O/0988/26

TRADE MARKS ACT 1994

IN THE MATTER OF INTERNATIONAL REGISTRATION NO. 1588591
IN THE NAME OF HUAWEI TECHNOLOGIES CO., LTD.
FOR THE FOLLOWING TRADE MARK:

SingleCell

IN CLASS 9

AND

AN APPLICATION FOR A DECLARATION OF INVALIDITY

UNDER NO. 508251
BY OUTDOOR WIRELESS NETWORKS LLC

Background and pleadings

1. Huawei Technologies Co., Ltd. ("the proprietor") is the holder of international registration designating the UK number 1588591, **SingleCell** ("the proprietor's mark"). The proprietor's mark was registered on 23 March 2021. With effect from the same date, the proprietor designated the UK as a territory in which it sought to protect the mark under the terms of the Protocol to the Madrid Agreement. It became protected on 3 September 2021 in respect of the following goods:

> *Class 9: Computer programs, recorded; computer programs [downloadable software]; computers; processors [central processing units]; data processing apparatus; smartphones; network communication equipment; switchboards; optical communication instruments; transmitting sets [telecommunication]; modems; transponders; computer hardware; humanoid robots with artificial intelligence; television apparatus; radio-frequency antennas; wireless broadband radios; radio frequency receivers; radio-frequency transmitters; photovoltaic inverters; sensors; chips [integrated circuits]; chargers for electric accumulators; batteries, electric, for vehicles; car video recorders; LCD large-screen displays; smartwatches; tablet computers.*

2. On 24 December 2024, Outdoor Wireless Networks LLC ("the applicant") made an application for a declaration of invalidity in respect of the proprietor's mark pursuant to section 47 of the Trade Marks Act 1994 ("the Act"). The application is based upon section 5(2)(b) of the Act and is directed at all the goods.

3. The applicant relies upon its UK trade mark number 801232944, **ONECELL** ("the applicant's mark). The mark is a comparable mark, created pursuant to the Withdrawal Agreement. The applicant's mark was filed on 30 September 2014 and became registered on 1 December 2015.[1] The applicant's mark stands registered for the following goods, all of which are relied upon for the purposes of the application:

> *Class 9: Wireless communication devices for voice, data or image transmission; wireless communications equipment, namely, cellular wireless base stations*

[1] With a US priority date of 7 May 2014.

and small cells; and computer software for use in operating and controlling cellular wireless base stations and small cells.

4. The applicant's mark qualifies as an 'earlier trade mark' in accordance with section 6 of the Act. The earlier mark had been registered for more than five years at the priority date of the proprietor's mark and is, therefore, subject to the use requirements in section 6A of the Act. The applicant has made a statement of use, and the proprietor has put the applicant to proof of use for all the goods relied upon in these proceedings.

5. In its statement of grounds, the applicant argues that the competing marks are highly similar, and that the parties' goods are identical or similar. On this basis, the opponent submits that there is a likelihood of confusion.

6. The proprietor filed a counterstatement denying the ground of invalidation.

7. The applicant is professionally represented by Abel & Imray LLP, and the proprietor is represented by Forresters IP LLP. Both parties filed evidence. No hearing was requested, but both parties filed written submissions in lieu. This decision is taken following careful consideration of all the papers before me.

Evidence

8. The applicant's evidence consists of a witness statement provided by Stuart Holyoak (dated 8 July 2025) and Exhibits SH1 to SH8. Mr Holyoak states that he is Director of Distributed Antenna Systems (DAS) and Small Cell Business Development for the applicant. His evidence was filed to show use of the applicant's mark and includes the applicant's brochure, price lists, product listings, and details of awards.

9. Exhibit SH8 does not show use of the applicant's mark, but has been filed to demonstrate use of the proprietor's mark. I will therefore assess this exhibit separately from the evidence of use.

10. The proprietor's evidence consists of a witness statement provided by Janette Hamer (dated 1 December 2025) and Exhibits JCH1 to JCH4. Ms Hamer states that she is a Chartered Trade Mark Attorney at Forresters IP LLP, the proprietor's representatives in these proceedings. Her evidence shows a range of screenshots of various online dictionaries and third-party websites.

11. I have taken all the evidence and submissions into account in reaching my decision and will refer to them to the extent I deem necessary.

Relevance of EU law

12. 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[2] 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.

Proof of use

13. The relevant parts of section 47 of the Act read as follows:

> "(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.
>
> (2B) The use conditions are met if–
>
> > (a) the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with their consent in relation to the goods or services for which it is registered–
> >
> > > (i) within the period of 5 years ending with the date of application for the declaration, and

[2] As amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023

(ii) within the period of 5 years ending with the date of filing of the application for registration of the later trade mark or (where applicable) the date of the priority claimed in respect of that application where, at that date, the five year period within which the earlier trade mark should have been put to genuine use as provided in section 46(1)(a) has expired, or

(b) it has not been so used, but there are proper reasons for non-use.

(2C) For these purposes—

(a) use of a trade mark includes use in a form (the "variant form") differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor), and

(b) use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(2D) [Omitted]

(2DA) [Omitted]

(2E) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services."

14. As the earlier mark is a comparable mark, paragraph 7 of Part 1, Schedule 2A of the Act is also relevant. It is as follows:

"(1) Section 6A applies where an earlier trade mark is a comparable trade mark (EU), subject to the modifications set out below.

…

(3) Where [IP completion day] falls within the five-year period, in respect of that part of the five-year period which falls before IP completion day-

(a) the references in section 6A(3) and (6) to the earlier trade mark are to be treated as references to the corresponding EUTM; and

(b) the references in section 6A(3) and (4) to the United Kingdom include the European Union."

15. Pursuant to the above provisions, there are two five-year periods; one ends on the date on which the invalidity action was filed, i.e. 25 December 2019 to 24 December 2024, and the other on the priority date claimed by the proprietor's mark, i.e. 15 January 2016 to 14 January 2021. The goods must have been put to genuine use during both of these five-year periods. Within these periods, the relevant territory is the EU (including the UK) for the period up to 31 December 2020 and the UK thereafter. I remind myself that sales in one Member State may be sufficient for showing use during the period in which the EU is the relevant territory.[3] This applies even where there are no special factors, such as the market for the goods and/or services being limited to that area of the EU.

16. In *easyGroup Ltd v Nuclei Ltd & Ors*,[4] Arnold LJ summarised the law relating to genuine use as follows:

"105. The principles applicable to determining whether there has been genuine use of a trade mark have been considered by the CJEU in a considerable number of cases, the principal decisions being Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, Case C-259/02 *La Mer Technology Inc v Laboratories Goemar SA* [2004] ECR I-1159, Case C-416/04 P *Sunrider Corp v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237, Case C-442/07 V*erein Radetsky-Order v Bundervsvereinigung Kamaradschaft 'Feldmarschall Radetsky'* [2008] ECR I9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode* GmbH [2009] ECR I-2759, Case C-149/11 *Leno Merken BV v Hagelkruis Beheer BV*

[3] For example, *Leno Merken BV v Hagelkruis Beheer BV* Case C-149/11 and *The London Taxi Corporation Limited v Frazer-Nash Research Limited & Ecotive Limited* [2016] EWHC 52
[4] [2023] EWCA Civ 1247

[EU:C:2012:816], Case C-609/11 *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], Case C-141/13 *P Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089], Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434] and Joined Cases C–720/18 and C–721/18 *Ferrari SpA v DU* [EU:C:2020:854].

