

O/799/21

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. 3533018
IN THE NAME OF SHENZHEN QIANHAI PATUOXUN NETWORK&TECHNOLOGY
CO. LTD
IN RESPECT OF THE TRADE MARK:**

Vidativa

IN CLASSES 10, 21 & 28

AND

**OPPOSITION THERETO UNDER NO. 422950
BY LOHMANN & RAUSCHER INTERNATIONAL GMBH & CO. KG**

Background and pleadings

1. SHENZHEN QIANHAI PATUOXUN NETWORK&TECHNOLOGY CO. LTD (“the applicant”) applied to register the trade mark ‘Vidativa’ with the application no. 3533018 in the UK on 14 September 2020. It was accepted and published in the Trade Marks Journal on 30 October 2020 in respect of goods in classes 10, 21 and 28. The full list of goods applied for are shown at Annex A. The goods of concern within this opposition are as follows:

Class 10: Orthopedic belts; orthopedic articles

2. Lohmann & Rauscher International GmbH & Co. KG (“the opponent”) partially oppose the trade mark on the basis of Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opposition is directed at the goods listed above only. This is on the basis of its earlier EU¹ trade mark no. 2279008 for the mark ‘Vliwaktiv’. The following goods are relied upon in this opposition:

Class 5: Compresses and pads of gauze and/or non-woven fabric

Class 10: Compresses, swabs and surgical drapes of gauze and/or non-woven fabric

3. By virtue of its earlier filing date of the 28 June 2001, the opponent’s mark constitutes an earlier mark in accordance with section 6 of the Act.

4. The opponent argues that the respective goods are similar and that the marks are visually and phonetically similar, such that there exists a likelihood of confusion.

5. 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. The applicant states that the marks are visually and phonetically dissimilar and that the goods are

¹ Although the UK has left the EU and the transition period has now expired, EUTMs and International Marks which have designated the EU for protection, are still relevant in these proceedings given the impact of the transitional provisions of The Trade Marks (Amendment etc.) (EU Exit) Regulations 2019 – please see Tribunal Practice Notice 2/2020 for further information.

dissimilar. As such, the applicant contends that there is no likelihood of confusion between the marks.

6. Only the opponent filed evidence in these proceedings. The applicant filed written submissions during the evidence rounds. These 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.

7. The opponent is represented in these proceedings by Urquhart-Dykes & Lord LLP. The applicant is represented by The Trade Marks Bureau.

8. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Act relied upon in these proceedings are derived from an EU Directive. That is why this decision continues to refer to EU trade mark law.

Evidence

9. The opponent has filed evidence in these proceedings by way of a witness statement in the name of Dr. Klemens Schulz, described in the statement as the managing director and chief portfolio officer of the opponent. The statement introduces nine exhibits, namely Exhibit KS1 – Exhibit KS9. Two of these exhibits, namely Exhibit KS5 and Exhibit KS7 are the subject to a confidentiality order, and as such any reference to the contents of these exhibits will be redacted prior to the issuance of this decision to the public. The evidence filed is for the purpose of proving the opponent has made genuine use of its mark in respect of the goods claimed. Whilst I have considered this evidence in full, I do not find it necessary to provide a full summary of the same at this stage, for reasons which will become apparent below.

Proof of use

10. The applicant requested that the opponent proves use of its earlier mark within these proceedings. Within its written submissions, the applicant appears to have conceded to the opponent's use of its mark in respect of "...wound dressings and tamponades used for the treatment of wounds that contain silver impregnated fabric

made of activated carbon.”² In the circumstances of this particular case, I find it appropriate to proceed with the opposition on the basis that the opponent has proven use of its earlier mark in respect of all of the goods relied upon. Should I find that there is no likelihood of confusion even where the opponent relies upon the full scope of its registered protection, there will be no need to consider if the opponent’s specification of goods should be limited in line with the applicant’s concession, or otherwise. However, should I find there will be a likelihood of confusion, I will return to consider if, and to what extent, genuine use has been evidenced by the opponent accordingly.

Decision

Section 5(2)(b)

11. 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”.

Section 5A

12. Section 5A of the Act is as follows:

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

² See paragraphs 13 to 16 of the applicant’s submissions.

The Principles

13. 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.

Comparison of the goods

14. Section 60A of the Act provides:

“(1) For the purpose of this Act goods and services-

(a) are not to be regarded as being similar to each other on the ground that they appear in the same class under the Nice Classification.

(b) are not to be regarded as being dissimilar from each other on the ground that they appear in different classes under the Nice Classification.

