

**O-874-21**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF TRADE MARK APPLICATION NO. 3531321**

**BY JUNGAO ZHANG**

**TO REGISTER THE FOLLOWING TRADE MARK:**

**Tencro**

**IN CLASS 9**

**AND**

**OPPOSITION THERETO UNDER NO. 422450**

**BY TECNO TELECOM (HK) LIMITED**

## BACKGROUND AND PLEADINGS

1. On 9 September 2020, Jungao Zhang (“the applicant”) filed trade mark application number UK00003531321 for the mark shown on the cover page of this decision (“the contested mark”). The application was published for opposition purposes on 30 October 2020, in respect of the following goods:

Class 9      Computer Peripherals; Tablet PC Cases; Tablet PC Stands; Smartphone Cases; Smartphone Screen Protective Films; Mobile Phone Stands; Microphones; Cameras; Headphones; Microphone Picks for Sound Transmission Devices; Sound and Image Playback device for carrier; Recording device for sound and image carrier; Tripod for camera; Selfie stick (handheld monopod).

2. On 14 December 2020, Tecno Telecom (HK) Limited (“the opponent”) filed an opposition against the application in full under section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opponent relies upon the following registration:

UK trade mark (“UKTM”) no. 3123682

The logo for Tecno mobile, featuring the word "TECNO" in a large, bold, black, sans-serif font, with the word "mobile" in a smaller, lowercase, black, sans-serif font directly below it.

Filing date 24 August 2015

Registration date 3 August 2018

The opponent is relying on all the goods for which the UKTM is registered:

Class 9      Batteries, electric; Chargers for electric batteries; Computer memory devices; Video screens; Mobile telephones.

3. The mark relied upon by the opponent qualifies as an earlier mark. It was registered less than five years before the date of application for the contested mark and so it is not subject to the proof of use provisions in section 6A of the Act.

4. Under section 5(2)(b), the opponent claims that the marks at issue and their respective specifications are identical or similar, resulting in a likelihood of confusion.

5. The applicant filed a defence and counterstatement denying the grounds of opposition. The applicant claims that the earlier mark is descriptive and therefore devoid of distinctive character, whereas the contested mark is an invented word. The resulting lack of conceptual similarity is said to avoid a likelihood of confusion.

6. Only the opponent filed evidence. Neither party requested an oral hearing, nor did they file written submissions in lieu. The opponent is represented by Urquhart-Dykes & Lord LLP. The applicant was initially represented by Hassler International Ltd but is now unrepresented.

## **PRELIMINARY ISSUE**

7. The applicant, in its counterstatement, made submissions claiming that it has used its mark prior to the publication of the earlier mark relied upon by the opponent: it also filed evidence to support these claims. The tribunal wrote to the applicant, directing it to Tribunal Practice Notice (“TPN”) 4/2009, and requested it file an amended counterstatement. TPN 4/2009 deals with defences to claims under sections 5(1) and 5(2) of the Act. The viability of defences based on use of the contested mark which precedes the date of registration of the earlier mark was considered by Ms Anna Carboni, sitting as the Appointed Person, in *Ion Associates Ltd v Philip Stainton and Another*, BL O/211/09. Ms Carboni rejected such defences as being wrong in law. In these proceedings, the applicant filed an amended counterstatement as requested and so I shall say no more about the applicant’s submissions on this point.