106. Ignoring issues which do not arise in the present case, such as use in relation to spare parts or second-hand goods and use in relation to a sub-category of goods or services, the principles may be summarised as follows:

(1) Genuine use means actual use of the trade mark by the proprietor or by a third party with authority to use the mark: *Ansul* at [35] and [37].

(2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Centrotherm* at [71]; *Leno* at [29]; *Ferrari* at [32].

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Centrotherm* at [71]; *Leno* at [29]; *Gözze* at [37], [40]; *Ferrari* at [32].

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: *Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37]; *Verein* at [14]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle* at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23].

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with

the commercial raison d'être of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: *Ansul* at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34]; *Leno* at [29]-[30], [56]; *Ferrari* at [33].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no de minimis rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72]; *Leno* at [55].

(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: *Reber* at [32]."

17. Moreover, section 100 of the Act states that:

"If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it."

Introduction

18. In his witness statement, Mr Holyoak states that his company, Outdoor Wireless Networks LLC is the successor in title to the UK registration for the mark ONECELL. He states that "[f]ollowing the recent acquisition of CommScopeTechnologies LLC's Outdoor Wireless Networks (OWN) and Distributed Antenna Systems (DAS)—including its ANDREW brand—by Amphenol Corporation , I am now Director of DAS and Small Cell Business Development for OWN LLC, which is doing business as ANDREW, a company within the Amphenol group".

Marketing activities

19. Exhibit SH1 shows marketing brochures. The copyright notices show the years 2017 on page 4, 2021 on page 11, and 2024 on page 18. It shows the mark written as ONECELL throughout the brochure. The brochures show use of the mark in relation to telecommunication products (namely, small cell systems/baseband controller units). In his witness statement, Mr Holyoak states that these brochures show that "the products sold under the ONECELL brand comprise a suite of telecoms products for delivering consistent LTE (long-term evolution) signals, e.g. 4G and 5G within commercial buildings and public venues, including office buildings, hospitals and hotels". He also states that these brochures were provided to the applicant's customers "in the UK and elsewhere".

20. Exhibit SH2 shows screenshots of a website entitled "Mobile UK". However, I cannot see the full website address or the date of the article. In his witness statement, Mr Holyoak states that this exhibit provides details of the "UK Joint Operator Technical Specifications (JOTS)", which he explains is a "minimalist infrastructure… utilised and shared by all four major UK network operators, i.e. Vodafone, EE, O2 and Three".

Sales figures

21. In his witness statement, Mr Holyoak states that "[r]evenue generated under the ONECELL brand in the UK has been in excess of $1M USD per year since 2017". However, he does not give a breakdown as to the goods sold. He files Exhibit SH3 to show a range of invoices and purchase orders showing the sale of ONECELL-branded products in the UK and EU. These invoices and purchase orders are supported by

Exhibits SH4 to SH6, as Exhibit SH4 shows a redacted price list from January 2024, Exhibit SH5 shows a redacted price list from March 2020, and Exhibit SH6 shows a redacted price list from December 2018. Mr Holyoak states that "these price lists demonstrate the connection between the ONECELL brand and the various Materials IDs/Descriptions listed on the invoices features in Exhibit SH3)". I can see on page 3 in Exhibit SH5 that it is a "fixed price list for the OneCell C-RAN in-building solution and associated Device Management System (DMS)". In his witness statement, Mr Holyoak also states that "any reference to 'OC' is an abbreviation of ONECELL". Exhibits SH5 and SH6 refer to a wide range of products, such as, inter alia, Baseband Controller CMU (including kits, power fan units, rack mount chassis, and power cords), baseband controller software licences, radio point field units (including various modules and ceiling/wall mounts), and device management systems (including equipment to host baseband controllers, onboarding services, and managed device licences), and also maintenance and support services. Page 8 of Exhibit SH1 offers further details about these goods. It explains that a baseband controller "provides the signal source" and the radio points "transmit and receive radio-frequency (RF) signals over the air" and contain "advanced features such as cell virtualization, enhanced signal quality and user location awareness for emergency services". It also explains that the device management systems "automates provisioning and ongoing support for ONECELL deployments. It can automatically configure more than 100 key network and RF parameters. The system is available via software license or software as a service (SaaS)". The codes used within these exhibits match the codes on the invoices in Exhibit SH3, and demonstrates sales of these goods and services to the applicant's customers. All of the invoices show dates within the one or both of the relevant periods. They show sales during the first relevant period in the UK (such as Berkshire, Lichfield, Dorset, Buckinghamshire, London, and West Sussex) and in the EU (Delft). Some invoices/purchase orders show fairly significant sales figures, such as the invoice on page 45 for an order total of £689,194.37.

22. I note that the products in the invoices and purchase orders are made under CommScope (such as on page 19) as well as other business entities such as Andrew Wireless Systems UK Ltd. However, in his witness statement, Mr Holyoak states that:

> "Please be aware that, during the relevant periods, Andrew Wireless Systems UK Ltd and Andrew Wireless Systems GmbH were subsidiaries of CommScope Technologies LLC, with most of the purchase orders being raised against these companies as the ship-from entity. I confirm that at the relevant time, all of the companies were under the same control and use by all of the companies was with the consent of CommScope."

23. I therefore find that these are acceptable for showing use of the applicant's mark.

Other activities

24. Exhibit SH7 shows the awards won by CommScope for its ONECELL small cell solution at the Small Cell Forum (SCF) Awards. These show that CommScope won the category 'commercial product or service to enable multi-operator and neutral host business models' in both 2021 (page 16) and 2023 (page 10). Pages 1 to 6 show publicity issued by the SCF. In this document, the SCF describes itself as "the world's leading advocacy and standards development organization dedicated to driving sustainable digit transformation through agile, scalable, shared communications infrastructure".

Forms of the mark

25. Within the exhibits, the mark is referred to as ONECELL. An example of this is on page 12 of Exhibit SH1:

ONECELL®

26. As the work "ONECELL" is used in a plain typeface on a colour background alongside the non-distinctive 'Registered' symbol, I find this is acceptable use of the mark as it is essentially the mark as registered.

27. The mark is also referred to as OneCell (such as on page 1 of Exhibit SH1):

OneCell®

28. Whilst the mark appears in title case rather than uppercase, it is my view that this variant is acceptable for showing use of the applicant's mark. This is because word marks are protected regardless of the case type, as shown in *LA Superquimica v European Union Intellectual Property Office (EUIPO)*,[5] in which the General Court ("GC") held at [39] that word-only marks protect the word or words contained in the mark in whatever case, colour or typeface.

