O/1195/25

TRADE MARKS ACT 1994

IN THE MATTER OF INTERNATIONAL REGISTRATION NUMBER

WO0000001608942

BY APPLE INC.

TO REGISTER THE FOLLOWING TRADE MARK:

APPLE FIND MY

IN CLASS 42

AND

THE OPPOSITION THERETO UNDER NO.

OP000432481

BY MEGA POP PODJETJE ZA OGLASEVANJE NA PROSTEM D.O.O

BACKGROUND AND PLEADINGS

1. Apple Inc. ("the holder") is the holder of the international registration ("the IR") shown on the cover page of this decision, no. WO0000001608942. The IR was registered on 22 June 2021. With effect from the same date, the holder designated the UK as a territory in which it seeks to protect the IR under the terms of the Protocol of the Madrid Agreement. The IR claims a priority date of 23 December 2020, the priority country being Jamaica and the trade mark number from which priority is claimed being 82296.

2. The holder seeks protection of the IR in relation to the following services:

Class 42	Design and development of computer hardware, software, and peripherals; computer programming; electronic data storage; cloud computing services; providing virtual computer systems and virtual computer environments through cloud computing; providing online non-downloadable software; providing computer hardware or software information online.

3. The IR was published for opposition purposes on 21 January 2022.

4. On 8 April 2022, MEGA POP podjetje za oglasevanje na prostem d.o.o ("the opponent") opposed all of the holder's services on the basis of section 5(2)(b) of the Trade Marks Act 1994 ("the Act").

5. The opponent relies upon the trade mark no. UK00801355567, detailed below.

FIND MY CAR

Filing date:
17 August 2016
Date of registration:
19 December 2017

6. For the purposes of these proceedings, the opponent is reliant upon the following goods and services:

   Class 9 Computer hardware; smart cards.

   Class 42 Scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware; computerized security services relating to the use of smart cards.

7. In its Form TM7, the opponent states that the IR is similar to its mark and that protection is sought for identical or similar services. It says that the marks share the same two words "FIND MY" in the same sequence. Further, it says that:

   > "There is a likelihood of confusion in the mind of consumers. The relevant public will believe that the opposed trademark and the earlier mark are used by the same undertaking or think that there is an economic connection between the owner of the opposed trademark and the earlier mark."

8. The holder filed a Form TM8 and a counterstatement denying the claims made.

9. The holder filed evidence, detailed below. The opponent's evidence in reply was struck out due to not having been filed in the correct evidential format.

10. The holder is represented by Shoosmiths LLP and the opponent is represented by Tija Hubej.

11. A hearing was held before me on 6 February 2025. The opponent did not attend the hearing. The holder was represented Phillip Johnson of Counsel, instructed by Shoosmiths LLP, who had filed skeleton arguments prior to the hearing.

Preliminary issue

12. The holder pointed out in its skeleton arguments and before me that the opponent's mark was cancelled for non-use on 25 January 2024. However, the revocation of the opponent's mark has no bearing upon the opposition, as per the decision of Professor Ruth Annand, sitting as the Appointed Person in *TAX ASSIST* (BL O/220/12). What matters is only that the earlier mark was extant on the register at the relevant date for the IR which is the IR's priority date of 23 December 2020.

Evidence

13. The holder filed evidence in the form of a witness statement from Thomas R. La Perle, an Assistant Secretary and Senior Director in the Legal Department of the holder who manages the holder's Trademark and Copyright Group, signed and dated 12 March 2024, together with exhibits TLP-1 to TLP-17 and TLP-19 to TLP-22.

DECISION

Section 5(2)(b)

14. 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.

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

> "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."