## **EVIDENCE**

8. The opponent filed evidence in the form of the witness statement of Xia Chunlei and its corresponding 12 exhibits (XC1 – XC12). Xia Chunlei is a director of the opponent as of July 2014 and, in the witness statement, denies the applicant’s alleged lack of distinctiveness in the earlier mark: Xia Chunlei states that the earlier mark has the necessary level of distinctiveness so as to be registrable and that it has been widely used in the UK. The accompanying exhibits, which I have considered in their entirety and will note the contents of to the extent I consider appropriate, have been filed in support of those submissions. The exhibits contain: news articles reporting the opponent’s win of the Quality Crown Award in London in 2015;<sup>1</sup> press coverage,<sup>2</sup> photographs,<sup>3</sup> invoices<sup>4</sup> and a contract<sup>5</sup> relating to the opponent’s partnership with Manchester City Football Club in 2016 and its subsequent extension in 2019; merchandise<sup>6</sup> and press articles<sup>7</sup> relating to Tecno Bluesquad, a programme run by the opponent in partnership with Manchester City Football Club offering children in Africa, Thailand and China the opportunity to play and train at their academy from 2017 to 2019; media coverage of a 2021 documentary into “selfie-culture” in which the opponent collaborated with “well-known” presenters, journalists and models;<sup>8</sup> and press articles relating to the opponent’s partnership with actor Chris Evans as a brand ambassador.<sup>9</sup>

## **DECISION**

### **Section 5(2)(b)**

9. Section 5(2)(b) of the Act states that:

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<sup>1</sup> Exhibit XC2

<sup>2</sup> Exhibits XC4 and XC10

<sup>3</sup> Exhibit XC5

<sup>4</sup> Exhibit XC6

<sup>5</sup> Exhibit XC10

<sup>6</sup> Exhibit XC7

<sup>7</sup> Exhibit XC8 and XC9

<sup>8</sup> Exhibit XC11

<sup>9</sup> Exhibit XC12

“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.”

### **Relevant law**

10. Although the UK has left the European Union (“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 on in these proceedings are derived from an EU Directive. This is why this decision continues to make reference to the trade mark case law of EU courts.

11. 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 goods**

12. In comparing the respective specifications, all the relevant factors should be taken into account. In the *Treat* case, [1996] R.P.C. 281, Jacob J. (as he then was) identified the following factors for assessing similarity:

- (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.

13. In the judgment of the Court of Justice of the European Union (“CJEU”) in *Canon*, the court stated at paragraph 23 of its judgment 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.”

14. 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/services. In *Boston Scientific Ltd v OHIM*, Case T-325/06, the GC stated that “complementary” means:

“...there is 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”.

15. In *Gérard Meric v Office for Harmonisation in the Internal Market* (“OHIM”), Case T-133/05, the General Court (“GC”) stated that:

“29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 *Institut für Lernsysteme v OHIM- Educational Services (ELS)* [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark”.

16. Where there is a lack of evidence or submissions from the parties relating to the definitions of some of the terms in their respective specifications, I rely on my own knowledge of those terms, where necessary.<sup>10</sup>

17. For the purpose of assessment, I will group the applicant’s goods together where I consider they are susceptible to common reasoning.<sup>11</sup>

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<sup>10</sup> *esure Insurance Ltd v Direct Line Insurance Plc*, [2008] EWCA Civ 842 [56]-[57]

<sup>11</sup> As per the decision of Mr Geoffrey Hobbs Q.C., sitting as the Appointed Person, in *Separode Trade Mark* BL O/399/10.



18. The competing goods are shown in the table below:

Earlier mark	Contested mark
Class 9: Batteries, electric; Chargers for electric batteries; Computer memory devices; Video screens; Mobile telephones.	Class 9: <del>Computer Peripherals; Tablet PC Cases; Tablet PC Stands; Smartphone Cases; Smartphone Screen Protective Films; Mobile Phone Stands; Microphones; Cameras; Headphones; Microphone Picks for Sound Transmission Devices; Sound and Image Playback device for carrier; Recording device for sound and image carrier; Tripod for camera; Selfie stick (handheld monopod).</del>

19. The applicant has not made any specific submissions on the similarities or differences between the parties' goods. The opponent, in its statement of grounds, made the following submissions:

“5. [...]

