

O/447/19

TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK APPLICATION NO 3 281 313: REEHUT IN
CLASS 28 BY QUANZHOU WANXIANG INFORMATION & TECHNOLOGY CO,
LTD

AND

IN THE MATTER OF OPPOSITION THERETO BY REEBOK INTERNATIONAL
LIMITED

Background and pleadings

1. Quanzhou Wanxiang Information & Technology Co, Ltd (the applicant) applied to register the trade mark No 3 281 313: Reehut in the UK on 9th January 2018. It was accepted and published in the Trade Marks Journal on 26th January 2018 in respect of the following goods in Class 28:

Barbells; Dart shafts; Gymnastic apparatus;Gymnastics rings; Jump ropes; Knee guards for athletic use; Knee pads for athletic use; Swing sets; Tennis nets; Ankle and wrist weights for exercise; Balance beams; Exercise balls;Knee pads for athletic use;Leg weights [sports articles];Yoga blocks;Yoga straps; Appliances for gymnastics; Exercise weights;Balance beams [for gymnastic];Barbells for weight lifting;Pads for use in sports;Exercisers[expanders];Manually operated exercise equipment;Body protectors for sports use;Belts (Weight lifting-)[sports articles];Sports equipment;Exercise bands;Grip tapes for golf clubs;Fitness exercise machines;Exercise treadmills;Rowing machines;Leg weights for exercising;Balls for playing handball;Inflatable mattresses for recreational use;Lacrosse balls;Protective padding for sports;Paddings (Protective -) [parts of sports suits];Hurdles for use in athletics training;Body-training apparatus;Putting mats for indoor putting practice;Putting practice mats [golf implement];Inflatable balls for sports;Billiard table cushions;Gloves for sports;Hockey gloves;Gloves made specifically for use in playing sports;Bowling apparatus and machinery;Golf bags;Shin pads [sports articles];Exercise bands;Wrist guards for athletic use;Gym balls for yoga;Chest developers;Dumbbells for weight lifting;Punching bags;Climbers' harness.

2. Reebok International Limited (the opponent) oppose the trade mark on the basis of Section 5(2)(b) and 5(3) of the Trade Marks Act 1994 (the Act). The grounds of opposition under Section 5(2)(b) and 5(3) of the Act is on the basis of its earlier European Union (formerly Community)Trade Mark No 373: REEBOK. The following goods are relied upon in this opposition:

Class 18:

All types of bags, leather and imitation leather goods, umbrellas.

Class 25:

Clothing, footwear, headgear.

Class 28:

Toys, games and playthings, gymnastic and sporting articles not included in other classes.

3. Under Section 5(2)(b), the opponent argues that the respective goods are identical or similar and that the marks are similar. Under Section 5(3), the opponent argues that the applicant will benefit from (the opponent's) investment in advertising, leading to advantage. Further that the applicant will ride on its coat tails and will benefit from the power of attraction, reputation and prestige of the earlier mark. The opponent also claims that the later use will be out of its control and that poor quality or offensive goods will cause detriment to its valuable reputation and business. It claims that use of the later mark will dilute the distinctive character and reputation of its marks. Finally, the opponent claims that there is no due cause for adoption of the opposed mark.
4. The applicant filed a counterstatement denying the claims made (and requesting that the opponent provides proof of use of its earlier trade mark relied upon).
5. Both sides filed evidence. This will be summarised to the extent that it is considered necessary.
6. Only the opponent filed written submissions which will not be summarised but will be referred to as and where appropriate during this decision. No hearing

was requested and so this decision is taken following a careful perusal of the papers.

Evidence

Opponent's evidence

7. This is a witness statement, dated 4th December 2018 from Ms Sarah Talbot, the Director of the opponent. Ms Talbot provides a brief history of the company from 1895 onwards. It is noted that the name Reebok commenced use as long ago as 1960 and in respect of sports footwear, including those worn by runners. Since then, according to Ms Talbot, it has been used in relation to a wide variety of sports products, equipment and accessories.

8. In respect of sales in the European Union (EU) Ms Talbot refers to Exhibit XX2 which contains a breakdown of sales figures. In respect of the UK¹, I note that for the year 2015 – 2016, net sales were 27,630,200; in 2016-2017 the figure was 42,031,163; 2017-2018 the figure was 45,383,371. It is noted that these figures are not broken down according to the nature of the goods sold. Figures for the UK for the period 2004 – 2008 are also provided. They will not be summarised (less to say that they are also not broken down according to the types of goods) but are noted.

