

O-758-19

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. 3325473
IN THE NAME OF PENG CHENG YU
TO REGISTER AS A TRADE MARK:**



FOR GOODS IN CLASS 18

AND

**IN THE MATTER OF THE OPPOSITION THERETO UNDER NO. 415026
BY SEVEN S.P.A**

BACKGROUND AND PLEADINGS

1. On 18 July 2018, Peng Cheng Yu (“**the Applicant**”) applied to register the figurative mark shown on the cover of this decision as a UK trade mark in respect of the following goods in Class 18:

Baby backpacks; Baby carrying bags; Back packs; Backpacks; Backpacks [rucksacks]; Baggage; Bags; Bags [envelopes, pouches] of leather, for packaging; Bags for carrying animals; Bags for carrying pets; Bags for clothes; Bags for school; Bags for sports; Bags for sports clothing; Bags for travel; Beach bags; Beachbags; Beauty cases; Belt bags; Belt pouches; Belts (Leather shoulder -); Card wallets; Cases for keys; Changing bags; Daypacks; Fashion handbags; Gym bags; Hand bags; Hiking bags; Messenger bags; Nappy bags; Shoulder bags; Sports bags; Sports packs; Suitcases; Toilet bags; Travel baggage; Travel bags; Travel cases; Travel luggage; Wash bags (not fitted); Waterproof bags

2. The application was published for opposition purposes in the Trade Marks Journal on 5 October 2018. On 7 January 2019, Seven S.p.A (“**the Opponent**”) filed a Form TM7 notice of opposition (having previously given notice of its threat to oppose). The Opponent requests that the application be refused in its entirety; it bases its opposition on section 5(2)(b) of the Trade Marks Act 1994 (“**the Act**”) relying (to the extent indicated) on the following two registrations:

“**The Opponent’s word mark**”:

EU trade mark registration No. 8728651 for the word “SEVEN”, filed on 2 December 2009 and registered on 2 June 2010, relying only on some of its registered goods, namely *backpacks, rucksacks, school bags, bags, travelling bags, holdalls* in Class 18.

“**The Opponent’s figurative mark**”:

International registration (IR) No. 1231145 designating the EU in respect of the following



figurative trade mark: . The IR was filed on 27 January 2014 and designated the EU on that same date. The Opponent relies on all the goods and services under this registration (in Classes 9, 16, 18 and 35 as set out in the annex to this decision).

3. Both of the Opponent's marks are earlier trade marks within the definition of 6(1) of the Act. The Opponent's word mark had been registered for more than five years when the Applicant's mark was published for opposition; consequently it is subject to the proof of use provisions in section 6A of the Act and the Opponent duly provided a statement of use of that mark in respect of the relevant Class 18 goods relied on.
4. The Opponent's figurative mark was not subject to proof of use. The Opponent clarified in its skeleton argument that while for many purposes the filing date of the IR (27 January 2014) is deemed the registration date, that is not the case for the purposes of section 6A(1)(c) of the Act. Section 6A(5A) provides that "in relation to an international trade mark (EC) the reference in subsection (1)(c) to the completion of the registration procedure is to be construed as a reference to the publication by the European Union Intellectual Property Office of the matters referred to in Article 190(2) of the European Union Trade Mark Regulation". In this case, the relevant date was shown to be 17 November 2015.¹

The Applicant's defence

5. The Applicant submitted a Form TM8 notice of defence, including a counterstatement in which the Applicant requested proof of use of the Opponent's word mark in respect of *backpacks, rucksacks, school bags, bags, travelling bags, holdalls*. The Applicant admitted that virtually all of the goods applied for are identical with the Class 18 goods relied on under the Opponent's word mark, and that the remainder are similar. It also admitted that the goods applied for are identical or similar to the Class 18 goods under the Opponent's figurative mark. It also admitted similarity in relation to some of the Class 35 services under the Opponent's figurative mark, but denied similarity for other services under that mark and in relation to the Opponent's goods in Classes 9 and 16. Centrally, the Applicant denied similarity between the Opponent's earlier marks and the mark applied for, and denied any likelihood of confusion or association between the parties' respective marks.