The Contested Goods are identical or similar to the goods for which the Earlier Trade Mark is registered. The Contested Goods are related to computers and/or mobile telephones and parts, accessories and peripherals for such goods. These goods are therefore identical or similar to the goods for which the Earlier Trade Mark is registered as they have the same or related purposes, would be used in conjunction with one another and would be sold through the same trade channels to the same consumers.”

20. I understand *computer peripherals* to include all hardware components or devices that can be attached to or removed from a computer. *Computer memory devices* fall within that category and so these goods are identical in accordance with *Meric*.

21. The applicant's *smartphone cases, smartphone screen protective films, mobile phone stands, and selfie stick (handheld monopod)* can all be considered accessories to mobile phones. These goods therefore have some similarity to the opponent's *mobile telephones*. Given that the accessories are dependent on a mobile telephone for their use and that it is common for undertakings to offer for sale mobile telephones and accompanying accessories, I consider these goods to be complementary in line with the case law referred to above. The nature and uses of the goods differ, but the users will overlap. Additionally, mobile telephones and their accessories can be found under the same category online and in the same or adjacent aisles in physical stores. Overall, I find these goods to be highly similar.

22. The applicant's *headphones* and the opponent's *mobile telephones* are often used together and sold together, but I do not consider them to be complementary in the sense described in the above case law: headphones can be used without mobile telephones (with a different device, for example) and vice versa. The nature and uses of the goods differ, but there will be an overlap in the users and the trade channels. I find these goods similar to a medium degree.

23. The applicant's *cameras* usually require a battery and a charger for their use and so there is a complimentary nature between these goods and the opponent's *batteries, electric and chargers for electric batteries*. The goods differ in their uses and methods of use but, to some extent, have overlapping users and trade channels. The goods can be bought together on the same websites and in the same areas of physical stores. These goods are similar to a medium degree.

24. The contested *tripod for camera* is an accessory used with a camera for additional stability and support. Though I found a medium degree of similarity between the contested *cameras* and the opponent's *batteries, electric and chargers for electric batteries*, these goods are effectively a further step away from the opponent's goods in class 9 and there is no complementary nature whereby one set of goods requires the other for its use. There is no real similarity in terms of uses, users, nature, purpose and method of use. Even if the goods may be sold in the same stores or on the same websites, this is not enough to make the goods similar in a trade mark sense. These goods are not similar.

25. It is not immediately clear what is meant by *microphone picks for sound transmission devices* and the applicant has not attempted to clarify this term. Therefore, I am left to attempt interpretation without technical knowledge and consider the goods to be a type of microphone device. Along with *microphones; sound and image playback device for carrier* and *recording device for sound and image carrier*, they are external devices capable of being connected to a computer. I do not see any obvious similarity between these goods and any of the opponent's goods, since they do not share the same nature or intended purpose, nor are they complementary or in competition with each other. The fact that they may be directed at the same public is not enough to consider the goods similar.

26. The same reasoning as applied in my paragraph 25 above applies to the applicant's *tablet PC cases* and *tablet PC stands*.

27. For a claim under section 5(2)(b) to succeed, there must be at least a degree of similarity between the goods.<sup>12</sup> Having concluded that there is no similarity between the opponent's goods and the applicant's *tablet PC cases; tablet PC stands; microphones; microphone picks for sound transmission devices; sound and image playback device for carrier; recording device for sound and image carrier; tripod for camera* and *microphones*, the opposition in relation to these goods fails.

### **The average consumer and the nature of the purchasing act**

28. As the case law above indicates, it is necessary for me to determine who the average consumer is for the goods in question. I must then determine the manner in which the goods are likely to be selected by the average consumer. In *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:

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<sup>12</sup> *Waterford Wedgwood plc v OHIM* – C-398/07 P (CJEU)

“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 word “average” denotes that the person is typical. The term “average” does not denote some form of numerical mean, mode or median.”

29. The average consumer of the goods at issue is a member of the general public. The respective goods are made available through a variety of trade channels and they may be bought in a store or online. The purchase of such goods is primarily visual, though I do not discount an aural element.