9. In terms of bare figures for advertising and promotion spend, these are provided only for the years 2004-2008. In the early 2000s, details are also provided of celebrities appearing in advertising campaigns, mainly in respect of (sports) footwear but also in respect of (sports) clothing. It is noted that Ms Talbot describes a collaboration between Reebok and hip-hop artist Kendrick Lamar in relation to several ranges of trainers between 2014-2017. In 2016, Reebok began a further collaboration with Palace Skateboards, one of the biggest streetwear brands from the UK. In 2017, Victoria Beckham announced she would be working with Reebok and her first collection was launched in

¹ The position in the UK is important for the purposes of assessing the impact of the reputation of the earlier trade mark under the opponent's Section 5(3) claim.

2018. Exhibit XX3 contains internet print outs relating to sponsorships. I note from the Exhibit that much of the information contained therein is from the early 2000s. However, there is an entry from March 2016, from the Fashionista website referring to the collaboration with Kendrick Lamar. There is also an entry from April 2014 (from the website "Mancunianmatters") referring to the ending of Reebok's sponsorship of the stadium of the Bolton Wanderers Football Club.

10. Exhibit XX4 contains a selection of internet printouts relating to advertisements run by Reebok. It is noted that these are dated from 2000 and 2007.
11. Ms Talbot goes on to describe the numerous associations Reebok has had with a wide variety of sportspeople. These date from 1970 up to 2008 and include prominent athletics figures, footballers (and football clubs) and tennis players.
12. Exhibit XX7 contains printouts from the Wayback Machine internet archive service. It is noted that the products on sale in the UK include sports footwear and clothing, bags and other sports accessories and equipment. These include fitness gloves, yoga mats, dumbbells, exercise steps, treadmills
13. Exhibit XX5 contains a report on an event run by Reebok which celebrated the release of a "vector" collection of clothing and footwear. It is noted from the report that the event was reported in the National press, notably the Daily Mail.
14. Exhibit XX6 contains a report on an event run by Reebok whereby a series of short films was released. During the event, complementary trainers were provided to guests.
15. Details of advertising and expenditure spend is provided between the years 2004 – 2008. It is difficult to see the relevance of these figures in the absence of more recent data. The same criticism can be made of the details provided

of the opponent's associations with sports people. It is noted that these date from 1970 onwards up to and including 2008. There is however a lack of more recent information.

16. Exhibits XX7, XX8 and XX9 contain screenshots from the opponent's websites (UK and EU) and also from social media.
17. Exhibit XX10 is a copy of the opponent's international price list dated 2015. According to the opponent this shows use of REEBOK on goods including sports gloves and mitts, hand wraps, pads, combat bags, guards and shields. Prices are shown in dollars, but the opponent argues that the document clearly states on each page that it is an international price list.
18. Exhibit XX11 contains a copy of a training equipment catalogue from 2016. This shows use of Reebok in respect of equipment such as skipping ropes, dumbbells, gloves, plyostacks, suspension rings, kettle balls, gym balls, mats, utility benches, training gloves and pads, body shields and foam rollers. Prices are provided in dollars, however according to the opponent, ordering rules are provided across many EU countries, including the UK.
19. Exhibit XX12 is a copy of a yoga collection catalogue from 2016, showing use of Reebok in respect of a variety of goods including yoga mats, bags, blocks and straps. Again, ordering rules are provided for countries across the EU including the UK.
20. Exhibit XX13 are examples of press coverage of the Reebok brand. The following is noted:
 - One is dated 2006 from the BBC website and refers to a sponsorship deal with boxer Amir Khan, whereby Reebok's gloves, kit and boots will be worn by Mr Khan.

- Another is from a website called “prweek”, dated 2012. This refers to Reebok as a “sportswear giant” and details its involvement in a programme which encourages people to get “fit for life”.
- Another is from a website called “digiday” and is dated 2015. It describes Reebok’s successful social media presence. It includes quotes from Reebok itself, describing it as being in the business of selling shoes. There is also reference made to handwraps used by boxers.
- Another from the website of The Independent, dated April 2016. This describes a launch of a new set of trainers, inspired by the Alien films.
- Another from the website of The Daily Mail, dated April 2017, describing a collection of clothing (particularly jeans) from Reebok which are designed to appear mud spattered.
- There are two further articles from the website of The Independent. The first, dated July 2017 refers to a comment made by Reebok following a remark from Donald Trump. The second, dated September 2014 refers to a competition ran by Reebok whereby year long sponsorship could be won if the participant agreed to a Reebok tattoo. This appears to have been based in Sweden.
- The final article is from the website of The Metro and is dated April 2018. It describes how Reebok (alongside Adidas) are the best brands for environmental and social transparency. It describes Reebok as a sportswear brand.