Papers filed, representation and hearing

6. During the evidence rounds, the Opponent filed evidence as proof of use of its word mark as requested; for reasons that will become apparent, it is unnecessary to detail that evidence. During the evidence rounds the Applicant filed submissions only. The Opponent

¹ It is noted of course that the IR registration date was anyway outside the five-year period.

requested an oral hearing, which then took place before me in the afternoon of Monday, 11 November 2019. The Applicant was represented by Wilson Gunn, with Maya Muchemwa of that firm attending by video conference. The Opponent was represented at the hearing by Bromhead Johnson, with Ross Manaton of that firm attending in person. Both parties filed skeleton arguments in advance of the hearing. I take account of all written and oral points and refer to the parties' points where and to the extent that I consider it warranted to do so.

DECISION

The applicable law:

7. Section 5(2)(b) of the Act, reads as follows:

“5. – [...]

(2) A trade mark shall not be registered if because – [...]

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

8. Determination of a section 5(2)(b) claim must be made in light of the following principles, which 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, 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;²

- (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.

² At the hearing I rejected the submission on the part of the Applicant that the average consumer would encounter the marks side-by-side on retail shelves. In a particularly stocked outlet that may prove the case, but that cannot be the basis of an assessment of the claim in this case.

Comparison of the goods and services

9. The Applicant admitted that its goods are **identical or similar** to some of the goods and services covered by the Opponent's earlier marks, and in its filed skeleton argument it admitted further that the Opponent has made relevant use of its earlier marks in relation to the relevant goods.

The average consumer and the purchasing process



10. In *Hearst Holdings Inc*,³ Birss J. explained that "... *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 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 word "average" denotes that the person is typical ...*".
11. The notional average consumer in this case – for goods that are, broadly, bags – will be a **member of the public at large**, who will purchase the goods in shops, via the internet or, possibly, through catalogues. They will see the marks used on the goods as labelling or branding or in advertising. The goods are likely to be selected on the basis of a visual perusal of items in a store or on-line. Therefore, I consider the purchase to be a primarily visual one⁴, but aural considerations may also play a part, such as on the basis of word-of-mouth recommendations, so I also take into account the aural impact of the marks in the assessment.
12. The price of the goods may of course vary, but broadly bags are not especially expensive, although they are more occasional than regular purchases. The consumer will be engaged in the purchasing process at least to a degree to ensure suitability in terms of size, function and styling preference. I consider it fair to characterise as **'normal', or 'medium', the level of attention of the average consumer** in buying the goods specified in this case.

3 *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), at paragraph 60.

4 See paragraphs 49 and 50 of the judgment of the General Court in *New Look Limited v OHIM*, joined cases T-117/03 to T-119/03 and T-171/03.

Comparison of the marks

13. It is clear from *Sabel* 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 in *Bimbo* 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.”
14. It would therefore be wrong to dissect the trade marks artificially, but it is necessary to take into account the distinctive and dominant components of the marks and to give due weight to any other features that are not negligible and therefore contribute to the overall impressions created by the marks. The marks to be compared are shown below:

<p>The Opponent’s word mark:</p>	<p>SEVEN</p>
<p>The Opponent’s figurative mark:</p>	
<p>The Applicant’s contested trade mark:</p>	

15. The overall impression of the Opponent’s word mark is simply that it is the single word “seven”, which will instantly be discerned as a number in English. Since it has no descriptive resonance for bags, it is distinctive in respect of the goods at issue.
16. The overall impression of the Opponent’s figurative is that it is a stylised rendering of the word seven. As to the first/opening part of the mark, despite its stylisation, featuring both a

star shape and a degree of underlap, in my view the average consumer will also perceive that it is the numeral form of the word. I consider that that numeral reinforces and duplicates the overall impression of the word message – that the figurative mark is, at base, “seven”. (This view is in line with the Opponent’s skeleton argument, where it was submitted that the “principal distinctive force of the mark resides in its most striking and memorable element – namely, the word SEVEN.”) On the other hand, I do recognise that some among the relevant consumer group may have the impression that the mark is “7 seven”.