Sufficient use

29. The evidence has its limitations. For example, there are no details as to the spend on marketing activities to promote the mark in the UK. Whilst the applicant has indicated that the brochures were sent to customers in the UK, no further details are provided as to when, to whom and how many. There are also no details in relation to the size of the relevant market or the share of that market held by goods bearing the applicant's mark. However, an assessment of genuine use is a global assessment, which includes looking at the evidential picture as a whole.[6] The applicant's evidence demonstrates that over 1 million USD was generated each year for goods bearing the applicant's mark in the UK and the EU during the relevant periods. However, as stated previously, there are no further details to show to which goods this figure relates. I have no details of the size of the relevant market so I cannot properly contextualise its significance, although 1million USD per annum is not economically insignificant. On the face of it, the figures provided seem modest in the context of the UK and EU markets for telecommunication goods, which I understand to be reasonably large. However, as the authorities cited above show, there is no de minimis rule, and use does not need to be quantitatively significant for it to be considered genuine. Furthermore, these documents show that the sales were geographically widespread in the UK. Taking the evidential picture as a whole, I am satisfied that there has been genuine use of the opponent's mark in relation to telecommunication products during both relevant periods. I will now consider how these findings apply to the specification of the marks relied upon for opposition purposes.

[5] Case T-24/17
[6] *New Yorker SHK Jeans GmbH & Co. KG v OHIM,* Case T-415/09

Fair specification

30. In determining a fair specification for the opponent's marks, I consider *Merck KGaA v Merck Sharp & Dohme Corp & Ors*[7] in which the Court of Appeal set out the proper approach to partial revocation (which applies equally to the framing of a fair specification) as follows:

> "245. First, it is necessary to identify the goods or services in relation to which the mark has been used during the relevant period.
>
> 246. Secondly, the goods or services for which the mark is registered must be considered. If the mark is registered for a category of goods or services which is sufficiently broad that it is possible to identify within it a number of subcategories capable of being viewed independently, use of the mark in relation to one or more of the subcategories will not constitute use of the mark in relation to all of the other subcategories.
>
> 247. Thirdly, it is not possible for a proprietor to use the mark in relation to all possible variations of a product or service. So care must be taken to ensure this exercise does not result in the proprietor being stripped of protection for goods or services which, though not the same as those for which use has been proved, are not in essence different from them and cannot be distinguished from them other than in an arbitrary way.
>
> 248. Fourthly, these issues are to be considered having regard to the perception of the average consumer and the purpose and intended use of the products or services in issue. Ultimately it is the task of the tribunal to arrive at a fair specification of goods or services having regard to the use which has been made of the mark.
>
> 249. This approach does strike an appropriate balance. It gives effect to the clear intention of the EU legislature that marks must actually be used or, if not used, be subject to revocation. […] It is also fair to proprietors for it does not require a proprietor to prove that he has used his mark in relation to all possible variations of the goods or services covered by its registration but only those

[7] [2017] EWCA Civ 1834

which are sufficiently distinct to constitute coherent categories or subcategories. I am also satisfied that it gives appropriate protection to the legitimate interest of a proprietor in being able in the future to extend his range of goods or services within the scope of the terms describing the goods or services for which its mark is registered."

31. This approach was approved by the Supreme Court in *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1),*[8] subject to the proviso that it must be seen in light of more recent guidance by the Court of Justice of the European Union ("CJEU") that the essential criterion to apply for the purposes of identifying a coherent subcategory of goods or services capable of being viewed independently is their purpose and intended use (for example, *Ferrari SpA v DU*[9] at paragraphs 36-53).

32. In his witness statement, Mr Holyoak states that Exhibits SH4-SH6 show "various ONECELL-related services are offered in conjunction with ONECELL products, including telecoms engineering and maintenance services, software licences and training services".

Wireless communication devices for voice, data or image transmission.

33. It is my view that the applicant's evidence demonstrates use of the mark in relation to some types of *wireless communication devices for voice, data or image transmission.* However, as I recognise that this is a broad category of goods which may include a wide variety of devices (such as mobile phones), I am of the view that the applicant cannot rely on the term at large. For example, the invoices and price lists in Exhibits SH3, SH5, and SH6 do not appear to refer to a wide variety of devices. Furthermore, whilst the price list mentions the products sold under the mark (such as on page 3 of Exhibit SH5, as previously mentioned) it does not appear to cover a wide range of wireless communication devices. I am therefore unable to determine the types of devices sold bearing the applicant's mark other than already discussed in relation to controlling baseband systems, radio point field units, and device management systems which all form part of the wireless base stations and small cell systems. On this basis, I find instead that the applicant can rely on *wireless*

[8] [2024] UKSC 36
[9] (Joined Cases C-720/18 and C-721/18) EU:C:2020:854; [2021] Bus LR 106

communication devices for voice, data or image transmission, namely in relation to cellular wireless base stations and small cell systems.

Wireless communications equipment, namely, cellular wireless base stations and small cells.

34. It is my view that the applicant's evidence demonstrates use of the mark in relation to these types of wireless communications goods in class 9. I therefore find that it can rely on them for the purposes of the opposition.

Computer software for use in operating and controlling cellular wireless base stations and small cells.

35. I can see in Exhibit SH6 that the applicant offers software and software licences (such as shown on page 5), and the codes shown in this exhibit match some of the codes shown in the invoices in Exhibit SH3 (such as on page 32). The software appears to be used in conjunction with operating and controlling the technology; for example, I can see on page 3 of Exhibit SH5 that the software appears to be used in conjunction with controlling baseband units. I therefore find that the applicant can rely on this term in class 9.

Section 5(2)(b)

36. Section 5(2)(b) of the Act reads 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."

37. 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:*[10]

(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;

[10] [2025] UKSC 25

(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;

(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

38. In *Canon,*[11] the CJEU stated, at paragraph 23 of its judgment, that when considering whether goods are similar, all the relevant factors relating to the goods should be taken into account. The CJEU stated that those factors include their nature, intended purpose, method of use and whether they are in competition with each other or are complementary.

39. The relevant factors identified by Jacob J. (as he then was) in *Treat*[12] for assessing similarity were:

(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;

[11] Case C-39/97
[12] [1996] R.P.C. 281

(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.

40. In *Kurt Hesse v OHIM,*[13] 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 Market (Trade Marks and Designs) (OHIM),*[14] 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."

41. In *Gérard Meric v OHIM,*[15] the GC confirmed 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."

42. The goods to be compared are as follows:

[13] Case C-50/15 P
[14] Case T-325/06
[15] Case T- 133/05

The applicant's goods as per the fair specification findings	The proprietor's goods
Class 9: Wireless communication devices for voice, data or image transmission namely in relation to cellular wireless base stations and small cell systems; wireless communications equipment, namely, cellular wireless base stations and small cells; and computer software for use in operating and controlling cellular wireless base stations and small cells.	*Class 9: Computer programs, recorded; computer programs [downloadable software]; computers; processors [central processing units]; data processing apparatus; smartphones; network communication equipment; switchboards; optical communication instruments; transmitting sets [telecommunication]; modems; transponders; computer hardware; humanoid robots with artificial intelligence; television apparatus; radio-frequency antennas; wireless broadband radios; radio frequency receivers; radio-frequency transmitters; photovoltaic inverters; sensors; chips [integrated circuits]; chargers for electric accumulators; batteries, electric, for vehicles; car video recorders; LCD large-screen displays; smartwatches; tablet computers.*

43. In their submissions in lieu, both parties make several submissions in relation to the similarity of the goods. I have taken all of these into account and will refer to them below where necessary.