Conclusions on the opponent’s evidence

21. It is noted that much of the opponent’s evidence is dated from periods long before the relevant date in these proceedings (which is the application date: 19th January 2018). This applies to much of the press coverage, sponsorship deals and advertising expenditure. Further in terms of turnover, although more recent data is provided, they are not stratified according to the types of goods sold. The impression I get from the material before me is that Reebok is a brand which has experienced a wane in its popularity, at least from its heyday. That said, from the evidence provided, I am satisfied they do still enjoy a

reputation, at least in respect of sports footwear and also (albeit to a lesser extent) in relation to sportswear (clothing).

22. The position is notably less clear in respect of sporting equipment generally. There are some references to such items, such as yoga mats, training machines and other items. However, there are no specific sales or advertising figures in respect of such items. The examples of advertising are overwhelmingly in relation to shoes and clothing. It is noted that Reebok have sponsored sporting figures, for example the boxer Amir Khan and that Mr Khan used Reebok branded boxing gloves. However, this was in 2006 and so while it was possible that Reebok enjoyed a reputation in respect of such items around that time period, this does not shed any light on the position at the relevant date in these proceedings: 19th January 2018. There is also no context provided such as to the market share in sporting equipment held by Reebok (or indeed any information on the size of that particular market). Bearing in mind all of the aforesaid, it is concluded that the evidence filed does not establish that Reebok, at the relevant date in these proceedings, enjoyed a reputation in sporting equipment (either in a general sense or in respect of specific items).

Additional remarks

23. It is noted that the applicant also filed evidence. This evidence contains information as to how the trade mark applied for is being used. This evidence will not be summarised in full (though it have been perused and the content noted). In its submissions, the opponent focusses upon one aspect of the applicant's evidence in relation to the use of the applied for trade mark in a stylised form. This evidence, claims the opponent, adds support to its claim under Section 5(3) of the Act in that it is intended to bring to mind the opponent's vector logo. I will return to this point further below.

DECISION

Legislation

Section 5(2)(b)

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

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

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark”.

Comparison of goods and services

25. Some of the contested goods i.e. those in Class 28 are identical to the goods on which the opposition is based. For reasons of procedural economy, the Tribunal will not undertake a full comparison of the goods listed above. The examination of the opposition will proceed on the basis that the contested goods are identical to those covered by the earlier trade mark. If the opposition fails, even where the goods are identical, it follows that the opposition will also fail where the goods are only similar.

Comparison of marks

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

their distinctive and dominant components. The Court of Justice of the European Union stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

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

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

28. The respective trade marks are shown below:

REEBOK	Reehut
Earlier trade mark	Contested trade mark

29. Both of the marks are word only and so have no stand out dominant features. Further each have the appearance of an invented word. Visually, they coincide in the first three letters and differ in their respective final three letters. They are of identical length. They are considered to be similar, to a low to medium degree.

30. Aurally, the matter is similar, they coincide entirely in respect of the first syllable and differ in respect of the second – “bok” as opposed to “hut”. They remain similar, to a low to medium degree.

31. Conceptually, neither has any meaning. Rather, they are each likely to be seen as invented words. The conceptual impact is considered to be neutral.

Average consumer and the purchasing act

32. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer, Case C-342/97*.

33. 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.”

34. The average consumer for sports equipment will be both the public at large and those with a professional level interest (for example, those who make a living from sport). The purchasing act may be visual in nature but may also follow a period of research or word of mouth recommendations. As such, both

visual and aural considerations are important. In terms of the level of attention expected to be displayed this will alter, dependent upon the exact item being purchased and the nature of the respective consumer. For example, a professional sports person is likely to pay a high degree of attention to such equipment as the purchase of the most suitable product may have a notable impact on performance. However, even in the case of a casual consumer, the level of attention is unlikely to ever be low as considerations such as function, suitability and safety will be important. As such, such a consumer is expected to at least display a medium degree of attention.

Distinctive character of the earlier trade mark

35. 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 *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).”

