

**O/1076/25**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF TRADE MARK APPLICATION NO. UK 4058683**

**BY CHUANRUI HE**

**TO REGISTER THE SERIES OF TWO TRADE MARKS:**

**FIFHEN**

**Fifhen**

**IN CLASS 21**

**AND**

**IN THE MATTER OF OPPOSITION THERETO**

**UNDER NO. 449107**

**BY MAXCOOL SHOP LIMITED**

## BACKGROUND AND PLEADINGS

1. On 1 June 2024, CHUANRUI HE (“the applicant”) applied to register the series of two trade marks shown on the cover page of this decision (“the contested mark”) in the UK. The application was published for opposition purposes on 21 June 2024, in respect of goods in class 21.<sup>1</sup>

2. On 14 August 2024, the application was opposed in full by PEAR LINE LIMITED, based upon section 5(2)(a) of the Trade Marks Act 1994 (“the Act”),<sup>2</sup> relying upon UKTM no. 3994496, for the trade mark ‘FIFHEN’. The earlier mark was filed on 21 December 2023 and became registered on 22 March 2024. The opponent relies upon all its class 21 goods for which the earlier mark is registered.<sup>3</sup>

3. On 1 November 2024, the applicant filed a form TM21B requesting a limitation to its specification of goods claimed in its application.<sup>4</sup> However, notwithstanding the limitation filed by the applicant, the opponent confirmed its intention to continue with the opposition.<sup>5</sup>

4. On 2 September 2025, the earlier mark was assigned from PEAR LINE LIMITED to MAXCOOL SHOP LIMITED (“the opponent”),<sup>6</sup> who in turn, confirmed its agreement to undertakings for the purpose of pursuing the opposition.<sup>7</sup>

5. The opponent’s mark qualifies as an earlier mark under section 6(1) of the Act. As it had not completed its registration procedure more than five years before the application date for the contested mark, it is not subject to the use provisions contained in section 6A of the Act. Consequently, the opponent may rely upon all the goods for which the earlier mark is registered without having to establish genuine use.

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<sup>1</sup> See the Annex to this decision.

<sup>2</sup> 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. See also Tribunal Practice Notice (“TPN”) 2/2020 End of Transition Period – impact on tribunal proceedings.

<sup>3</sup> See goods comparison at paragraph [31].

<sup>4</sup> See goods comparison at paragraph [31].

<sup>5</sup> Opponent’s written submissions filed on 2 January 2025.

<sup>6</sup> Form TM16 - filed on 2 September 2025 assigning the earlier mark from PEAR LINE LIMITED to MAXCOOL SHOP LIMITED.

<sup>7</sup> Opponent’s written submissions filed on 11 November 2025.

6. The opponent claims that the marks are identical and that the goods covered by the marks are similar or complementary, resulting in a likelihood of confusion, including a likelihood of association.

7. The applicant filed a defence and counterstatement denying that there exists a likelihood of confusion between the marks on the basis that there is no similarity between the goods.

8. Only the opponent filed evidence and, in doing so, also filed written submissions. Both parties were given the option of an oral hearing but neither requested to be heard on this matter, nor did they file written submissions in lieu of a hearing. This decision is taken following a careful review of the papers.

9. The opponent, originally represented by IBE Avocat - Isabelle Bertaux, is now represented by Marinos Cleanthous.<sup>8</sup> The applicant is not professionally represented.

## **PRELIMINARY ISSUE**

10. In its counterstatement, the applicant claims that it owns the goodwill in the mark 'FIFHEN' on the basis that they have used the mark throughout the UK since 2017 in relation to their class 21 goods at issue.

11. In this regard, it is noted that the applicant has not submitted any evidence in support of their claim. Moreover, Tribunal Practice Notice ("TPN") 4/2009, deals with defences to claims under sections 5(1) and 5(2) of the Act. Here it states that the viability of defences based on use of the contested mark which precedes the date of registration of the earlier mark was considered by Ms Anna Carboni, sitting as the Appointed Person, in *Ion Associates Ltd v Philip Stainton and Another*, BL O/211/09. Ms Carboni rejected such defences as being wrong in law. Accordingly, any claim that the applicant was trading prior to the opponent's registration is not relevant to the matter before me, and I will make no further mention of it.

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<sup>8</sup> The opponent's representatives were changed following the filing of a form TM33, on 28 March 2025.