44. In addition to these submissions, the applicant has also filed Exhibit SH8. In his witness statement, Mr Holyoak states that the exhibit shows that "the Proprietor's SingleCell mark is to be used in relation to improving LTE connectivity experiences for customers in indoor environments, thereby operating in the same and/or very similar commercial space to ONECELL".

45. As a matter of law, the applicant's comments regarding how the proprietor operates can have no bearing on the outcome of this opposition. As per the CJEU judgement in *O2 Holdings Limited, O2 (UK) Limited v Hutchison 3G UK Limited*, Case C-533/06 (particularly paragraph 66), it is necessary to consider all the circumstances in which the proprietor's mark might be used. As a result, even though the applicant has suggested the way in which the proprietor operates, my assessment must take into account only the proprietor's mark and any potential conflict with the applicant's mark. Any differences between the actual goods provided by the parties, or differences in their targets markets, are not relevant unless those differences are apparent from the competing marks.

46. For the purposes of comparing goods, 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.[16] I have therefore assessed the applicant's goods by dividing the terms into groups as per below.

Computer programs, recorded; computer programs [downloadable software].

47. In its submissions in lieu, the applicant argues that these wider goods incorporate the proprietor's goods. In its submissions in lieu, the proprietor argues that "The Registrant's software product covers a very specialised software product whereas the Applicant's Earlier Registration covers "software" generally. It is widely recognised that "software" products are not necessarily similar if they are used in different areas."

48. Whilst I recognise that specific types of software may differ from each other if they are used in different contexts, the proprietor's computer programs cover all types of software, including the applicant's narrower *computer software for use in operating and controlling cellular wireless base stations and small cells.* I therefore agree with the applicant on this issue, and find that the competing goods are identical under the principle set out in *Meric.*

Computers; tablet computers.

[16] *Separode Trade Mark* (BL O/399/10) and *BVBA Management, Training en Consultancy v. Benelux-Merkenbureau* [2007] ETMR 35 at paragraphs 30 to 38

49. In its submissions in lieu, the applicant submits these goods are highly similar on the basis that they "functionally depend on the goods of the Earlier Mark, and must therefore be considered complementary in the sense defined by the *Boston Scientific* case". The proprietor does not mark any specific submissions in relation to the similarity of these goods.

50. These goods relate to computing. It is my view that there is a degree of similarity between these goods and the applicant's *computer software for use in operating and controlling cellular wireless base stations and small cells.* The goods' users will overlap, as the users of the applicant's software will also use these types of hardware to operate the software. Their core nature and purpose differ in that the proprietor's goods are hardware which issued to run software, whereas the applicant's goods are software which is used in operating and controlling cellular wireless base stations and small cells. Their trade channels may overlap, as the applicant's software may be sold in the same retail environment as the proprietor's hardware goods. It is my view that the goods are complementary, as the proprietor's goods are necessary to operate the applicant's goods, and therefore they are indispensable to one another. Furthermore, the average consumer may believe that the responsibility for both lies with the same undertaking. Given their different natures and purposes, they are not in competition with each other. Taking these factors into account, I find that they are similar to a medium degree.

> *Smartphones; switchboards; optical communication instruments; modems; transponders; wireless broadband radios.*

51. In its submissions in lieu, the applicant argues that these are included in the applicant's term *wireless communication devices for voice, data or image transmission.* The proprietor does not mark any specific submissions in relation to the similarity of these goods.

52. However, in my earlier findings in relation to fair specification, I found that the applicant may only rely on *wireless communication devices for voice, data or image transmission, namely in relation to cellular wireless base stations and small cell systems.* It is my view that *wireless broadband radios* and *optical communication instruments* fall within the applicant's term, as the applicant's evidence demonstrates

use of radio technology and communication instruments within its systems. *Modems* are defined by Cambridge Dictionary as being “an electronic device that allows one computer to send information to another”. In addition to this, *transponders* are defined by Cambridge Dictionary as “an electronic device that gives out a radio signal when it receives a similar signal telling it to”. I therefore find that *wireless broadband radios*, *optical communication instruments*, *modems*, and *transponders* are identical to the applicant’s goods under the principle in *Meric.*

53. *Switchboards* are defined by Cambridge Dictionary as “a piece of equipment, used especially in the past, for directing all the phone calls made to and from a particular building or area”. Their nature and purpose overlap with *wireless communication devices for voice, data or image transmission, namely in relation to cellular wireless base stations and small cell systems* in that both are communication equipment used to transmit information. However, it is my view that their core purpose and nature differ in that the applicant’s goods are used to transmit information via cellular wireless base stations and small cells equipment, whereas the proprietor’s goods are used to transmit phone calls. They are unlikely to be sold through the same trade channels. It is also my view that they are not complementary or in competition with one another. Taking these factors into account, I find that the goods are similar to a very low degree.

54. However, I do not view *smartphones* as falling within the applicant’s goods. Although the goods both broadly relate to communication devices, their core nature and purpose differ in that *smartphones* are types of mobile phones which users use to communicate with others, whereas the applicant’s goods are devices used to transmit information via cellular wireless base stations and small cells equipment. Their trade channels are likely to differ. I am of the view that the goods are not complementary in that the average consumer is unlikely to believe that the responsibility for both lies with the same undertaking. Given their different purposes, they will not be in competition with each other. Taking these factors into account, it is my view that the competing goods are dissimilar to one another.

> *Network communication equipment; transmitting sets [telecommunication]; data processing apparatus; radio frequency receivers; radio-frequency antennas; radio-frequency transmitters.*

55. In its submissions in lieu, the applicant argues that these include the applicant's goods, namely *wireless communications equipment, namely, cellular wireless base stations and small cells*. In its submissions in lieu, the proprietor submits that "the Applicant has not shown that its data processing equipment / network communication equipment is similar to the Registrant's "wireless base stations and cells"".

56. It is my view that the applicant's evidence (such as Exhibit SH1) shows that *radio frequency receivers, radio-frequency antennas,* and *radio-frequency transmitters* all appear to be a part of the radio point field units which form the applicant's cellular wireless base stations system. As the proprietor's goods are narrower terms which fall within the applicant's wider *wireless communications equipment, namely, cellular wireless base stations and small cells*, they are therefore identical under the principle in *Meric*. Furthermore, *network communication equipment, transmitting sets [telecommunication],* and *data processing apparatus* all appear to be wide terms which cover goods which are used to communicate or transmit data. It is my view that they incorporate the applicant's narrower term. I therefore also find that these goods are identical under the principle in *Meric.*

Humanoid robots with artificial intelligence.

57. In its submissions in lieu, the applicant submits that these goods are highly similar on the basis that they "functionally depend on the goods of the Earlier Mark, and must therefore be considered complementary in the sense defined by the *Boston Scientific* case". The proprietor does not mark any specific submissions in relation to the similarity of these goods.

