation Applicant's goods. I have been provided with no evidence or submissions giving me any indication as to why I should find these goods similar to the Cancellation Applicant's goods. There is no overlap in method of use, nature or purpose. They are neither in competition nor complementary. I consider the goods to be dissimilar.

45. The remaining goods in class 11 of the application are all electric domestic cleaning products:

Electric dish drying machines for household purposes; Dish sterilizers.

46. They are likely to be sold through the same trade channels to the same users as the Cancellation Applicant's *"washing machines for household purposes"* in Class 7. There may be some limited overlap in nature (such as where they are all electric goods) and method of use. Although they all have the general purpose of cleaning, The specific purpose of the goods will differ. The purpose of an *Electric dish drying machine(s) for household purposes* and *Dish sterilizers.* is to dry dishes after washing and to eliminate bacteria and other microorganisms from dishes, whereas the purpose of the Cancellation Applicant's goods is to clean clothing and other textiles. The goods are not in competition and there is no complementary relationship between them. Nevertheless, both are household appliances intended for use in a domestic environment, they target the same general class of consumer and may be sold through some of the same retail outlets specialising in household and electrical goods but I do not find this a sufficient enough factor to find any level of similarity. In my view, they are dissimilar.

47. Under section 5(2)(b), a degree of similarity between the goods and services is essential for there to be a finding of likelihood of confusion: see paragraph 49 of *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA. In relation to the goods and services which I have found to be dissimilar, as there can be no likelihood of confusion under section 5(2)(b), I will take no further account of such services, with the cancellation failing to that extent.

48. The cancellation remains 'live' for all terms that I have found to have some level of similarity with those of the Cancellation Applicant.

The average consumer and the purchasing act

49. it is necessary to determine who the average consumer is for the goods and services at issue. I must then determine the manner in which the goods and services are likely to be selected by the average consumer.

50. 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 or services in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97.

51. In *Iconix Luxembourg Holdings SARL v Dream Paris Europe Inc & Anor*, [2025] UKSC 25, 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:

(a) Consumers who are ill-informed or careless, or consumers with specialised knowledge or who are excessively careful are excluded from consideration;

(b) The average consumer provides a standard which enables the courts to strike a balance between the competing interests involved, such as trade mark owners, their competitors and consumers;

(c) The average consumer is neither a single hypothetical person nor a mathematical average; assessment from the perspective of the average consumer does not involve a statistical test. There is no single meaning rule and 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, a finding of infringement may properly be made;

(d) Assessment from the perspective of the average consumer is intended to facilitate adjudication of trade mark disputes by providing an objective criterion, by promoting consistency of assessment and by and enabling courts and tribunals to determine such issues so far as possible without the need for evidence;

(e) The average consumer's level of attention varies according to the category of goods or services in question; and

(f) 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.

52. The average consumer for the parties' goods will be both a member of the general public or a professional user in the healthcare, engineering or cleaning operations sector. The cost of the goods and services will vary, but they are unlikely to be particularly frequent purchases, although more so where professionals purchase component parts. The cost is unlikely to be low but will also not be at the highest end of the scale, although it may be more for goods aimed at the commercial sector. In any event, various factors will be taken into consideration such as ease of use, functionality and performance. Consequently, I consider a medium degree of attention is likely to be paid during the purchasing process.

53. The goods and services are likely to be purchased at physical premises or on websites. Consequently, visual considerations will dominate the selection process.

However, given that advice may be sought from retail assistants or word-of-mouth recommendations may play a role, I do not discount an aural component.

Comparison of marks

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

55. It would be wrong, therefore, to dissect the trade marks artificially, 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.

56. I note that in its submissions the Cancellation Applicant makes reference to Decision BL O/1054/22 in respect of the mark comparison. Although I acknowledge that there are relevant considerations set out in this decision which may be applied in other cases, I also acknowledge that I am not bound by earlier decisions of this tribunal and will make my own assessment of the matter.