36. It is accepted that the opponent enjoys a reputation, particularly in respect of sports footwear and (albeit to a lesser extent), sportswear (clothing). However, the evidence failed to establish the same in respect of goods in Class 28. That said, I cannot see that this matters as Reebok is likely in any event to be viewed as being an invented word. As such, it naturally enjoys a higher than average degree of distinctive character. The likelihood of confusion therefore, will be assessed with this in mind.

GLOBAL ASSESSMENT – Conclusions on Likelihood of Confusion.

37. 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.

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.

38. Some of the goods are identical. The interdependency principle is therefore in full operation here. The earlier trade mark is an invented word with a higher than average degree of distinctive character. The marks have been found to similar visually and aurally to a low to medium degree. Conceptually, the impact is neutral. In bearing in mind all of the aforesaid, it is considered that the respective endings of the marks are clearly different. Such a difference will not go unnoticed and so it is difficult to see how the later trade mark will be mistaken for the earlier one. There is no likelihood of direct confusion.

39. This is not the end of the matter however. In considering whether or not there will be indirect confusion, I take into account the following guidance in *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, where 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 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.

40. The marks in question coincide in respect of their first three letters: Ree. They differ in respect of their endings. It is true that they are identical in length. However, they are likely to both be viewed as (differing) invented words.

There is no obvious cohesive distinctive element or pattern being repeated. Rather, there is a coincidental inclusion of “Ree” at the start of each mark. It is considered that there is nothing in the later trade mark which would lead a prospective consumer to assume that Reehut is another brand of Reebok. There is no indirect confusion. As such, the opposition based upon Section 5(2)(b) fails in its entirety.

Section 5(3) – Reputation

Legislation

41. Section 5(3) states:

“(3) A trade mark which-

(a) is identical with or similar to an earlier trade mark, shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom (or, in the case of a European Union trade mark or international trade mark (EC), in the European Union) and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark.”

42. The relevant case law can be found in the following judgments of the CJEU:

Case C-375/97, General Motors, Case 252/07, Intel, Case C-408/01, Addidas-Salomon, Case C-487/07, L’Oreal v Bellure and Case C-323/09, Marks and Spencer v Interflora. The law appears to be as follows.

a) The reputation of a trade mark must be established in relation to the relevant section of the public as regards the goods or services for which the mark is registered; *General Motors, paragraph 24.*

(b) The trade mark for which protection is sought must be known by a significant part of that relevant public; *General Motors, paragraph 26.*

(c) It is necessary for the public when confronted with the later mark to make a link with the earlier reputed mark, which is the case where the public calls the earlier mark to mind; *Adidas Saloman, paragraph 29* and *Intel, paragraph 63*.

(d) Whether such a link exists must be assessed globally taking account of all relevant factors, including the degree of similarity between the respective marks and between the goods/services, the extent of the overlap between the relevant consumers for those goods/services, and the strength of the earlier mark's reputation and distinctiveness; *Intel, paragraph 42*

(e) Where a link is established, the owner of the earlier mark must also establish the existence of one or more of the types of injury set out in the section, or there is a serious likelihood that such an injury will occur in the future; *Intel, paragraph 68*; whether this is the case must also be assessed globally, taking account of all relevant factors; *Intel, paragraph 79*.

(f) Detriment to the distinctive character of the earlier mark occurs when the mark's ability to identify the goods/services for which it is registered is weakened as a result of the use of the later mark, and requires evidence of a change in the economic behaviour of the average consumer of the goods/services for which the earlier mark is registered, or a serious risk that this will happen in future; *Intel, paragraphs 76 and 77*.

(g) The more unique the earlier mark appears, the greater the likelihood that the use of a later identical or similar mark will be detrimental to its distinctive character; *Intel, paragraph 74*.

(h) Detriment to the reputation of the earlier mark is caused when goods or services for which the later mark is used may be perceived by the public in such a way that the power of attraction of the earlier mark is reduced, and occurs particularly where the goods or services offered under the later mark have a characteristic or quality which is liable to have a negative impact of the earlier mark; *L'Oreal v Bellure NV, paragraph 40*.

(i) The advantage arising from the use by a third party of a sign similar to a mark with a reputation is an unfair advantage where it seeks to ride on the coat-tails of the senior mark in order to benefit from the power of attraction, the reputation and the prestige of that mark and to exploit, without paying any financial compensation, the marketing effort expended by the proprietor of the mark in order to create and maintain the mark's image. This covers, in particular, cases where, by reason of a transfer of the image of the mark or of the characteristics which it projects to the goods identified by the identical or similar sign, there is clear exploitation on the coat-tails of the mark with a reputation (*Marks and Spencer v Interflora*, paragraph 74 and the court's answer to question 1 in *L'Oreal v Bellure*).