## **EVIDENCE**

12. Evidence was filed in the form of the witness statement of Mr Peiwen Li, dated 20 December 2024. The witness statement was accompanied by a certificate of incorporation of Mr Li's private limited company, PEAR LINE LIMITED<sup>9</sup> ("ANNEX 01"), the original opponent in these proceedings. Mr Li is the president of PEAR LINE LIMITED. The purpose of Mr Li's witness statement is to dispute the applicant's address for service, claiming that its use is malicious, on the basis that it is the same address for service as that used by PEAR LINE LIMITED.

13. However as previously mentioned, on 2 September 2025, following the filing of a form TM16, the earlier right was assigned from PEAR LINE LIMITED to MAXCOOL SHOP LIMITED, who is now the opponent in these proceedings. It is noted that the address for service of the opponent, MAXCOOL SHOP LIMITED, differs to that of the applicant. Accordingly, I do not consider it necessary to make any further reference to Mr Li's claim as it has no bearing on my decision on a likelihood of confusion between the competing marks.

## **DECISION**

### **Section 5(2)(a)**

14. Section 5(2)(a) and 5A of the Act read as follows:

"5(2) A trade mark shall not be registered if because-

(a) it is identical with an earlier mark and is to be registered for goods or services similar to those for which the earlier trade mark is protected,

[...]

there exists a likelihood of confusion on the part of the public, which includes

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<sup>9</sup> The original opponent in these proceedings, prior to the filing of a form TM16 on 2 September 2025.

the likelihood of association with the earlier trade mark.

[...]

5A Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only.”

15. The following principles are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P:

a) the likelihood of confusion must be appreciated globally, taking account of all relevant factors;

b) the matter must be judged through the eyes of the average consumer of the goods or services in question. The average consumer is deemed to be reasonably well informed and reasonably circumspect and observant, but someone who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them they have kept in their mind, and whose attention varies according to the category of goods or services in question;

c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing

in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

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

f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

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

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

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

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

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

### **Identity of the marks**

16. The marks to be compared are as follows:

Earlier mark	Application (series of two)
<b>FIFHEN</b>	<b>FIFHEN</b> <b>Fifhen</b>

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

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

18. Further, the registration of a word mark gives protection irrespective of capitalisation: see *Bentley Motors Limited v Bentley 1962 Limited*, BL O/158/17. Accordingly, bearing in mind the above case law, it is self-evident that the applicant’s marks and the earlier mark are identical.

**Distinctive character of the earlier mark**

19. In *Lloyd Schuhfabrik Meyer*, the CJEU stated that:

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

20. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The degree of distinctiveness is an important factor as it directly relates to whether there is a likelihood of confusion; the more distinctive the earlier mark, the greater the likelihood of confusion.

21. Although the distinctiveness of a mark can be enhanced by virtue of the use that has been made of it, the opponent has not filed any evidence of use in relation to the earlier mark. Consequently, I have only the inherent position to consider

22. The earlier mark ‘FIFHEN’ is an invented word mark with no allusive qualities or clear meaning in relation to the goods relied upon. Consequently, I consider the earlier mark to be inherently highly distinctive.

### **Comparison of goods**

23. When making the comparison, all relevant factors relating to the goods and services in the specifications should be taken into account. In the judgment of the CJEU in *Canon*, Case C-39/97, the court stated at paragraph 23 that:

“In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all

the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary.”

24. Additionally, the factors for assessing similarity between goods and services identified in *British Sugar Plc v James Robertson & Sons Limited* (“*Treat*”) [1996] R.P.C. 281, include an assessment of the users and the channels of trade of the respective goods or services.

25. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v OHIM*, Case T-325/06, the General Court (“GC”) stated that “complementary” means:

“82. ...there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking”.

26. For the purposes of considering the issue of similarity of goods, it is permissible to consider groups of terms collectively where appropriate: *Separode Trade Mark*, BL O-399-10.<sup>10</sup>

27. While making my comparison, I will endeavour to follow the principle outlined in *YouView*<sup>11</sup> by comparing what I consider to be the core meaning of the goods, without affording them neither a too liberal, nor an artificially narrow, interpretation.

28. Pursuant to section 60A of the Act, I am mindful of the fact that the goods at issue are not to be automatically regarded as being similar to each other on the ground that they appear in the same class.

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<sup>10</sup> Paragraph 5

<sup>11</sup> *YouView TV Ltd v Total Ltd* [2012] EWHC 3158 (Ch), at [12].