57. The respective trade marks are shown below:

Cancellation Applicant's trade mark	Proprietor's contested trade mark
acerpure	**Acepur**

58. Both are word-only marks therefore the overall impression of the marks rests solely in those words.

59. The Cancellation Applicant's mark is an eight letter word and the Proprietor's mark is a six letter word. Visually the marks differ with regard to the letter "r" in the middle of the earlier mark and "e" at the end of the mark. The marks otherwise share the first three letters "Ace", which ordinarily carries a greater significance, with this position generally considered to have more impact due to consumers in the UK reading from left to right.[17] The marks also share letters "pur" (which form the fifth to seventh letters in the earlier mark and the last three letters of the contested mark). Overall, the marks are visually highly similar.

60. Aurally the Cancellation Applicant's mark will likely be pronounced as 'ACE-ER-PURE'. The Proprietor's mark will likely be pronounced as 'ACE-ER-PURR'. The first syllables of the Proprietor's mark are therefore aurally identical to the Cancellation Applicant's mark. Whilst the last syllables are not identical, they are similar in sound and contribute to the overall aural similarity between the marks. The only point of difference is the additional middle syllable "ser" in the earlier mark which doesn't create too much of an aural divergence between the marks as the 'r' is a soft sounding letter, sitting at the middle of the word. Overall, the marks are aurally highly similar.

61. I now consider the marks conceptually.

[17] *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02, paragraph 81

62. The respective marks are likely to be viewed as invented words, in which case no meaningful conceptual comparison can be undertaken. If the average consumer does not derive any meaning from the marks and they are seen as invented words, then I find they are conceptually neutral.

Distinctive character of the earlier trade mark

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

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

64. The Cancellation Applicant has filed no evidence to show that the earlier mark's distinctive character has been enhanced through use. Consequently, I have only the inherent position to consider.

65. The earlier mark consists of the single word ACERPURE. The Cancellation Applicant submits that the "*Earlier Registered Mark has an inherently high degree of distinctive character because it is an invented word and does not describe or even allude to the goods for which is it registered*".[18]

66. Whilst the mark as a whole is not a dictionary word, the element PURE may be understood by the average consumer as an allusive reference to purity, particularly in relation to the Class 7 and Class 11 goods. Taking into consideration that as a

[18] Paragraph 25 Cancellation Applicant submission in lieu

whole mark “ACERPURE” is an invented word, I find the earlier mark to possess a slightly above medium degree of inherent distinctive character.

Likelihood of Confusion

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

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

- I have found the respective marks visually and aurally similar to a high degree.
- I have found the marks to be conceptually neutral.
- I have found the Cancellation Applicant’s mark to be inherently distinctive to a slightly above medium degree for the relevant goods relied upon.
- I have identified the average consumer for the parties’ goods to be members of the general public or professional users in the healthcare, engineering or cleaning operations sector paying a medium degree of attention, who will select

the goods primarily by visual means, but I do not discount the aural component to the purchase.

- I have found the parties' goods in class 7 to range from dissimilar, highly similar to identical to the Cancellation Applicant's goods.

- I have found the parties' goods in class 9 to range from dissimilar to a low degree of similarity to the Cancellation Applicant's goods.

- I have found the parties' goods in class 10 to range from being dissimilar to a medium degree of similarity to the Cancellation Applicant's goods.

- I have found the Proprietor's services in class 11 to range from being dissimilar to identical to the Cancellation Applicant's goods.

69. I will consider direct confusion first. I acknowledge the main points of difference between the marks to be the presence of the letter 'r' in the middle of the earlier mark and the letter "e" at the end of the mark.

70. Both marks share the letters "Ace" and "pur", For me to be satisfied that there is a likelihood of direct confusion requires me to find that the average consumer will overlook the presence of the additional letters in the earlier mark. I bear in mind that I have found the marks to be highly visually and aurally similar and conceptually neutral.

71. In my view I consider that the average consumer will overlook, misremember or otherwise fail to notice the differences between the marks and that those consumers are likely to mistake one mark for the other when encountering them. I have found the selection process of the goods to be primarily visual and with an aural element.