(2) In subsection (1), the "Nice Classification" means the system of classification under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, which was last amended on 28 September 1975."

15. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, for assessing similarity were:

(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.

16. In the judgment of the Court of Justice of European Union (“CJEU”) in *Canon*, Case C-39/97, the court stated at paragraph 23 that:

“In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary”.

17. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06, the General Court (“GC”) stated that goods may be considered “complementary” where:

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

18. The case law provides further guidance on how the wording of goods and services as registered and filed should be interpreted within the comparison. In *YouView TV Ltd v Total Ltd* [2012] EWHC 3158 (Ch), Floyd J. (as he then was) stated that:

“... Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless the principle should not be taken too far. Treat was decided the way it was because the ordinary and natural, or core, meaning of 'dessert sauce' did not include jam, or because the ordinary

and natural description of jam was not 'a dessert sauce'. Each involved a straining of the relevant language, which is incorrect. Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question.”

19. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, the 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”.

20. The goods and services for comparison are outlined in the table below:

| Earlier goods | Contested goods |
|---|--|
| Class 5: <i>Compresses and pads of gauze and/or non-woven fabric</i> | Class 10: <i>Orthopedic belts; orthopedic articles</i> |
| Class 10: <i>Compresses, swabs and surgical drapes of gauze and/or non-woven fabric</i> | |

21. I find the ordinary and natural meaning of the applicant’s *Orthopaedic articles* will be articles such as supports, braces and other implements for the correction or support of muscular and/or skeletal misalignments or deformities. This may include anything from back braces and wrist supports to orthopaedic shoe inserts. Whilst the opponent’s goods in classes 5 and class 10, namely the compresses, pads and swabs,

may be used to assist with the healing of wounds which may have formed as a result of an orthopaedic issue or related surgery, it is my view that to find these to be orthopaedic articles would be to strain the natural meaning of the term. I therefore do not find these to be identical to the applicant's goods. Further, I do not find the goods to be complementary in the trade mark sense, or in competition, and I do not find the purpose of the goods will be shared, with the opponent's goods being for the protection of wounds and reduction of swelling, and the applicant's for correction and support as mentioned. I note the possibility for shared users, particularly medical practitioners, and shared trade channels. However, overall, if there is any similarity between the goods, I find this to be at a low degree.

22. In respect of orthopaedic belts, I find again these may share trade channels and users with the opponent's earlier goods, but the purpose for correcting, realigning or supporting the a person's posture on the one hand, and the covering and healing of wounds and the reduction of swelling on the other will differ. I acknowledge there may be an overlap in nature between some medical compresses and orthopaedic belts in that they may both be made of a supportive fabric that is shaped to wrap around the body, but the goods will not be complementary or in competition. Again I find any similarity between the goods will be at a low level.

Comparison of marks

23. 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.”

24. 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.

25. The respective trade marks are shown below:

| Earlier trade mark | Contested trade mark |
|---------------------------|-----------------------------|
| Vliwaktiv | Vidativa |

26. The earlier mark consists of a single nine letter word. The overall impression lies in the mark as a whole.

27. The contested mark comprises a single eight letter word. The overall impression of this mark also resides in the mark as a whole.

Visual comparison

28. The marks are a similar number of letters, with the earlier mark having only one extra letter than the contested mark. Both marks begin with the letter ‘V’, and both contain the letters ‘i’, ‘a’ and ‘t’, and ‘v’ but none of these are in the same position in each of the marks. The applicant points out within its submissions that both marks use the same string of letters ‘tiv’. This is where the visual similarities end. The marks differ by way of the order of the eight letters falling after the ‘V’ in the earlier mark which read ‘l-i-w-a-k-t-i-v-’ in the earlier mark, and the seven letters in the contested mark which read ‘i-d-a-t-i-v-a’. Overall, I find only a low level of visual similarity between the marks.

Aural comparison

29. Both marks begin with the letter ‘V’. It is my view that in the earlier mark the letter ‘v’ will be rolled in with the letter ‘l’ and ‘i’ to produce a short ‘vli’ sound, and in the contested mark this will be rolled with the letter ‘i’ to produce a short ‘vi’ sound. There

is a degree of aural similarity between this element of the marks. However, overall it is my view that the earlier mark will be pronounced in the three syllables vli-wak-tiv, whereas the contested mark will be pronounced as the four syllables vid-a-tee-va. It is the applicant's submission that the earlier mark may instead be pronounced 'vlew-aktiv'. I accept that is also a possibility, but I find it to be far less likely that the UK consumer would choose to pronounce the mark in such a way. In either scenario, I find there to be only a very low level of aural similarity between the marks.

