O/1176/25

TRADE MARKS ACT 1994

IN THE MATTER OF

TRADE MARK APPLICATION NO 4038566

IN CLASS 12

IN THE NAME OF

GUANGZHOU YU HONG YE NETWORK TECHNOLOGY LTD.

FOR THE FOLLOWING MARK:

BULLSPANN

AND

OPPOSITION THERETO (UNDER NO. 448488)

BY

ZEG ZWEIRAD-EINKAUFS-GENOSSENSCHAFT EG

BACKGROUND

1) On 12 April 2024, Guangzhou Yu Hong Ye Network Technology Ltd. ('the applicant') applied to register the mark, BULLSPANN, in respect of the following goods:

> **Class 12:** Bicycle kickstands; bicycle chains; bicycle handlebars; gears for bicycles; bicycle brakes; pumps for bicycle tyres; baskets adapted for bicycles; bicycle bells; motorcycle handlebars; saddle covers for motorcycles.

2) The application was published in the Trade Marks Journal on 26 April 2024 and notice of opposition was later filed by ZEG Zweirad-Einkaufs-Genossenschaft eG ('the opponent'). The opponent claims that the application offends under Section 5(2)(b) of the Trade Marks Act 1994 ('the Act'). The following trade mark registration, and goods covered by the same, is relied upon:

i) **TM No. 800922242**

BULLS

Class 12: two-wheeled vehicles, motorized two-wheeled vehicles, bicycles, children bicycles, motor-assisted cycles, motorcycles; sporting bikes, racing bikes; parts, spare parts and accessories for all afore mentioned vehicles (included in this class); parts for bikes and two-wheeled vehicles (included in this class).

Priority date: 28 September 2006 (Germany)
Filing date: 27 March 2007
Date of entry in the register: 30 June 2008

3) The trade mark relied upon by the opponent is an 'earlier' mark, in accordance with section 6 of the Act.[1] As it had been registered for more than five years at the date of filing of the applicant's mark, it is, in principle, subject to the proof of use conditions, as per Section 6A of the Act.

4) The applicant filed a counterstatement. It does not request proof of use of the earlier mark for the purpose of establishing genuine use.[2] It accepts that there may be some visual and aural similarity between the marks but denies that the respective goods are similar and denies that there is a likelihood of confusion.

5) Subsequent to the filing of the counterstatement a preliminary indication was issued to the parties under Rule 19 of The Trade Marks Rules 2008.[3] That indication was that the opposition would succeed against all goods in the application. The applicant gave notice that it nevertheless wished to proceed to the evidence rounds.[4] The preliminary indication, given by a different Hearing Officer, is not binding upon me and will have no bearing upon my decision.

6) The opponent is represented by BHA IP; the applicant is represented by Pablo Albert Catala. Neither party filed evidence. The opponent filed written submissions during the evidence rounds.[5] Neither party requested a hearing nor filed written submissions lieu. I now make this decision based upon the papers before me.

DECISION

7) The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the

[1] Following the end of the transition period of the UK's withdrawal from the EU, all EUTMs and IR (EU) TMs registered before 1 January 2021 were recorded as comparable trade marks in the UK trade mark register (and as a consequence, have the same legal status as if they had been applied for and registered under UK law). A 'comparable trade mark (EU)/IR(EU)' retains the same filing date, priority date (if applicable) and registration date of the EUTM/EU(IR)TM from which it derives.
[2] Q7 of Form TM8 refers. (Whilst, at paragraph 11 of the continuation sheet of the Form TM8, the applicant requests proof of use, this is said to be for the purpose of establishing that the earlier mark has enhanced distinctiveness; there is no indication that this is for the purpose of establishing genuine use.)
[3] As per the official letter of 19 November 2024
[4] As per Form TM53 filed on 12 December 2024
[5] Dated 13 February 2025 (amended and re-filed on 05 March 2025)

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. Hence, this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

8) Section 5(2)(b) of the Act states:

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

9) The leading authorities which guide me are from the Court of Justice of the European Union: *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.