17. At the hearing, Mr Manaton accepted that the Opponent’s stronger case lies with its word mark. I agree with that position, since the stylisation, the star and the numeral in the figurative mark, generate points of difference from the Applicant’s mark, that do not arise from the Opponent’s plain word mark. I shall therefore focus my comparison analysis only on the basis of the Opponent’s word mark.
18. The overall impression of the Applicant’s mark is that it involves the word “SEVENTEEN” sitting beneath a large stylised “S” device, composed of three angular shapes. The average consumer will also notice the additional word “LONDON”. (The grey background rectangle is banal and negligible.) As to what significance I should attach to the various elements, Mr Manaton made several submissions in his skeleton argument. Given their centrality to the matter to be decided in this case, I consider it warranted to set out those submissions to the following extent:

“32. The Applicant’s mark is a composite [and] would naturally be viewed by members of the relevant purchasing public as comprising three elements – namely:

- a device element likely to be seen as a stylised letter “S”
- the plain word SEVENTEEN
- the word LONDON (in much smaller type)

33. Within this mark, SEVENTEEN clearly constitutes a dominant distinctive element, which retains an independent distinctive function within the mark as a whole. It is well established that, in the case of a composite mark comprising both pictorial and verbal elements, it is the verbal elements that will tend to dominate. That is particularly likely to be the case here, since although the device element is physically larger (at least in height but not in width) than the verbal element and appears at the top of the mark, the device element is likely to be seen by members of the relevant purchasing public as consisting of a

letter “S”. This is especially likely, since the most prominent verbal element consists of the word SEVENTEEN and thus, in the context of the mark, the device element is likely to be seen as a repetition of the initial letter of SEVENTEEN. In other words, the device element emphasises and draws attention to the SEVENTEEN element.

34. The word LONDON is evidently a very minor and relatively insignificant part of the mark. Not only is the word LONDON depicted in characters that are much smaller than those used to depict the word SEVENTEEN but it is also obviously wholly lacking in distinctiveness in its own right, being geographically descriptive.
 35. There is nothing in the collection of elements making up the Applicant’s mark that serves to create a combination having any different meaning or significance beyond the separate significances of the individual elements themselves. As noted in paragraph 33 above, the device element serves to repeat the initial letter of the SEVENTEEN element but this in no way modifies the meaning or significance of the SEVENTEEN element. The SEVENTEEN element thus retains an independent distinctive role within the mark.”
19. I agree that the Applicant’s mark is a composite mark, whose three component parts do not form a unit greater than their sum; I also acknowledge the limited significance of the LONDON component, and that the SEVENTEEN element is a distinctive element and that it has the greater degree of dominance within the mark as a whole. However, at paragraph 36 of his skeleton argument, Mr Manaton submits that “the relevant comparison is therefore essentially between SEVENTEEN and SEVEN.” In my view that submission is too reductive and improperly denies the need for due account of the large and central “S” device element, which I consider to be neither negligible nor without distinctiveness and to have, owing to its size and position, a considerable degree of prominence in the mark overall.
 20. The Applicant made various submissions, including at the hearing, emphasising visual, aural and conceptual differences based on the presence of the word LONDON. I find those submissions neglect to acknowledge that the word is not only small but is also geographically descriptive and not distinctive of trade origin. On the other hand, I do not quite consider it so negligible that I should omit it entirely from my comparison of the marks, although in considering the impact of that word I of course take account of its size and lack of distinctiveness.

Visual similarity

21. The word “seventeen” in the Applicant’s mark contains the word “seven” which is the Opponent’s word mark. Nonetheless, the additional four letters “teen” are very obvious and they of course give rise to a different and notably longer word. While the “seven” and “seventeen” could be considered visually similar to no more than a medium degree, when I take into account the additional visual difference resulting from the prominent “S” device, I consider the marks to be **visually similar to a low degree** (even disregarding the word LONDON).

Aural similarity

22. In my view there are a few ways in which the average consumer may potentially refer to the mark orally. In each case the average consumer will of course include the word “seventeen”, but I do not discount the possibility that the average consumer may also voice the “S” device (as “ESS”) and/or may also voice the word LONDON. Even on the basis of the word “seventeen” (solus), the Opponent’s word mark is clearly a shorter and different word from the Applicant’s mark. Although the common “se-ven” will be voiced first, the “teen” component will not be overlooked in utterance. **I find the marks could be considered aurally similar to no more than a medium degree, and lower than that if either or both of the other elements were voiced** (e.g. if the mark were said as “ESS seventeen” or “seventeen London”, both of which Mr Manaton acknowledged as possibilities).