58. It is my view that these goods are dissimilar to the applicant's goods. Whilst both types of goods are electronic, the competing goods' core nature, user, and purpose will differ in that the applicant's goods are telecommunication devices used by those wishing to communicate data, whereas the proprietor's goods are humanoid robots and used to complete tasks. They are likely to be sold through different trade channels. I disagree with the applicant that the goods are complementary, as it is my view that consumers would not believe that the responsibility for both lies with the same undertaking. Given their different purpose, they are not in competition with one another.

Chips [integrated circuits]; processors [central processing units]; computer hardware.

59. In its submissions in lieu, the applicant submits that its own goods "functionally depend on, and are therefore complementary to" these goods. The proprietor does not mark any specific submissions in relation to the similarity of these goods.

60. It is my understanding that these goods form constituent parts of electronic products. In *Les Éditions Albert René v OHIM*,[17] the GC found that:

> "61... The mere fact that a particular good is used as a part, element or component of another does not suffice in itself to show that the finished goods containing those components are similar since, in particular, their nature, intended purpose and the customers for those goods may be completely different."

61. Whilst these goods may be used within the applicant's goods, their nature, users, and purpose will differ, in that these are components used by trade professionals to build other devices, whereas the applicant's goods are finished products used for the purpose of communication. They are likely to be sold through different trade channels. It is unlikely that the goods are complementary; whilst these component goods could be important to the applicant's finished products, it is my view that consumers are unlikely to believe that the responsibility for both lies with the same undertaking (given that they will be sold for different purposes, through different trade channels, and to different users). Given their different purpose, they are also not in competition with each other. Taking these factors into account, I find that competing goods are dissimilar.

Sensors.

62. In its submissions in lieu, the applicant submits that these goods are highly similar to its goods on the basis that its own goods "may commonly be used in association with" with these goods. The proprietor does not mark any specific submissions in relation to the similarity of these goods.

[17] Case T-336/03

63. It is my view that these goods are dissimilar to the applicant's goods. Whilst both types of goods are electronic, the competing goods' core nature, user, and purpose will differ in that the applicant's goods are telecommunication devices used by those wishing to communicate data, whereas the proprietor's goods are sensors used by those who need to detect things within a specific range. They are likely to be sold through different trade channels. I am of the view that they are not complementary to the applicant's goods as the average consumer is unlikely to assume that the responsibility for both lies with the same undertaking. Given their different purpose, they are not in competition with one another.

Television apparatus.

64. In its submissions in lieu, the applicant submits that these goods are highly similar to its goods on the basis that that its own goods "may commonly be used in association with" with these goods, and states that "e.g. "television apparatus", to the extent that this covers television goods capable of wireless communications, e.g. smart TVs". The proprietor does not mark any specific submissions in relation to the similarity of these goods.

65. It is my view that these goods are dissimilar to the applicant's goods. Whilst both types of goods are electronic, the competing goods' core nature, user, and purpose will differ in that the applicant's goods are telecommunication devices used by those wishing to communicate data, whereas the proprietor's goods are television apparatus, and will be used to broadcast images. They are likely to be sold through different trade channels. I am of the view that they are not complementary to the applicant's goods as the average consumer is unlikely to assume that the responsibility for both lies with the same undertaking. Given their different purpose, they are not in competition with one another.

Photovoltaic inverters

66. In its submissions in lieu, the applicant submits that these goods are highly similar to its goods on the basis that its own goods "may commonly be used in association with" with these goods. The proprietor does not mark any specific submissions in relation to the similarity of these goods

67. It is my view that these photovoltaic inverter goods are dissimilar to the applicant's communication goods. I understand the proprietor's goods to be types of power inverters which convert currents, whereas the applicant's goods are used in relation to wireless communication devices. The competing goods' core nature, user, and purpose will therefore differ from one another. They are likely to be sold through different trade channels. It is my view that the goods are not complementary, as it is my view that consumers would not assume that the responsibility for both lies with the same undertaking. Given their different purpose, they are not in competition with one another.

Chargers for electric accumulators; batteries, electric, for vehicles.

68. In its submissions in lieu, the applicant submits that these goods are highly similar to its goods on the basis that its own goods "may commonly be used in association with" with these goods. The proprietor does not mark any specific submissions in relation to the similarity of these goods.

69. It is my view that these goods are dissimilar to the applicant's goods. Whilst both types of goods are electronic, the competing goods' core nature, user, and purpose will differ in that the applicant's goods are telecommunication devices used by those wishing to communicate data, whereas the proprietor's goods are goods used to power other goods. They are likely to be sold through different trade channels. I am of the view that they are not complementary to the applicant's goods as the average consumer is unlikely to assume that the responsibility for both lies with the same undertaking. Given their different purpose, they are not in competition with one another.

Car video recorder.

70. In its submissions in lieu, the applicant submits that these goods are highly similar to its goods on the basis that its own goods "may commonly be used in association with" with these goods. The proprietor does not mark any specific submissions in relation to the similarity of these goods.

71. It is my view that these goods are dissimilar to the applicant's goods. Whilst both types of goods are electronic, the competing goods' core nature, user, and purpose

will differ in that the applicant's goods are telecommunication devices used by those wishing to communicate data, whereas the proprietor's goods are video recorders used by those wishing to record videos in their cars. They are likely to be sold through different trade channels. I am of the view that they are not complementary to the applicant's goods as the average consumer is unlikely to assume that the responsibility for both lies with the same undertaking. Given their different purpose, they are not in competition with one another.

LCD large-screen displays.

72. In its submissions in lieu, the applicant submits that these goods are highly similar to its goods on the basis that its own goods "may commonly be used in association with" with these goods. The proprietor does not mark any specific submissions in relation to the similarity of these goods.

73. It is my view that these goods are dissimilar to the applicant's goods. Whilst both types of goods are electronic, the competing goods' core nature, user, and purpose will differ in that the applicant's goods are telecommunication devices used by those wishing to communicate data, whereas the proprietor's goods are large-screen displays which are used to show images. They are likely to be sold through different trade channels. I am of the view that they are not complementary to the applicant's goods as the average consumer is unlikely to assume that the responsibility for both lies with the same undertaking. Given their different purpose, they are not in competition with one another.

Smartwatches.

74. In its submissions in lieu, the applicant submits that these goods are highly similar on the basis that they "functionally depend on the goods of the Earlier Mark, and must therefore be considered complementary in the sense defined by the *Boston Scientific* case". The proprietor does not mark any specific submissions in relation to the similarity of these goods.

75. It is my view that these goods are dissimilar to the applicant's goods. Whilst both types of goods are electronic, the competing goods' core nature, user, and purpose will differ in that the applicant's goods are telecommunication devices used by those

wishing to communicate data, whereas the proprietor's goods are smartwatches which will be worn by users, and used to tell the time and perform a variety of tasks. They are likely to be sold through different trade channels. I am of the view that they are not complementary to the applicant's goods as the average consumer is unlikely to assume that the responsibility for both lies with the same undertaking. Given their different purpose, they are not in competition with one another.