The principles

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

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

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

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

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

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

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

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

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

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

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

Comparison of goods

10) In *Gérard Meric v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM* Case T-133/05) (‘*Meric*’) the General Court held that:

> “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 the trade mark application (Case T-388/00 Institut für Lernsysteme v OHIM – Educational Services (ELS) [2002] ECR II-4301, paragraph 53) or when the goods designated by the trade mark application are included in a more general category designated by the earlier mark (Case T-104/01 Oberhauser v OHIM – Petit Liberto (Fifties) [2002] ECR II-4359, paragraphs 32 and 33; Case T-110/01 Vedial v OHIM – France Distribution (HUBERT) [2002] ECR II-5275,paragraphs 43 and 44; and Case T-10/03 Koubi v OHIM – Flabesa (CONFORFLEX) [2004] ECR II-719, paragraphs 41 and 42).”

11) The goods to be compared are:

Opponent’s goods	Applicant’s goods
Class 12: two-wheeled vehicles, motorized two-wheeled vehicles,	**Class 12:** Bicycle kickstands; bicycle chains; bicycle handlebars; gears for

bicycles, children bicycles, motor-assisted cycles, motorcycles; sporting bikes, racing bikes; parts, spare parts and accessories for all afore mentioned vehicles (included in this class); parts for bikes and two-wheeled vehicles (included in this class).	bicycles; bicycle brakes; pumps for bicycle tyres; baskets adapted for bicycles; bicycle bells; motorcycle handlebars; saddle covers for motorcycles.

12) All of the applicant's goods fall within the opponent's 'parts, spare parts and accessories for all afore mentioned vehicles (included in this class); parts for bikes and two-wheeled vehicles (included in this class).' They are, therefore, identical as per *Meric*.

Average consumer and the purchasing process

13) It is necessary to determine who the average consumer is for the respective goods and the manner in which they are likely to be selected. 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. (as he then was) 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."

14) The average consumer for the relevant goods is the general public. The purchasing act will be primarily visual because such goods will be selected after

perusal of the goods in-store or from photographs/images on Internet websites or in catalogues. That is not to say, though, that the aural aspect should be ignored since the goods may sometimes be the subject of discussions with sales representatives, for example. The cost of the goods is likely to vary. I would expect factors such as functionality, compatibility (with the bicycle/motorcycle for which they are being purchased) and, sometimes, aesthetics to be taken account of by the consumer when making the purchase. Generally speaking, I find that a medium degree of attention is likely to be paid during the purchase for the relevant goods.

Comparison of marks

15) 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 Case C-591/12P, *Bimbo SA v OHIM*, that:

> ".....it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion."

It would be wrong, therefore, to dissect the marks artificially, although it is necessary to take into account their distinctive and dominant components and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

16) The marks to be compared are:

Neither mark lends itself to deconstruction into separate elements. Their respective overall impressions are based solely on the single word of which they are comprised.

17) Visually, the contested mark includes the entirety of the earlier mark at its beginning. However, the contested mark also contains the additional four letters 'PANN' at the end which are not present in the earlier mark. Whilst I bear in mind that it is the beginning of words which tend to have the greatest impact on the perception, that is no more than a general rule of thumb; it is not an immutable rule. In my view, the visual coincidence between the marks arising from the shared letters 'BULLS' at the beginning is tempered by the fact that the contested mark is somewhat longer than the earlier mark. As such, I do not agree with the opponent that the marks are visually highly similar overall. I find the visual similarity between the marks to be no more than medium.

18) Aurally, the marks coincide in the single syllable, BULLS, which comprises the entirety of the earlier mark and the first syllable of the contested mark. The latter also includes a second syllable, PANN, which is absent from the earlier mark. Overall, the marks are aurally similar to no more than a medium degree.

19) Turning to the conceptual comparison, the earlier mark will, as the opponent submits, be perceived as meaning male cows. The contested mark appears to be an invented word. Nevertheless, even invented marks are capable of being evocative or suggestive of a concept if there are aspects of the mark which resemble a known word.[6] Given the presence of the well-known word BULL/BULLS at the beginning of the contested mark, a substantial proportion of consumers may perceive that mark as alluding to the concept of a male cow/group of male cows, notwithstanding the invented nature of the word as a whole. For those consumers, there is, therefore, some degree of conceptual similarity between the marks. However, for another separate substantial proportion of consumers, the contested mark is likely to evoke no meaning at all given its overall invented nature. For that group of consumers, the marks are