Conceptual similarity

23. Clearly the Opponent’s mark is a number, and the Applicant’s mark also involves a number featuring as a dominant and distinctive aspect of its whole. The marks therefore have that concept in common. Equally clearly, the marks involve different numbers, so there is thus a divergence in concept.
24. Mr Manaton’s oral submissions referred to the two being “not very different numbers”, and that if one were trying to choose a number different from seven, seventeen would be a poor choice, since it retains a “strong element of ‘seven-ness’ about it”. By contrast Ms Muchemwa referred to the unconnected conceptual images brought to mind by the marks, such as the concept of lucky number seven, whereas seventeen in contrast may perhaps bring to mind the imminent age of majority, the age one can start driving a car. In my view, while there is a conceptual overlap, sufficient difference arises from the marks involving

clearly different numbers, that **the marks overall may be considered conceptually similar only to a degree between low and medium.** (Ms Muchemwa also submitted that it is common for brands to include the name of a city and the presence of the word LONDON, carries an implication of fashion style and cosmopolitan sophistication. However, the word's lack of distinctiveness of brand origin and its relative lack of prominence in the mark must very largely negate any impact in my conceptual analysis of the mark.)

Distinctiveness of the earlier mark

25. The distinctive character of the earlier mark must be assessed, as, potentially, the more distinctive the earlier mark, either inherently or through use, the greater the likelihood of confusion.⁵ 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-2779, 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)”.

26. The Opponent's word mark is not descriptive of the goods and Mr Manaton submitted at the hearing that the earlier mark enjoyed a “reasonably high” level of inherent distinctiveness. However, since the mark is an ordinary, very common English word – a simple single digit

⁵ *Sabel* at [24]

number - I consider that the **mark is inherently distinctive to a degree that is lower than average**. (There was no claim of enhanced distinctiveness through use, and I note that although Opponent filed ample evidence showing genuine use in the EU, the evidence related primarily to use in Italy and a few other countries but did not relate to the UK market.)

Conclusion as to likelihood of confusion

27. It was submitted on behalf of the Opponent that a likelihood of confusion arises in a form that may be direct or indirect. Before I set out my own global assessment of likelihood of confusion, I note the following relevant points from case law. Indirect confusion (and its distinction from direct confusion), was considered by Mr Iain Purvis QC, sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*,⁶ where he noted 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 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.

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)*

⁶ Case BL-O/375/10

(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).”*

28. Sitting as the Appointed Person in *Eden Chocolat*⁷, James Mellor QC stated as follows:

“81.4 ... I think it is important to stress that a finding of indirect confusion should not be made merely because the two marks share a common element. When Mr Purvis was explaining⁸ in more formal terms the sort of mental process involved at the end of his [16], he made it clear that the mental process did not depend on the common element alone: ‘Taking account of the common element in the context of the later mark as a whole.’ (my emphasis).”

29. In my global assessment of likelihood of confusion, I take account of my findings set out in the foregoing sections of this decision and of the various principles from case law outlined in paragraph 8 above. The parties goods are very largely identical or else admitted to be similar; the purchasing process will entail a normal/medium level of attention; the consumer (the public at large) will primarily encounter the marks visually and I have found the marks to have a low degree of visual similarity; the average consumer may also encounter the marks by oral recommendation or reference, and I find the marks have no more than a medium degree of aural similarity (and lower than that if either or both the “S” or “London” were spoken). I have found the marks to be conceptually similar only to a degree between low and medium. The Opponent’s word mark is distinctive for the goods at issue but to a degree that is lower than average and the earlier mark does not benefit from an enhancement of its distinctive character on the basis of use.

30. Taking all this in the round, and despite the identity between the goods, and even allowing for the principle of interdependence of factors, and that a lesser degree of similarity between

7 Case BL O-547-17 *Eden Chocolat be more chocstanza (word & device) v Heirler Cenovis GmbH* (27 October 2017)

8 In *L.A. Sugar Limited v By Back Beat Inc* Case BL-O/375/10 –above.

the marks may be offset by a great degree of similarity between the goods, **I find that there is no likelihood that the average consumer, being reasonably well informed and reasonably circumspect, will directly confuse the Applicant's mark with the word "seven"**; the marks one will not be mistaken for the other. The public are well used to distinguishing between two numbers, and despite the common presence of "seven" the average consumer will not imperfectly recollect one as the other. Moreover, since the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details, the impact of the "S" device further assists in differentiating the marks, especially visually.⁹ Since the Opponent's word mark has no descriptive message for the goods at issue, one may take the view that I ought not to have reduced its degree of distinctiveness on the basis of the commonplace nature of the number. Even if I had assessed the Opponent's word mark to have an average degree of inherent distinctiveness, my conclusion as to likelihood of confusion would have remained unchanged.