16. By virtue of its earlier filing date, the opponent's mark constitutes an earlier mark in accordance with section 6 of the Act. The opponent ticked "Yes" in response to questions 2 (STATEMENT OF USE - Was the registration or protection process for the earlier trade mark completed 5 years or more before the application date (or priority date, if applicable) of the application or international registration you wish to oppose?) and 3 (Has the trade mark been used in the 5-year period ending on the date of application (or priority date, if applicable) of the opposed mark?) of Section A of its Form TM7. However, the opponent's mark had not been registered for five years or more on the priority date of the IR and so it is not subject to proof of use in accordance with section 6A of the Act. Nor did the holder request proof of use.

17. 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.

18. The likelihood of confusion must be appreciated globally, taking account of all relevant factors;

(a) 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;

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

(c) 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;

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

(e) 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;

(f) 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;

(g) 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;

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

(i) 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;

(j) 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 the goods and services

19. When making the comparison, all relevant factors relating to the goods and services in the specifications should be taken into account. In *Canon*, Case C-39/97, the Court of Justice of the European Union ("CJEU") stated that:

> "23. 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."

20. Guidance on this issue has also come from Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, where he identified the factors for assessing similarity as:

(a) The respective uses of the respective goods or services;

(b) The respective users of the respective goods or services;

(c) The physical nature of the goods or acts of service;

(d) The respective trade channels through which the goods or services reach the market;

(e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be found in supermarkets and, in particular, whether they are or are likely to be found on the same or different shelves;

(f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance, whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

21. In *Gérard Meric v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-133/05, the General Court ("GC") stated 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 trade mark application (Case T-388/00 *Institut für 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."

22. The goods and services for comparison are as follows:

Opponent's goods and services	**Holder's services**
Class 9 Computer hardware; smart cards.	
Class 42 Scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware; computerized security services relating to the use of smart cards.	Class 42 Design and development of computer hardware, software, and peripherals; computer programming; electronic data storage; cloud computing services; providing virtual computer systems and virtual computer environments through cloud computing; providing online non-downloadable software; providing computer hardware or software information online.

23. In its skeleton arguments, the holder has said that:

> "5. It is admitted that the Applicant's services "Design and development of computer hardware, software, and peripherals" are identical to the Opponent's services "design and development of computer hardware" by reason of the inclusiveness principle."

24. For reasons that will become apparent later in this decision, I will proceed on the basis of the closest point of similarity between the respective goods and services, that of admitted *Meric* identity between the above services.

Average consumer and the purchasing act

25. It is necessary for me to determine who the average consumer is for the goods in question; I must then determine the manner in which the goods are likely to be selected by the average consumer in the course of trade.

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

> "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."

27. The holder has said that:

> "8.1 In relation to the "design and development of computer hardware, software and peripherals" and "computer programming", the relevant public would be sophisticated businesses, these businesses would expect at least a medium-term relationship with the designers (while the product was being created), and the purchasing decisions would involve negotiations and presentations discussing specifications and other requirements before the purchase was made. In short, the purchase would be highly circumspect and even the smallest differences between the marks would be noticed."

28. I concur with the holder's analysis, and I find that the average consumer for services for the design and development of computer hardware, software and peripherals, is a business seeking design and development input on technological projects. Such services are highly technical, and the business customer will pay attention to the capabilities of the companies offering the services and their areas of expertise. Entering into a contract for such services will entail a considerable financial outlay. Overall, I find that the level of attention that would be paid during the purchasing process would be of a relatively high level.

29. Prospective consumers of the above referenced services would initially select them visually via the service provider's website, with verbal considerations coming into play when as the contract for such services was discussed.

Comparison of the marks

30. 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."

31. 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.

32. The respective trade marks are shown below:

Opponent's mark	**The IR**
FIND MY CAR	APPLE FIND MY

Overall impression

33. The opponent's mark is a plain word mark consisting of the unitary phrase "FIND MY CAR", with the overall impression made by the mark lying in the combination of the words.