Comparison of goods and services summary

76. Some similarity between goods is essential for engaging the test of the likelihood of confusion. In *eSure Insurance v Direct Line Insurance,*[18] Lady Justice Arden stated that:

> "49. ...If there is no similarity at all, there is no likelihood of confusion to be considered. If there is some similarity, then the likelihood of confusion has to be considered but it is unnecessary to interpose a need to find a minimum level of similarity."

77. As I have found no similarity for the following goods, the opposition under section 5(2)(b) fails in relation to them:

> *Class 9: Smartphones; Car video recorder; Humanoid robots with artificial intelligence; Television apparatus; Photovoltaic inverters; LCD large-screen displays; Sensors; Smartwatches; Chargers for electric accumulators; Batteries, electric, for vehicles; Chips [integrated circuits]; Processors [central processing units]; Computer hardware.*

78. I will now go on to consider whether there exists a likelihood of confusion under section 5(2)(b) for the remaining goods in class 9.

[18] [2008] ETMR 77 CA

Average consumer and the purchasing act

79. In *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc & Anor*,[19] the Supreme Court approved the comments of Arnold LJ in *Lidl Great Britain Ltd & Anor v Tesco Stores Ltd & Anor (Rev1)*,[20] 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.

[19] [2025] UKSC 25
[20] [2024] EWCA Civ 262

80. In its submissions in lieu, the applicant submits that "[t]he average consumer is a professional who will pay a medium-to-high degree of attention". In its submissions in lieu, the proprietor submits that "the consumer is a specialist paying attention to the purchases".

81. The average consumer of the goods will be members of the general public, as well as trade customers. The cost of purchase is likely to vary considerably, with goods such as the components for instance at one end of the spectrum and more sophisticated devices such as *computers* at the other. Overall, the goods are likely to be purchased on a fairly infrequent basis. Several factors may influence the average consumer when purchasing the class 9 goods, such as the quality, the technical specifications, and the compatibility of the goods with existing systems. Taking these factors, I find that the average consumer is likely to pay a medium to high level of attention when purchasing the goods, with trade customers being on the higher end of the scale. I bear in mind that in relation to the assessment of the likelihood of confusion, it is the group of consumers with the lowest level of attention which must be taken into consideration.[21] The goods will be selected from specialist shops, general retail outlets, or online. The customer will self-select the goods from the display shelves, or by selecting the image of their desired product if purchasing online. The visual component will therefore dominate the purchasing process, but I do not discount aural considerations, such as word-of-mouth recommendations, or placing telephone orders.

Comparison of marks

82. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in *Bimbo SA v OHIM*[22] that:

[21] See Case T-247/12, *Argo Group International Holdings Ltd. v OHIM* and *Idem* T -356/14 [25]-[26]
[22] Case C-591/12P

> "…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."

83. 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.

84. The respective trade marks are shown below:

The applicant's mark	**The proprietor's mark**
ONECELL	SingleCell

85. The applicant does not make any submissions on what it views as the distinctive and dominant components of the competing marks. In its submissions in lieu, the proprietor submits that "the term CELL is descriptive" and therefore "the dominant and distinctive elements of the marks are the terms SINGLE and ONE".

86. The applicant's mark is a plain word mark consisting solely of the conjoined word "ONECELL". Whilst there may be some consumers who do not recognise the two words "ONE" and "CELL" in the applicant's mark, it is my view that they will not constitute a significant proportion of consumers. Instead, I am of the view that consumers will read the applicant's mark as consisting of the two words "ONE" and "CELL". This is due to the established principle that, notwithstanding the conjoined manner, consumers will break down the mark into verbal elements which suggest a concrete meaning or resemble words known to them (*Usinor SA v OHIM*).[23] It is my view that the word "CELL" in the applicant's mark will be understood as descriptive of referring to small cell technology, given that all the goods are used in relation to small cells. Furthermore, page 5 of Exhibit SH7 refers to "components integral to 5G mobile

[23] Case T-189/05

base stations, whether small cell or macro" and "small cell architectures and products". It is therefore my view that the reference to "CELL" would be understood as referring to this type of technology. I do not have any evidence before me to suggest that the term "ONECELL" in totality is a specific type of technology, so I am of the view that the average consumer would not understand "ONECELL" as a descriptive term in totality. However, based on the ordinary and natural meaning of the words "ONE" and "CELL", it is likely that a significant proportion of consumers would understand the conjoined word "ONECELL" as a phrase which refers to one cell, where "ONE" characterises the word "CELL". On this basis, it is my view that the overall impression resides in the mark as a whole.

87. The proprietor's mark is also a plain word mark[24] which consists solely of the conjoined word "SingleCell". It is my view that consumers will readily understand the proprietor's mark as consisting of the two words "Single" and "Cell" joined together (as per the principle cited above in *Usinor*). It is my view that the word "Cell" will only be interpreted as directly descriptive in the proprietor's mark for goods which use small-cell technology or in relation to smartphones (given the definition of 'cell' in relation to mobile phones), or allusive of this type of technology for the other goods. As with the applicant's mark, I do not have any evidence before me to suggest that the term "SingleCell" in totality is descriptive of a specific type of technology, so I am of the view that the average consumer would not understand "SingleCell" as a descriptive term in totality. However, based on the ordinary and natural meaning of the words "Single" and "Cell", it is my view that a significant proportion of consumers would understand the conjoined word "SingleCell" as referring to a single cell, where "Single" characterises the word "Cell". On this basis, it is my view that the overall impression resides in the mark as a whole.

Visual comparison

88. In its submissions in lieu, the applicant submits that "[b]y virtue of the shared verbal element "CELL", which comprises the final four letters of each mark, the Later Mark shares at least a medium degree of visual… similarity with the Earlier Mark". In its submissions in lieu, the proprietor submits that "[v]isually, the terms are clearly different

[24] In the international registration, the proprietor declared that it wished the mark to be considered as a word-only mark.

in spelling, length and appearance. The term SINGLE consists of six letters whereas the term ONE only consists of three letters".

89. The competing marks are visually similar as they both contain the word "CELL" as their final four letters. The competing marks differ visually as the applicant's mark is a seven-letter mark with "ONE" as its first three letters, whereas the proprietor's mark is longer in that it has ten letters, and the first six letters are "SINGLE". I bear in mind that the beginnings of marks tend to have more visual impact than the ends,[25] and therefore the position of marks' differences at the beginning of each mark reduces the level of visual similarity. Bearing in mind my analysis of the marks' overall impressions, I am of the view that the marks are visually similar to a low degree.

Aural comparison

90. In its submissions in lieu, the applicant submits that "[b]y virtue of the shared verbal element "CELL", which comprises the final four letters of each mark, the Later Mark shares at least a medium degree of …aural similarity with the Earlier Mark". In its submissions in lieu, the proprietor submits that "[p]honetically, the terms differ in syllable count and pronunciation". It also adds that "[t]he opening sounds differ significantly, namely ONE begins with a soft "W" sound whereas SINGLE starts with an "S"".