31. As to indirect confusion, it was submitted on behalf of the Opponent to the effect that the average consumer may, for example, believe that the goods under the later mark is a sub-brand released by the Opponent. (Mr Manaton referred anecdotally to Boots having produced goods under the brand No.7 and No. 17.) I acknowledge that it is not out of the question in certain sectors for a single trader manufacturer to use sub-brands (signs that derive from a principal mark and which share with it a common dominant element) in order to distinguish its various lines from one another.¹⁰ However, on the present facts I find no sustainable sub-brand argument. Even if the Applicant's mark were to bring to mind the earlier mark (on which point I make no finding), the case law principles in this area are clear that no likelihood of confusion arises where a later mark merely calls to mind the earlier mark (mere association). Bearing in mind the Appointed Person's emphases in *Eden Chocolat* that a finding of indirect confusion should not be made merely because the two marks share a common element, and the importance of taking account of the common element in the context of the later mark as a whole, **I conclude that there is no likelihood of indirect**

⁹ In this regard see paragraph 21 of *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271 (Ch), where Arnold J considered the impact of the CJEU's judgment in *Bimbo*, Case C-591/12P, on the court's earlier judgment in *Medion v Thomson*, confirming that even where an element of the composite mark which is identical or similar to the earlier trade mark has an independent distinctive role, it does not automatically follow that there is a likelihood of confusion. It remains necessary to carry out a global assessment taking into account all relevant factors.

¹⁰ As stated by the European Court of First Instance at paragraph 68 of its ruling in T-346/04 - *Sadas v OHMI - LTJ Diffusion (ARTHUR ET FELICIE)*

confusion in the present case. The opposition fails overall. (Since Mr Manaton, correctly in my view, considered the Opponent's word mark its better case, clearly there is still less likelihood of any confusion arising from the Opponent's figurative mark.)

COSTS

32. This opposition has failed and the Applicant is entitled to a contribution towards its costs of defending its application, based on the scale published in Tribunal Practice Notice 2/2016. The award breakdown is as follows:

Considering the other side's statement and preparing a counterstatement	£200
Preparation of skeleton argument and attendance at hearing	£600
Total	£800

33. I order Seven S.p.A to pay Peng Cheng Yu the sum of £800 (eight hundred pounds) which, in the absence of an appeal, should be paid within 21 days of the expiry of the appeal period.

Dated this 11th day of December 2019

Matthew Williams

For the Registrar

Annex

The goods and services registered under the Opponent's figurative mark

Class 9

Optical apparatus and instruments, eyeglasses, sunglasses, spectacles, frames, goggles for sports; protection devices for personal use against accidents, irradiation and fire; cases for electronic diaries, for photographic apparatus, for glasses, for compact discs, DVD and video cassettes, for laptops, for telephones and mobile telephones, for smartphones; covers for mobile telephones, for smartphones, for tablet computers and for electronic and/or computer products; calculating machines; pocket calculators; cases for calculators; USB flash drives. Goods and services limited to: Optical apparatus and instruments, eyeglasses, sunglasses, spectacles, frames, goggles for sports; protection devices for personal use against accidents, irradiation and fire; cases for electronic diaries, for photographic apparatus, for glasses, for compact discs, DVD and video cassettes, for laptops, for telephones and mobile telephones, for smartphones; covers for mobile telephones, for smartphones, for tablet computers and for electronic and/or computer products; calculating machines; pocket calculators; cases for calculators; USB flash drives.

Class 16

Printed matter, including stationery articles, decalcomanias (transfers), bookmarkers, tickets, tag labels, cards, business cards, greetings cards, invitations, stickers, gift vouchers cards, writing or drawing books, diaries, memo blocks, note pads; posters, calendars, photographs; printed publications, books, periodicals, manuals and handbooks, magazines, newspapers, newsletters, catalogues, brochures and pamphlets; articles for the correspondence, including writing papers and envelopes; sets of stationery material, articles and instruments for writing and drawing, namely pens, ball-point pens, fountain pens, felt-tip markers, permanent markers, highlighters, highlighting markers, rollerball pens, felt-tip pens; pencils, chalk, crayons, cases for pens and for drawing, daily and weekly planners, ring binders, folders for drawing, loose-leaf binders, gift wrapping paper; shopping bags of paper; plastic materials for packaging; gift bags of paper or plastic.