34. While the reproduction of the holder's mark on the register could be said to be very slightly stylised, the holder has declared that it wishes the mark to be considered as a mark in standard characters and so I will treat it as a word mark. A significant proportion of average consumers will perceive "APPLE" and "FIND MY" as standalone elements, with these elements playing an equal role in forming the overall impression made by the mark.

Visual comparison

35. Visually, the marks share the words “FIND MY”, with the opponent’s mark ending with the word “CAR” and the IR beginning with the word “APPLE”. Overall, I find the marks to be of a medium degree of visual similarity.

Aural comparison

36. Aurally, the marks share the identically pronounced “FIND MY”, but the marks begin differently phonetically and consist of three syllables versus four. Overall, I find the marks to be of a medium degree of aural similarity.

Conceptual comparison

37. The opponent’s mark gives rise to the concept of finding one’s car.

38. The holder makes the following arguments:

> “9.3 Conceptually, the marks have no similarity (or alternatively, very little):
>
> 9.3.1 It is the Applicant’s primary case that the word “Apple” when used in relation to goods and services (other than fruit) has become a distinct concept for the Applicant’s brand and business: see C-361/04 *Ruiz-Picasso v OHIM* [2006] ECR I-643 and C-449/18 *EUIPO v Messi Cuccittini*, EU:C:2020:722.
>
> 9.3.1.1 The strength of the Applicant’s brand in the United Kingdom is so notorious that it is something in respect of which the registrar could properly take judicial notice for this purpose: see C-449/18 *EUIPO v Messi Cuccittini*, EU:C:2020:722, [74].
>
> 9.3.1.2 In any event, the Applicant has filed extensive evidence supporting the strength of its brand.

9.3.2 In the alternative, the concept attached to the word Apple would be the fruit itself."

39. In the *Messi Cuccittini* case, it was held that the reputation of the footballer Lionel Messi was a well-known fact that should have been taken into account in the assessment of conceptual similarity. Even on the basis that the assessment of conceptual similarity is usually done without reference to the goods and services at issue, I consider that I am entitled to take judicial notice of how well known the technology company Apple is in the UK (even without reference to the copious evidence that the holder has filed to that effect) and find that a significant proportion of average consumers when considering the mark "APPLE FIND MY" would derive the concept of the technology company Apple from the word "APPLE". However, if I am wrong to say that they would derive such a concept from the mark in and of itself without reference to the services for which it is registered, then the average consumer would simply derive the concept of a fruit from the word "APPLE" in the mark.

40. Whether the average consumer would derive the concept of a well-known technology company from the IR or the concept of a fruit, either concept is absent from the opponent's mark. However, the marks share the broad concept of finding something belonging to one. Overall, I find the marks to be conceptually similar to a medium degree.

Distinctive character of the earlier mark

41. The distinctive character of a trade mark can be appraised only, first, by reference to the goods and services in respect of which registration is sought and, secondly, by reference to the way it is perceived by the relevant public – *Rewe Zentral AG v OHIM (LITE)* [2002] ETMR 91. In *Lloyd Schuhfabrik*, 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 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)."

42. 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 or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities.

43. The earlier mark, being the word mark "FIND MY CAR" is suggestive of the goods and services for which it is registered in that it alludes to a technology-based means of finding one's car. I find the mark to be of low inherent distinctiveness.

44. No evidence has been filed by the opponent as to enhanced distinctiveness.

Likelihood of confusion

45. 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 scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the opponent's trade marks, the average consumer for the goods at issue and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that they have retained in their mind.

46. I have found the parties' marks to be visually, aurally and conceptually similar to a medium degree.

47. I am proceeding on the basis of the closest point of similarity between the respective goods and services, that of the admitted *Meric* identity between the holder's "Design and development of computer hardware, software, and peripherals" and the opponent's "design and development of computer hardware".

48. I have found that the average consumer for services for the design and development of computer hardware, software and peripherals is a business that would pay a relatively high level of attention during the purchasing process. Initial selection of the services would be visual, with verbal considerations coming into play when as the contract for such services was discussed.