Conceptual comparison

30. The opponent has pleaded that neither mark has a conceptual meaning. Whilst the applicant accepted this within its counterstatement, it appears to have changed its position on this within its submissions following the receipt of the opponent's evidence, stating that the 'aktiv' element of the opponent's mark would indicate to the consumer that the product contains an active ingredient. However, I find it unlikely the UK consumer would view the letters AKTIV in the opponent's mark as registered as alluding to the inclusion of an activated ingredient within the goods. Instead, I accept the initial position of both parties that the marks are conceptually neutral.

Average consumer and the purchasing act

31. 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.

32. 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.”

33. The goods in respect of which some similarity has been found will be aimed both at the general public and at medical professionals. The fact the applicant’s goods will be for support with, or for the correction or treatment of orthopaedic concerns means that the general public will need to consider carefully the quality, effectiveness and size of the product on offer, in addition to the suitability for their own needs. I find the level of attention paid towards these goods is likely to be at least above average. In respect of the opponent’s goods, as these will often be used for the treatment of wounds or injuries, there will be considerations made as to the size, application requirements and suitability of the goods. I find members of the general public are likely to pay at least an average level of attention in respect of the same. In respect of medical professionals, they are likely to pay a higher level of attention when purchasing all of the aforementioned goods due to the increased liability they will have when treating their patients with the same, and I find the level of attention from professionals purchasing these products will range between above average to high.

34. These goods may be available for the general public to purchase in pharmacies or online. They may be issued to end users from hospitals or General Practitioners, with professionals obtaining the goods either online or via catalogues or medical sales representatives. Sales may also be agreed following trade shows. The purchasing process will therefore be primarily visual, as I find consumers (both professionals and the general public) will likely wish to see the items they will be using prior to making a purchase. However, I note there is the possibility for orders to be made over the telephone or for assistance to be sought verbally from retail or pharmacy staff, at trade shows or via the medical sales representatives mentioned, and as such I cannot completely discount an aural component.

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. The earlier mark comprises the word ‘Vliwaktiv’, which appears to not only have no meaning in relation to the goods and services, but also to have no meaning in the English language. It is my view that it will be perceived as an invented word and, therefore, I find the distinctive character of the earlier mark to be inherently high.

37. The opponent has filed evidence showing use of its earlier mark. For the purpose of considering whether the distinctiveness of an earlier EU trade mark has been enhanced through use, it is important to remind myself that it is the exposure to the UK consumer that will be relevant. Whilst I note Dr Klemens confirmed that the opponent attends and presents at conferences run by the European Wound

Management Association,³ at which it is possible there will be attendance from UK medical professionals, suppliers and distributors, including one that took place in the UK on 13 May 2015, there is no convincing evidence showing significant exposure of the mark to the UK market. [REDACTED]

[REDACTED] I do not find from the evidence that the distinctiveness of the earlier mark will have been enhanced to above its inherent level through use.

GLOBAL ASSESSMENT – Conclusions on Likelihood of Confusion

38. Prior to reaching a decision under Section 5(2)(b), I must first consider all relevant factors, including those as set out within the principles A-K at paragraph 13 of this decision. I must view the likelihood of confusion through the eyes of the average consumer, 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 they have kept in their mind. I must consider the impact of the visual, aural and conceptual similarities of the marks by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. I must consider that the level of distinctive character held by the earlier mark will have an impact on the likelihood of confusion. I must consider that the likelihood of confusion may be increased where the distinctive character held by the earlier mark is high and may be less likely where it is low. I must remember that the distinctive character of the earlier mark may be inherent, but that it may also be increased through use, and that the distinctiveness of the common elements is key.⁴ I must keep in mind that a lesser degree of similarity between the goods and services may be offset by a greater degree of similarity between the marks, and vice versa. I must also consider that both the degree of attention paid by the average consumer and how the goods or services are obtained will have a bearing on how likely the average consumer is to be confused.

³ See paragraph 14 of the witness statement of Dr. Klemens Schulz and Exhibit KS9.

⁴ See *Kurt Geiger v A-List Corporate Limited*, BL O-075-13, in which Mr Iain Purvis Q.C. as the Appointed Person pointed out that the level of 'distinctive character' is only likely to increase the likelihood of confusion to the extent that it resides in the element(s) of the marks that are identical or similar.