Class 18

Rucksacks; backpacks; school bags, shoulder bags for carrying infants, bags, shopping bags; travelling bags and duffel bags for travel; bags and holdalls for sports; handbags; bags for campers; beach bags; backpacks for hiking and climbing, satchels, briefcases, pocket wallets; purses; key cases; hip bags; suitcases; umbrellas, trunks; walking sticks; overnight suitcases; vanity cases, gift garment bags for clothing, wheeled bags, wheeled backpacks and wheeled suitcases.

Class 35

Retailing, wholesaling and online sales relating to optical apparatus and instruments, eyeglasses, sunglasses, spectacles, frames, goggles for sports, protection devices for personal use against accidents, irradiation and fire, cases for electronic diaries, for photographic apparatus, for glasses, for compact discs, DVD and video cassettes, for laptops, for telephones and mobile telephones, for smartphones, covers for mobile

telephones, for smartphones, for tablet computers and for electronic and/or computer products, calculating machines, pocket calculators, cases for calculators, USB flash drives, printed matter, including stationery articles, decalcomanias (transfers), bookmakers, tickets, tag labels, cards, business cards, greetings cards, invitations, stickers, gift vouchers cards, writing or drawing books, diaries, memo blocks, note pads, posters, calendars, photographs, printed publications, books, periodicals, manuals and handbooks, magazines, newspapers, newsletters, catalogues, brochures and pamphlets, articles for the correspondence, including writing papers and envelopes, sets of stationery material, articles and instruments for writing and drawing, namely pens, ball-point pens, fountain pens, felt-tip markers, permanent markers, highlighters, highlighting markers, rollerball pens, felt-tip pens, pencils, chalk, crayons, cases for pens and for drawing, daily and weekly planners, ring binders, folders for drawing, loose-leaf binders, gift wrapping paper, shopping bags of paper, plastic materials for packaging, rucksacks, backpacks, school bags, shoulder bags for carrying infants, bags, shopping bags, travelling bags and duffel bags for travel, bags and holdalls for sports, handbags, bags for campers, beach bags, backpacks for hiking and climbing, satchels, briefcases, pocket wallets, purses, key cases, hip bags, suitcases, umbrellas, trunks, walking sticks, overnight suitcases, vanity cases, gift bags of paper or plastic, garment bags for clothing, wheeled bags, wheeled backpacks and wheeled suitcases. Goods and services limited to: Retailing, wholesaling and online sales relating to optical apparatus and instruments, eyeglasses, sunglasses, spectacles, frames, goggles for sports, protection devices for personal use against accidents, irradiation and fire, cases for electronic diaries, for photographic apparatus, for glasses, for compact discs, DVD and video cassettes, for laptops, for telephones and mobile telephones, for smartphones, covers for mobile telephones, for smartphones, for tablet computers and for electronic and/or computer products, calculating machines, pocket calculators, cases for calculators, USB flash drives, printed matter, including stationery articles, decalcomanias (transfers), bookmakers, tickets, tag labels, cards, business cards, greetings cards, invitations, stickers, gift vouchers cards, writing or drawing books, diaries, memo blocks, note pads, posters, calendars, photographs; printed publications, books, periodicals, manuals and handbooks, magazines, newspapers, newsletters, catalogues, brochures and pamphlets, articles for the correspondence, including writing papers and envelopes, sets of stationery material, articles and instruments for writing and drawing, namely pens, ball-point pens, fountain pens, felt-tip markers, permanent markers, highlighters, highlighting markers, rollerball pens, felt-tip pens, pencils, chalk, crayons, cases for pens and for drawing, daily and weekly planners, ring binders, folders for drawing, loose-leaf binders, gift wrapping paper, shopping bags of paper, plastic materials for packaging, rucksacks, backpacks, school bags, shoulder bags for carrying infants, bags, shopping bags, travelling bags and duffel bags for travel, bags and holdalls for sports, handbags, bags for campers, beach bags, backpacks for hiking and climbing, satchels, briefcases, pocket wallets, purses, key cases, hip bags, suitcases, umbrellas, trunks, walking sticks, overnight suitcases, vanity cases, gift bags of paper or plastic, garment bags for clothing, wheeled bags, wheeled backpacks and wheeled suitcases.