72. Taking all of the above factors into consideration, and allowing for imperfect recollection, whilst bearing in mind the principle of interdependency, I find that the average consumer, or at least a significant proportion thereof, will mistake one mark for the other and be directly confused as to the origin of the relevant goods. In reaching that conclusion, I bear in mind that the high degree of visual and aural similarity between the marks is sufficient to offset even lower degrees of similarity

between the goods. Consequently, I find a likelihood of direct confusion in respect of the contested goods that I have found to be similar to a low degree or above.

73. If I am wrong in my finding above, I now consider whether there is a likelihood of indirect confusion for completeness.

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

75. Indirect confusion was described in the following terms by Iain Purvis QC (as he then was), sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*:[19]

> "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:

[19] BL O/375/10

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)."

76. These three categories are not exhaustive. Rather, they were intended to be illustrative of the general approach. 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.[20]

77. Firstly, I note that this situation is not one that appears to fall into the categories set out in *L.A. Sugar*, however, I remind myself that they were not intended to be exhaustive.

78. Having previously concluded that there is a high degree of similarity between "acerpure" and "Acepur" (and that the difference between them may be imperfectly recalled), I am of the view that even if average consumer recognises the differences in the marks, the differences between them are limited to the omission of the letter "R" and the final letter "E" in the contested mark. Despite those differences, the marks share the same opening sequence "ACE" and the sequence "PUR", resulting in a high degree of visual and aural similarity.

[20] *Duebros limited v Heirler Cenovis GmbH*, BL O/547/17

79. Bearing in mind the above medium degree of inherent distinctive character possessed by the earlier mark, together with the identity and similarity of the goods at issue, I consider that consumers who notice the differences between the marks are likely to regard the contested mark as a shortened, simplified or updated version of the earlier mark rather than a badge of origin denoting a different undertaking. Consequently, even if the average consumer does not directly mistake one mark for the other, they are likely to conclude that the goods originate from the same undertaking or from economically linked undertakings. I find a likelihood of indirect confusion in relation to those same goods.

CONCLUSION

80. The application for invalidation under section 5(2)(b) of the Act has succeeded in relation to the following goods, for which the Proprietor's mark will be declared invalid;

Class 7 Electric vacuum cleaners for bedding; Electric fruit presses; Electric fruit squeezers; Electric fruit peelers; Dust removing installations for cleaning purposes; Dust filters and bags for vacuum cleaners; Electric vacuum cleaners; Drycleaning machines; Dishwashers; Compressors for air conditioners; Compressors; Vacuum cleaners.

Class 10 Humidifying apparatus for medical use;

Class 11 Air cleaning apparatus; Air humidifiers; Electric humidifiers; Dehumidifiers; Electric fans; Electric heaters; Warm air heating apparatus;

81. The application has failed in relation to the following goods, for which the Proprietor's mark remains registered;

Class 7 Refrigerator compressors;

Class 9 Air analysis apparatus; Air measuring apparatus; Air pollution measuring devices ; Air quality sensors; Apparatus for monitoring gas consumption;

Dust masks; Dust protective masks; Dust protective goggles; Dustproof glasses; Electronic weighing scales; Electronic weighing scales for personal use; Face-protection shields; Face shields, other than for medical purposes; Protective masks, not for medical purposes.

Class 10 Electric massage apparatus for personal use; Meters for measuring blood glucose; Massage apparatus; Foot massage apparatus; Neck massage apparatus; Back massage apparatus; Massage apparatus for eyes; Massage apparatus, electric or non-electric; Instruments for massage; Electric massage chairs; Massage chairs with built-in massage apparatus.

Class 11 Gas cleaners and purifiers; Electric dish drying machines for household purposes; Dish sterilizers.

COSTS

82. Bearing in mind the scope of the goods and services applied for and the partial success of each party, I decline to favour either party with an award of costs.

Dated this 15th day of October 2026

Janeve Manca

For the Registrar