91. The applicant's mark is a two-syllable mark which will be pronounced in the ordinary manner, i.e. "ONE-CELL". The proprietor's mark is a three-syllable mark which will be pronounced as "SIN-GUL-CELL". The competing marks are aurally similar as they both contain the word "CELL" as their final syllable. The competing marks differ aurally as the applicant's mark is only two syllables, and has "ONE" as its first syllable, whereas the proprietor's mark is longer in that it has three syllables, and the first two syllables are "SIN-GUL". I bear in mind that the beginnings of marks tend to have more aural impact than the ends,[26] and therefore the position of the marks' differences at the beginning of each mark reduces the level of aural similarity. Bearing in mind my analysis of the marks' overall impressions, I am of the view that the marks are aurally similar to a low degree.

[25]See paragraph 81 of *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02.
[26]See paragraph 81 of *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02.

Conceptual comparison

92. In its submissions in lieu, the applicant submits that "{a]s 'one' and 'single' both indicate the lowest cardinal number 'ONECELL' and 'SingleCell' must logically refer to a quantity of 'cell' corresponding to the lowest cardinal number. The marks are therefore conceptually identical'. It also highlights that in "the Proprietor's evidence at Exhibit JCH3, in which the dictionary definition of 'SINGLE' is defined as "one only", with "one" stated as a synonym".

93. In its submissions in lieu, the proprietor submits that "[c]conceptually, the marks convey a different meaning as shown by the…evidence. ONE is a numerical term whereas SINGLE suggests singularity or exclusivity but not necessarily a numerical value". It has filed Exhibits JCH1 to show the meaning of the terms "CELL" and "CELLULAR", and Exhibits JCH2 and JCH3 to show the meaning of "ONE".

94. As stated previously, it is my view that the applicant's mark ONECELL will be understood by a significant proportion of consumers as comprising the two words "ONE" and "CELL", with the word "CELL" being descriptive of the applicant's small-cell technology goods. The proprietor has filed Exhibits JCH2 and JCH3 which contain screenshots of the meaning of "ONE" as a number. These definitions are consistent with my own understanding of numbers. As stated previously, I do not have any evidence before me to suggest that the term "ONECELL" in totality is a specific type of technology, so I am of the view that the average consumer would not understand "ONECELL" as a descriptive term in totality. However, based on the ordinary and natural meaning of the words "ONE" and "CELL", it is likely that a significant proportion of consumers would understand the conjoined word "ONECELL" as referring to the concept of one cell, where "ONE" characterises the word "CELL".

95. As stated previously, it is my view that the proprietor's mark will be understood by a significant proportion of consumers as comprising the two words "Single" and "Cell". The proprietor has filed Exhibit JCH4 which contains screenshots of the meaning of "Single" to mean, inter alia, "one only", "not married", and "an individual person or thing rather than part of a pair or a group". These definitions are consistent with my own understanding of the word "single". It is my view that a significant proportion of consumers would understand the word "Single" as referring to the concept of there

only being one of something. In Exhibit JCH1, the proprietor has filed evidence to show the use of this word in a variety of ways, such as cell phones/mobile phones, “the smallest basic unit of a plant or animal”, or as an abbreviation of the word “cellular”. In the proprietor’s mark, the word “Cell” will be directly descriptive for goods which use small-cell technology or in relation to smartphones, but it will be allusive of this type of technology for other related goods. As explained previously, I do not have any evidence before me to suggest that the term “SingleCell” in totality is a specific type of technology, so I am of the view that the average consumer would not understand “SingleCell” as a descriptive term in totality. However, based on the ordinary and natural meaning of the words “Single” and “Cell”, it is my view that a significant proportion of consumers would understand the conjoined word “SingleCell” as referring to the concept of a single cell, where “Single” characterises the word “Cell”.

96. The competing marks are therefore conceptually similar as the word “ONE” relates to the number one, which overlaps with the word “Single”, which relates the concept of there just being one. These words will both be viewed by consumers as qualifying the word “CELL”/”Cell” in the competing marks. The word “CELL”/”Cell” will be viewed as descriptive in both marks where it is used in relation to goods using small-cell technology or smartphones, which provides further conceptual overlap. The competing marks differ conceptually for goods where the word “Cell” in the proprietor’s mark merely alludes to small-cell technology or cell phones, rather than being directly descriptive of them. Taking these factors into consideration, I am of the view that the marks are conceptually similar to a high degree.

Distinctive character of the earlier mark

97. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV,*[27] 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

[27] Case C-342/97

undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee* v *Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

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

98. Registered trade marks possess various degrees of inherent distinctive character; marks which are suggestive or allusive of a characteristic of the goods tend to be at the lower end of the scale, whereas invented words with no allusive qualities tend to be at the higher end of the scale. A range of marks will fall in between, such as dictionary words with no obvious connection to the goods.

99. In its submissions in lieu, the applicant submits that its mark is "inherently distinctive, being an invented word with no obvious or direct meaning in relation to the relevant goods, to at least a medium degree". In its counterstatement, the proprietor states that "[i]t is not admitted that the Cancellation Applicant's mark…is inherently distinctive to at least a medium degree". In its submissions in lieu, the proprietor also states that "CELL is descriptive".

100. As stated previously, in the context of the applicant's goods (which all relate to small cell technology), the word "CELL" will be understood as a descriptive reference to the goods (although I do not have anything before me to suggest that "ONECELL" in totality is directly descriptive in relation to the goods). On this basis, notwithstanding the descriptive nature of the word "CELL", I find that the applicant's mark in totality has a low to medium level of inherent distinctive character due to the inclusion of the word "ONE".

101. Although the applicant has filed evidence of use, I do not consider this evidence to be sufficient for the purposes of demonstrating that the applicant's mark had an enhanced degree of distinctive character at the relevant priority date of 7 May 2014. Whilst I acknowledge that the evidence demonstrates genuine use of the applicant's mark, and sales of ONECELL-branded goods in the UK, it is considered that the evidence does not show what share of the relevant market was held by goods sold under the applicant's mark. Whilst the evidence contains sales figures of 1 million USD each year of the relevant periods, I am unable to ascertain how significant those sales were. Furthermore, the evidence contains no figures in relation to advertising spend in the relevant markets. It is therefore my view that the applicant mark's does not enjoy an enhanced degree of distinctiveness.

Global assessment – conclusions on likelihood of confusion

102. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods down to the responsible undertakings being the same or related. There is no set formula for establishing a likelihood of confusion between marks; it is a global assessment where a number of factors need to be borne in mind.

103. One such factor is the interdependency principle, i.e. a lesser degree of similarity between the competing marks may be offset by a greater degree of similarity between the respective goods, and vice versa. As mentioned above, it is necessary for me to keep in mind the distinctive character of the applicant's mark, the average consumer for the goods, and the nature of the purchasing process. In doing so, I must be mindful 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 they have retained in their mind.