49. I have found the earlier mark to have a low level of inherent distinctive character, the opponent not having filed any evidence in respect of enhanced distinctiveness.

50. The presence of the word “APPLE” in the holder’s mark, a word that is absent from the opponent’s mark, would not go unnoticed. Furthermore, the word “CAR” is in the opponent’s mark and absent from the holder’s mark. There is no likelihood of direct confusion in this case, even where the services are *Meric* identical.

51. I also consider the likelihood of indirect confusion. Indirect confusion was described in the following terms by Iain Purvis Q.C. (as he then was), sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10:

> “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 recognised 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.”

52. It is the holder’s contention that:

> “22. Even where the services are identical, it is submitted that there would be no likelihood of confusion between the Applicant’s Mark and the Opponent’s Mark because:
>
> 22.1 The Earlier Mark has a very low level of distinctiveness.
>
> 22. 2 The APPLE element of the Applicant’s Mark has the highest level of enhanced distinctiveness possible (as the World’s Number One

Brand).

22.3 The APPLE element of the Applicant's mark is a concept in its own right and any use of that word would create an association with the Applicant.

22.4 The FIND MY element of the marks is either descriptive or it would be associated with the Applicant both at the time of filing the Earlier Mark and the relevant date.

22.5 The APPLE element of the Applicant's Mark dwarfs any common elements in the marks."

53. Mr La Perle has attested to and provided evidence to show that Apple has used the phrase "FIND MY" dating back to June 2010.[1] Initially, this took the form of "Find my iPhone", "Find My iPad" and "Find my iPod Touch" and then "Find My Friends", "Find My AirPods" and so on. In September 2019, the ability to locate particular devices or peripherals was consolidated into a single "FIND MY" app offered by Apple.

54. While I do not doubt that the "FIND MY" app has been available for some time across Apple's devices and will therefore have been frequently encountered by Apple's large customer base (including customers in the UK), the evidence before me documents the use of "FIND MY" *within* Apple devices for the purposes of finding Apple goods. As such, I do not consider the presence of the phrase "FIND MY" in and of itself within a trade mark that refers to the ability to find one's car will necessarily lead the average consumer to associate it with the Apple technology company.

55. The word "APPLE" is an entirely distinct element within the holder's mark, the words "FIND MY" being allusive. The average consumer would see the presence of that allusive phrase in the opponent's lowly distinctive mark as coincidental.

[1] Witness statement, paragraphs 29 to 47, together with exhibits TLP-3 to TLP-16.

They would simply see the opponent's mark as originating from one of many companies that offer a technology-based means of locating one's possessions, in this case one's car. Consequently, there is no likelihood of indirect confusion in this case even where the services at issue are *Meric* identical.

CONCLUSION

56. Subject to any appeal, the opposition fails in its entirety and the IR is permitted protection in the UK.

COSTS

57. As the successful party, the holder is entitled to a contribution to its costs and it indicated in its skeleton arguments that it sought costs on the scale, the scale in question coming from Tribunal Practice Notice 2 of 2016, proceedings having commenced prior to 1 February 2023. Mr Johnson elaborated on the holder's position on costs before me. Saying that the opponent did nothing more than file a Form TM7 (albeit I note that the opponent made an attempt to file evidence in reply that was struck out due to not having been filed in the correct evidential format), it is the holder's view that costs should be at the top end of the scale due to the limited amount of effort that the opponent had put in to opposing the IR.

58. Having taken the holder's comments into account, I award the following costs:

Preparing a statement and considering the other side's statement:	£200
Preparing evidence:	£1000
Preparing for and attending a hearing:	£750

59. I therefore order MEGA POP podjetje za oglasevanje na prostem d.o.o to pay Apple Inc. the sum of £1950. 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 final determination of the appeal proceedings.

Dated this 22nd day of December 2025

John Williams
For the Registrar