29. The competing goods are as follows:

Opponent's goods	Applicant's goods
<p><u>Class 21</u>            Carpet-cleaning brushes; Carpet sweepers; Cleaning brushes; Coffee cups; Coffee mugs; Cosmetic bags [fitted]; Cups; Dental floss; Dental floss dispensers; Dish drying racks; Drinking bottles; Drinking cups; Electric lint removers; Empty spray bottles; Garlic presses; Insulated mugs; Rat traps; Sprinklers; Travel mugs; Water bottles.</p>	<p><u>Class 21</u>            Disposable paperboard bakeware; Baking tins; Air Fryer Liners; Air Fryer Disposable Paper Liners; Air Fryer Silicone Liners; Air Fryer Silicone Pot; Air Fryer Racks.</p>

30. In its written submissions,<sup>12</sup> the opponent states the following regarding the similarity of the goods:

“All of the contested goods in class 21 of the challenged trademark are similar or to the goods covered by the Earlier Trademark. They concern kitchen utensils as bakeware.

The earlier trademark covers other kitchen utensils as for example, Dish drying racks; Drinking bottles; Drinking cups; Garlic presses or Water bottles.

[...]

The products of both Applicant and the Opponent are sold, or offered, to the same end consumers via the same channels of trade and advertising means. Both parties' products are, or can be, sold via physical retail stores and online. A consumer searching for the Opponent's products may well come across the Applicant's products during its search and, on seeing a very similar trademark

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<sup>12</sup> Filed on 2 January 2025.

on the goods, their packaging and/or on advertising material, be confused into believing they originate from the Opponent.

The consumers would likely to believe that the products bearing the disputed mark are simply other products in the Opponent's family of products."

### ***Overview of the applicant's goods***

#### Disposable paperboard bakeware

31. The contested goods are a type of single-use, microwave-safe, oven-safe, cooking utensil, such as a pan or mold, etc., made from specially treated thick rigid paperboard which can withstand high temperatures in conventional ovens as well as microwaves. The goods provide a sustainable alternative to traditional metal or plastic bakeware and can be used for baking goods, such as cakes, breads, pies, pasta bakes and quiches, etc.

#### Air Fryer Disposable Paper Liners; Air Fryer Liners; Air Fryer Silicone Liners

32. Broadly speaking, the contested goods are used in air fryers to provide a protective, disposable or reuseable layer while cooking, in order to keep the air fryer basket clean, for example, by catching grease and preventing food from sticking, etc.

#### Air Fryer Silicone Pot

33. As with the above, the contested goods are used in air fryers to provide a protective, reuseable layer while cooking in order to keep the air fryer basket clean. However, they can also be used in an air fryer as a cooking vessel, just like a conventional cooking pot, to cook a wide variety of foods, such as vegetables and chicken, etc.

### Air Fryer Racks

34. The contested goods are a type of accessory used to increase cooking capacity in an air fryer by allowing multiple items to be cooked at once. Additionally, they can be used to elevate food in an air fryer for improved crisping.

### Baking tins

35. Broadly speaking, a baking tin is an oven-safe container, typically made of metal or silicone. They come in various shapes and sizes and are predominantly used for baking items such as cakes, cupcakes, Yorkshire puddings and bread, etc.

36. Accordingly, in view of the above analysis, I find the contested goods to be various types of air fryer or oven/microwave oven accessories. The primary function of the contested goods is for use in the cooking process of food products. The *liners* will predominantly be used to keep the air fryer clean; the *silicone pots* will predominantly be used as a vessel to bake/cook various food products; and *the air frying racks* will predominantly be used during the cooking process in an air fryer to elevate food and improve crisping.

37. The earlier right is registered in respect of *carpet-cleaning brushes; carpet sweepers; cleaning brushes; coffee cups; coffee mugs; cosmetic bags [fitted]; cups; dental floss; dental floss dispensers; dish drying racks; drinking bottles; drinking cups; electric lint removers; empty spray bottles; garlic presses; insulated mugs; rat traps; sprinklers; travel mugs and water bottles.*

38. It is noted that the opponent's goods in class 21 do not include any of the contested goods, or indeed any goods intended to be used in the actual cooking of foodstuffs.

39. In my view, the closest point of comparison with the applicant's goods would be against the opponent's dish drying racks and its various drinking cups/mugs and garlic presses, all of which may be classed as kitchenware/homeware. There will be an overlap in users, however, I find that the goods at issue will satisfy different consumer needs, the contested goods being distinct in their essential nature and intended

purpose to the opponent's goods. Although there may be some overlap between providers of the likes of cooking utensils, including the opponent's garlic presses and the applicant's baking products, the goods are not complementary to the extent that the average consumer would automatically expect them to be provided by the same undertaking.<sup>13</sup> Neither are the goods in competition with one another.