104. In its submission in lieu, the applicant submits that consumers may directly confuse the competing marks due to the level of visual and aural similarities, "that even a consumer paying a close degree of attention may be mistaken, particularly when taking into account the conceptual identity". It also argues that indirect confusion may

occur on the basis of "[t]he substitution of "ONE" for "SINGLE" as the beginning element comprising a logical and consistent sub-brand/brand extension". In its submission in lieu, the applicant submits that "due to the dissimilarity of the respective marks and the dissimilarity of the respective goods, there can be no likelihood of confusion or association". It also argues that "consumers are used to marks consisting of two or three elements containing the descriptive term CELL", and refers to its evidence, which it states "shows a large number of registered trade marks in class 9 which contain the term CELL". It has filed Exhibit JCH4 in support of this submission.

105. At paragraph 73 of *Zero Industry Srl v OHIM*,[28] the GC stated that:

> "As regards the results of the research submitted by the applicant, according to which 93 Community trade marks are made up of or include the word 'zero', it should be pointed out that the Opposition Division found, in that regard, that '… there are no indications as to how many of such trade marks are effectively used in the market'. The applicant did not dispute that finding before the Board of Appeal but none the less reverted to the issue of that evidence in its application lodged at the Court. It must be found that the mere fact that a number of trade marks relating to the goods at issue contain the word 'zero' is not enough to establish that the distinctive character of that element has been weakened because of its frequent use in the field concerned (see, by analogy, Case T-135/04 *GfK v OHIM – BUS(Online Bus)* [2005] ECR II-4865, paragraph 68, and Case T-29/04 *Castellblanch v OHIM – Champagne Roederer (CRISTAL CASTELLBLANCH)* [2005] ECR II-5309, paragraph 71). "

106. As there is no evidence that the registered marks are in use or that consumers have become accustomed to differentiating between them, they cannot have any bearing on whether there exists a likelihood of confusion between the competing parties' marks. Moreover, the mere fact that the other marks are on the register cannot be taken as evidence per se that they are peacefully coexisting.

107. Earlier in this decision I found that the proprietor's goods range from being identical to being similar to a very low degree to the applicant's goods. The average consumer of the goods will be the general public and trade customers. The average

[28] Case T-400/06

consumer is likely to pay a medium to high degree of attention when selecting the goods, with trade professionals on the higher end of the scale. The goods will primarily be selected through visual means, although I do not discount an aural element to the selection process. I have found the marks to be visually similar to a low degree, aurally similar to a low degree, and conceptually similar a high degree. The earlier mark has a low to medium level of inherent distinctive character.

108. It is my view that, even when accounting for imperfect recollection, I consider that the average consumer, when paying a medium to high degree of attention, would not overlook the points of difference between the competing marks. Although both marks share the letters "CELL" as their final four letters, the marks' visual and aural differences are at the beginnings of each mark, where differences are more likely to be noticed. Whilst I acknowledge the conceptual overlap between the words "ONE" and "Single", it is my view that the marks' visual and aural differences are sufficient to overcome this conceptual overlap for a significant proportion of consumers. On this basis, I am of the view that these differences will not go unnoticed by the average consumer, and I therefore find that there is no likelihood of direct confusion. I make this finding even in respect of identical goods on the basis of the interdependency principle, due to the low level of visual and aural similarities between the competing marks and the low to medium level of distinctiveness of the applicant's mark.

109. I now go on to consider indirect confusion. In *L.A. Sugar Limited v By Back Beat Inc,*[29] Mr Iain Purvis Q.C., as the Appointed Person, explained that:

> "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

[29] BL O/375/10

earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark'.

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

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

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

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

110. I bear in mind that these categories are not intended to be an exhaustive list. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors,*[30] Arnold LJ approved Mr Purvis's formulation but added:

"13. As James Mellor QC sitting as the Appointed Person pointed out in *Cheeky Italian Ltd v Sutaria* (O/219/16) at [16] 'a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion'. Mr Mellor went on to say that, if there is no likelihood of direct confusion, 'one needs a reasonably special set of circumstances for a finding of a likelihood of indirect confusion'. I would prefer to say that there must

[30] [2021] EWCA Civ 1207

be a proper basis for concluding that there is a likelihood of indirect confusion given that there is no likelihood of direct confusion."

111. It is not sufficient that a mark merely calls to mind another mark (as per *Duebros Limited v Heirler Cenovis GmbH).*[31] This is mere association not indirect confusion. A finding of indirect confusion should not be made merely due to a shared element within marks. As per *L.A. Sugar Limited v By Back Beat Inc*[32] (set out above), indirect confusion should be identified in cases where the average consumer is likely to notice the differences between the competing marks but assume an economic link between the two undertakings based on their similarities.

112. It is my view that the average consumer would notice the differences between the competing marks but would not assume an economic link between the two undertakings. The word 'CELL' in the applicant's mark cannot be described as strikingly distinctive as it is my view that it would be understood by the average consumer as descriptive, and therefore the average consumer would not assume that only the applicant would be using 'CELL' in a trade mark. It is also my view that the visual and aural differences between the two marks are not consistent with a brand extension or sub-brand of a house mark, so I do not consider it likely that the average consumer would interpret it in this manner. In particular, I can see no reason why an undertaking would take the word 'ONE' in the applicant's mark, and alter it to 'SINGLE', resulting in a different invented word and different mark. Whilst I acknowledge the conceptual overlap between the words 'ONE' and 'SINGLE', it is my view that this would result in mere association or the bringing to mind of the other mark, rather than a likelihood of confusion. This is because it is my view that, for a significant proportion of consumers, the overlap will be viewed as coincidental. Notwithstanding the close conceptual connection between ONE (as a number), and SINGLE (which relates the concept of there only being one), it is my view that consumers are highly unlikely to assume that the same or economically linked undertakings would use these terms interchangeably in trade marks, especially given that the common element CELL is descriptive in the applicant's mark, and either descriptive or allusive in the proprietor's mark. Consequently, I find that there is no likelihood of indirect confusion between the

[31] BL O/547/17
[32] BL O/375/10

two marks. I make this finding even in respect of identical goods on the basis of the interdependency principle, due to the low level of visual and aural similarities between the competing marks and the low to medium level of distinctiveness of the applicant's mark.

113. It should be noted that, even if I had found that the applicant could rely upon the term *wireless communication devices for voice, data or image transmission* at large without being subject to a limitation (as per my earlier findings in relation to fair specification), it would not have affected the outcome in the applicant's favour. This is because my findings of no direct or indirect confusion are already made in respect of identical goods; even if I had found more of the proprietor's goods to be identical with the applicant's goods, it would not improve the applicant's position.

Conclusion

114. The application for invalidation has been unsuccessful in its entirety. Subject to any successful appeal, the proprietor's mark will remain protected in the UK.

Costs

115. The proprietor has been successful and is entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 1/2023. In the circumstances I award the proprietor the sum of £1,200 as a contribution towards the cost of the proceedings. The sum is calculated as follows:

Preparing a statement: £250

Preparing evidence and considering the other side's evidence £600

Preparing submissions in lieu £350

116. I therefore order Outdoor Wireless Networks LLC to pay Huawei Technologies Co., LTD the sum of £1,200. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 5th day of November 2026

K LEWIS

For the Registrar