Reputation – Threshold

43. In *General Motors*, Case C-375/97, the CJEU held that:

“25. It cannot be inferred from either the letter or the spirit of Article 5(2) of the Directive that the trade mark must be known by a given percentage of the public so defined.

26. The degree of knowledge required must be considered to be reached when the earlier mark is known by a significant part of the public concerned by the products or services covered by that trade mark.

27. In examining whether this condition is fulfilled, the national court must take into consideration all the relevant facts of the case, in particular the market share held by the trade mark, the intensity, geographical extent and duration of its use, and the size of the investment made by the undertaking in promoting it.

28. Territorially, the condition is fulfilled when, in the terms of Article 5(2) of the Directive, the trade mark has a reputation 'in the Member State'. In the

absence of any definition of the Community provision in this respect, a trade mark cannot be required to have a reputation 'throughout' the territory of the Member State. It is sufficient for it to exist in a substantial part of it."

44. The evidence of the opponent has been assessed above. It is clear that it enjoys a reputation in respect of sports footwear and sportswear (clothing), though the evidence falls short of establishing a reputation beyond this. The opposition based upon Section 5(3) will therefore be assessed on this basis.



The Link

45. The case law informs that in assessing whether or not a link will be established, the following factors must be considered:

- the degree of similarity between the respective marks;
- the degree of similarity between the goods/services;
- the extent of the overlap between the relevant consumers for those goods/services,
- the strength of the earlier mark's reputation and distinctiveness;

46. It has already been found that the marks are similar, to the extent that they coincide in their respective first three letters: Ree. In terms of the respective goods, sports footwear and clothing are commonly sold in the same outlets as sporting equipment and so coincide in terms of trade channels. They can also be produced by the same undertaking. They are different in nature and purpose. Similarity remains though and this is pitched as being low to medium. In terms of the relevant consumer, it is clear that they can coincide as a customer interested in running shoes, for example, may also show interest in a running machine (treadmill). It has also been found that the earlier trade mark enjoys a reputation in respect of sports footwear and sportswearclothing, which though notable, has likely reduced from its heyday.

47. The opponent argues that the applicant's use of a stylised version of its applied for mark emphasises its intention to make a link with a logo used by the opponent. Both are displayed below:

	
Earlier logo	Contested trade mark

48. It is noted that the earlier logo is not a sign relied upon in this opposition. However, for the sake of completeness and upon viewing the signs above, it is difficult to see how this argument assists the opponent. It is true that each includes a swish device. However, even so, they are different in terms of overall appearance and presentation. I cannot see how this demonstrates any adverse intention on the part of the applicant.

49. I take into account all of the relevant factors outlined above in considering whether or not a link will be established. The opponent has aspects of the assessment in its favour: it enjoys a notable reputation (though the evidence leads me to the view that this is no longer to the highest degree) and it operates in a crossover market targeted at the same consumers. It is also a highly distinctive trade mark. However, it only coincides with the later trade mark in respect of the first three letters and each have their own distinct identity as differing invented words. There is nothing to provide a hook in the minds the mind of the consumer. In weighing up all aspects I am required to assess, it is concluded that it is unlikely that a consumer would make a link between these marks. If I am wrong on this, it is considered that even if a link was made, it would be so fleeting that it would have no consequence.

Final Remarks

50. It is noted that the opposition originally included claims based upon Section 5(4)(a) of the Act. However, these were not included in the written submissions filed by the opponent. The Tribunal queried this point and the opponent confirmed, in a letter dated 3rd July 2019 that the claims based upon Section 5(4)(a) were no longer relied upon and should be deemed withdrawn.

COSTS

51. The applicant has been successful and is entitled to a contribution towards its costs. In the circumstances I award the applicant the sum of £1500 as a contribution towards the cost of the proceedings. The sum is calculated as follows:

Preparing a statement and considering the other side's statement - £500

Preparing evidence and considering the other side's evidence - £1000

TOTAL - £1500

52. I therefore order Reebok International Limited to pay Quanzhou Wanxiang Information & Technology Co, Ltd the sum of £1500. The above sum should be paid within 14 days of the expiry of the appeal period or, if there is an appeal, within 14 days of the conclusion of the appeal proceedings.

Dated this 31st day of July 2019

Louise White
For the Registrar