40. That being said, I acknowledge the opponent's submissions that the parties' goods are, or can be sold or offered, to the same end consumers via the same channels of trade via physical retail stores and online. The fact that the parties' goods may be found in the same retail outlet is not, in itself, determinative since these stores usually sell a vast range of totally different goods. However, I would expect the type of goods offered by each party, such as the applicant's bakeware and the opponent's dish drying racks, drinking vessels and garlic presses, to be found in close proximity in such retail stores. In *Unicorn Studio Inc v Veronese* Case CH-2023-000214, Iain Purvis, KC, sitting as deputy High Court judge, stated that any finding of similarity (between goods and services) requires the exercise of common sense.<sup>14</sup> Given that the competing trade marks are identical, in my view, it would not be unreasonable for the consumer of the respective goods to mistakenly believe that the goods bearing such identical marks have been provided by the same or economically linked undertakings. I find this particularly in view of the high degree of distinctive character of the marks. Overall, I find the contested goods and the opponent's dish drying racks, drinking cups/mugs and garlic presses to be similar to a low degree.

### **The average consumer and the nature of the purchasing act**

41. 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 (see *Lloyd Schuhfabrik Meyer*, Case C-342/97).

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<sup>13</sup> *Boston Scientific Ltd v OHIM*, Case T-325/06, at [82].

<sup>14</sup> At [24].

42. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

“60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The words “average” denotes that the person is typical. The term “average” does not denote some form of numerical mean, mode or median.”

43. The average consumer for the parties’ goods at issue will be a member of the general public. The costs of the goods may vary, however, overall, they are relatively inexpensive. When selecting the goods, the average consumer will consider factors such as suitability and functionality. Consequently, I consider that a medium degree of attention will be paid during the purchasing process. The goods will be purchased primarily visually, selected from the shelves of a retail outlet or from an online equivalent. That said, I do not discount that there may be an aural component to the purchase of the goods given that advice may be sought from a sales assistant and word-of-mouth recommendations may be made.

### **Likelihood of confusion**

44. There is no simple formula for determining whether there is a likelihood of confusion. It is clear that I must make a global assessment of the competing factors (*Sabel* at [22]), keeping in mind the interdependency between them 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 vice versa (*Canon* at [17]).

45. Earlier in this decision, I found that:

- The marks are identical.

- All the contested goods are similar to at least some of the opponent's goods to a low degree.
- The average consumer for the goods at issue is the general public who will pay a medium degree of attention during the purchasing process.
- The purchasing process will be predominantly visual, although I do not discount an aural component to the purchase.
- The earlier mark is inherently highly distinctive.

46. Given that the marks are identical, there is nothing to assist the average consumer in distinguishing between them. Further, taking into account the high degree of distinctiveness of the marks, while bearing in mind the principle of interdependency, it is unlikely that the average consumer would attribute the use of such identical marks as a coincidence, even on goods similar to only a low degree. I therefore consider there to be a likelihood of direct confusion between the marks in relation to all the goods for which similarity was found.

## **CONCLUSION**

47. The opposition has succeeded under section 5(2)(a). Subject to any successful appeal, the application will be refused in full.

## **COSTS**

48. The opponent has succeeded and is entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 1/2023. Although I have read the witness statement of Mr Li, it was of no relevance to my substantive decision.<sup>15</sup> As such, I make no award of costs for it. In the circumstances, I award the opponent the sum of £700, calculated as follows:

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<sup>15</sup> See paragraph [13] of this decision.

Official fee:	£100
Filing a notice of opposition and considering the applicant's counterstatement:	£300
Filing written submissions:	£300
<b>Total:</b>	<b>£700</b>

49. I therefore order CHUANRUI HE to pay MAXCOOL SHOP LIMITED the sum of £700. This sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

**Dated this 19<sup>th</sup> day of November 2025**

**Sam Congreve**  
**For the Registrar**

## Annex 1

Class 21 Pot lids; Closures for pot lids; Cooking pot sets; Paper cooking pots; Reusable silicone food covers; Plastic ice cube moulds; Insulated food cover domes; Covers for dishes; Cup lids; Combined lids for kitchen containers; Dining plates of silica gel; Plates (Paper -); Paper plates; Containers for pot pourri; Pots; Cooking pots; Pot cleaning brushes; Cookware [pots and pans]; Silicone baking cups; Silicone muffin baking liners; Crumb trays; Seed tray inserts; Baking cases of silicone; Ice cube trays; Disposable paperboard bakeware; Baking tins; Saucepans; Cooking utensils; Kitchen moulds; Cutlery trays; Cutlery trays; Cups; kitchen container; Air Fryer Liners; Air Fryer Disposable Paper Liners; Air Fryer Silicone Liners; Air Fryer Silicone Pot; Air Fryer Racks.