[6] *Usinor SA v OHIM,* T-189/05

conceptually different given that, in those circumstances, the earlier mark has a clear concept and the contested mark has none.[7]

Distinctive character of the earlier mark

20) The distinctive character of the earlier mark must be considered. The more distinctive it is, either by inherent nature or by use, the greater the likelihood of confusion (*Sabel BV v Puma AG*). In *Lloyd Schuhfabrik Meyer & Co. GmbH* v *Klijsen Handel BV,* Case C-342/97 the CJEU stated that:

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

As the opponent has filed no evidence of use of its mark, I have only the inherent degree of distinctiveness of the same to consider. The word 'BULLS' will be perceived

[7] PICASSO/PICARO, C-361/04

as meaning male cows. Although a very well-known English language word, BULLS is not obviously allusive or descriptive in relation to the opponent's goods. I find the opponent's mark to have a medium degree of inherent distinctiveness.

Likelihood of confusion

21) I must now feed all of my earlier findings into the global assessment of the likelihood of confusion, keeping in mind the following factors: i) the interdependency principle, whereby a lesser degree of similarity between the goods may be offset by a greater similarity between the marks, and vice versa (*Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*); ii) the principle that the more distinctive the earlier mark is, the greater the likelihood of confusion (*Sabel BV v Puma AG*), and; iii) the factor of imperfect recollection i.e. that consumers rarely have the opportunity to compare marks side by side but must rather rely on the imperfect picture that they have kept in their mind (*Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V).*

22) The marks are visually and aurally similar to no more than a medium degree. Conceptually, the marks share some degree of similarity for a substantial proportion of average consumers. However, for another separate substantial proportion of average consumers, they are conceptually different. The purchase is also likely to be mainly visual although aural considerations are borne in mind. I also bear in mind that the opponent's mark has a medium degree of inherent distinctiveness. Weighing all these factors, I do not consider that the average consumer, being a member of the general public paying a medium degree of attention, is likely to imperfectly recall the marks as being the same. I reach this conclusion even where the marks may be perceived as having some conceptual similarity and notwithstanding the identity of the goods at issue. The likelihood of the marks being imperfectly recalled as being the same is even less likely where the marks are perceived as being conceptually different. **There is no likelihood of direct confusion.**

23) I will now consider the likelihood of indirect confusion. In this connection, I bear in mind that in *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10 (*L.A. Sugar),* Mr Iain Purvis Q.C. (as he then was), sitting 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 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)".

24) I also keep in mind that in *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ referred to the comments of James Mellor QC (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at [16] that "a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct

confusion". Arnold LJ agreed, pointing out that there must be a "proper basis" for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion. Furthermore, it is not sufficient that a mark merely calls to mind another mark: *Duebros Limited v Heirler Cenovis GmbH,* BL O/547/17. This is mere association not indirect confusion.

25) I bear in mind that the categories listed above in *L.A. Sugar* are, of course, not an exhaustive list of all the ways in which indirect confusion can occur; they are merely examples of the way in which it tends to occur.

26) I can see no proper basis for concluding that the consumer, having recognised that the marks are not the same, is nevertheless likely to believe that the respective goods covered by the marks at issue come from the same/linked undertaking(s). Neither mark appears to be an entirely logical brand extension of the other nor does the later mark simply add a non-distinctive element to the earlier mark. Furthermore, the common element between the marks is not so strikingly distinctive such that the average consumer would assume that nobody, but the brand owner, would be using it in a trade mark at all. It is also not obvious to me that the marks are likely to be indirectly confused on some other basis, outside of the categories identified by Mr Purvis. I reach this conclusion whether the marks are perceived as having some conceptual similarity or not. **There is no likelihood of indirect confusion.**

OUTCOME

27) **The opposition fails.**

COSTS

28) The applicant has been successful and is entitled to an award of costs. Using the guidance in Tribunal Practice Notice 1/2023, I award the applicant costs on the following basis:

Preparing a statement and considering the other side's statement	£300

29) I order ZEG Zweirad-Einkaufs-Genossenschaft eG to pay Guangzhou Yu Hong Ye Network Technology Ltd. the sum of **£300**. This sum is to be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 17th day of December 2025

Beverley Hedley
For the Registrar