39. I consider at this point that there are two types of confusion that I may find. The first type of confusion is direct confusion. This occurs where the average consumer mistakenly confuses one trade mark for another. The second is indirect confusion. This occurs where the average consumer notices the differences between the marks, but due to the similarities between the common elements, they believe that both products derive from the same or economically linked undertakings.⁵

40. In *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17, Mr James Mellor Q.C. (as he then was), as the Appointed Person, stressed that a finding of indirect confusion should not be made merely because the two marks share a common element. In this connection, he pointed out that it is not sufficient that a mark merely calls to mind another mark. This is mere association not indirect confusion.

41. I found the earlier mark to be visually similar to the contested mark to a low degree, and to be aurally similar to a very low degree. I found the marks to be conceptually neutral. I found the earlier mark to hold a high level of inherent distinctiveness in respect of the goods, but that this had not been enhanced further through use. I found the average consumer of the goods will comprise both members of the general public as well as professionals, and that the level of attention paid will be average or higher. I found the purchasing process will be primarily visual, but that I cannot completely discount aural considerations. I found any similarity between the goods to be to a low degree. Overall, with consideration to all of the factors, and keeping in mind the consumers imperfect recollection, I find the differences between the mark to be significant, and I do not believe these will go unnoticed or be forgotten. I do not find there is a likelihood that the consumer will be directly confused between the marks.

42. Three examples of when indirect confusion may occur were set out by Mr Ian Purvis Q.C. in *L.A. Sugar*. At paragraph 17. Mr Purvis Q.C. stated as follows:

“Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:

⁵ *L.A. Sugar Limited v Back Beat Inc*, BL O/375/10

- (a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right (“26 RED TESCO” would no doubt be such a case).
- (b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as “LITE”, “EXPRESS”, “WORLDWIDE”, “MINI” etc.).
- (c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension (“FAT FACE” to “BRAT FACE” for example).”

43. I do not find that the two marks fall within any of the categories set out above. However, I remind myself that this list is not exhaustive, and I consider if there are any other reasons that the consumer may believe the marks originate from the same economic undertaking. Whilst I note the marks are both long, made up words beginning with the letter ‘V’ and that they share some of the same letters, I again consider that the similarity between the marks is low. I do not find that shared elements outlined will lead the consumer to believe that the marks originate from the same or a linked undertaking. If one mark does call the other to mind, which in my view will be very unlikely, I find this will be put down to coincidence.

Final Remarks

44. The opposition has failed, and subject to a successful appeal, the application will proceed to registration.

COSTS

45. The applicant has been successful and is entitled to a contribution towards its costs. As the applicant did not file evidence of its own, I have awarded below the scale

amount set in Tribunal Practice Notice 2/2016 for preparing, filing and considering the evidence. In the circumstances I award the applicant the sum of £700 as a contribution towards the cost of the proceedings. The sum is calculated as follows:

| | |
|--|-------------|
| Considering the TM7 and preparing and filing the TM8 and counterstatement | £200 |
| Considering the opponent's evidence | £200 |
| Preparing and filing written submissions | £300 |
| Total | £700 |

46. I therefore order Lohmann & Rauscher International GmbH & Co. KG to pay SHENZHEN QIANHAI PATUOXUN NETWORK&TECHNOLOGY CO. LTD the sum of £700. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 27th day of October 2021

Rosie Le Breton

For the Registrar

Annex A

Class 10: Vibromassage devices; Electric massage apparatus for personal use; Massage apparatus for neck and shoulders; vibromassage apparatus; Orthopedic belts; orthopedic articles; Low frequency electric therapy apparatus; Static electric therapy apparatus; Vertebral orthopedic apparatus; Ice bags for medical purposes; Apparatus for use in toning muscles for medical rehabilitation.

Class 21: Spray nozzles for garden hoses; Sprinklers for watering flowers and plants; sprinkling devices; mouse traps; Dish drying racks; strainers for household purposes; drinking bottles for sports; Drinking bottles; Vacuum mugs; insect traps; Reusable plastic water bottles sold empty; Ultrasonic pest repellents.

Class 28: Weight lifting belts [sports articles]; waist trimmer exercise belts; dumb-bells; hang gliders; Exercise pulleys; Tennis balls; Abdominal wheel rollers for fitness purposes; Grips for sporting articles; Wrist guards for athletic use; knee guards [sports articles]; Snow sleds for recreational use; Leg guards for athletic use; Ascenders [mountaineering equipment]; Body-training apparatus; Tennis racquets; Toys for pets; exercise bands; Apparatus for achieving physical fitness [for non-medical use].