30. The level of attention paid to the purchase will vary depending on the nature of the goods. The goods range in price from fairly inexpensive to quite expensive and are not likely to be everyday purchases. The level of attention paid will be that necessary to achieve the correct features, aesthetic and function, for example. Accordingly, the average consumer will pay at least a medium level of attention to the purchase of the goods.

### **Comparison of marks**



31. It is clear from *Sabel* that the average consumer normally perceives a trade 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 trade marks must be assessed by reference to the overall impressions created by the trade marks, bearing in mind their distinctive and dominant components. The Court of Justice of the European Union (“CJEU”) stated at paragraph 34 of its judgment 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 relevant 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.”

32. 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 trade marks and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the trade marks.

33. The trade marks to be compared are as follows:

Earlier mark	Contested mark
 The logo for 'TECNO mobile' features the word 'TECNO' in a bold, slightly stylized, uppercase font. Below it, the word 'mobile' is written in a smaller, lowercase, sans-serif font.	 The logo for 'Tencro' consists of the word 'Tencro' in a large, bold, sans-serif font. The 'T' is significantly larger than the other letters.

34. The earlier mark consists of the word ‘TECNO’ presented in a slightly stylised font, with the word ‘mobile’ underneath. The goods concerned are *batteries, electric; chargers for electric batteries; computer memory devices; video screens; and mobile telephones*. The word ‘mobile’ means, inter alia, relating to mobile phones, handheld computers, and similar technology. It therefore has an obvious and direct meaning in relation to the relevant goods. The word TECNO is an invented word since it does not exist in the English dictionary. However, it would be viewed as a misspelling of TECHNO which alludes to the word ‘technology’. Consequently, the word ‘TECNO’ is the dominant and distinctive element of the mark.

35. The contested mark consists exclusive of the invented word ‘TENCRO’ in a slightly stylised font. As this is the only component of the mark, it is the only thing that contributes to its overall impression.

36. The letters comprising ‘TECNO’ in the earlier mark are all present in the contested mark, albeit in a slightly different order. ‘TENCRO’ and ‘TECNO’ both begin with the

letters 'TE-' and end in '-O' creating a visual similarity. The middle of those words creates a visual difference, as does the word 'mobile' in the earlier mark. The slight stylisation to the marks is far from remarkable. In my view, and bearing in mind the overall impression, the marks are visually similar to a degree above medium but not high.

37. Comparing 'TECNO' and 'TENCRO', whilst they both start with the sound 'TE-' and end with the sound '-OH', the middle of the words creates quite an aural difference: the letters C and N being in different positions in the words and the addition of the letter R in the contested mark. The word 'mobile', if articulated, creates a further difference. Overall, the marks are aurally similar to a low degree where 'mobile' is articulated, and to a medium degree where it is not.

38. The average consumer is likely to perceive 'TECNO' in the earlier mark as a shortened, albeit misspelled, word for 'technology'. The addition of the word 'mobile' simply reinforces that concept. The contested mark is an invented word with no clear meaning or concept for consumers to grasp. As a result, the marks are conceptually dissimilar.

### **Distinctive character of the earlier mark**

39. The degree of distinctiveness of the earlier marks must be assessed. This is because the more distinctive the earlier marks, the greater the likelihood of confusion (see *Sabel*). In *Lloyd Schuhfabrik Meyer* the CJEU stated that:

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

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

40. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use that has been made of it.

41. I will begin by assessing the inherent distinctiveness of the mark. The word ‘mobile’ is either descriptive of or allusive for the relevant goods. The word ‘TECNO’ is suggestive of technology and therefore allusive for the relevant goods (the prefix techno- means relating to or involving technology).<sup>13</sup> However, the slight misspelling adds to the mark’s distinctive character. Taking the mark as a whole, I consider it has a low degree of inherent distinctive character.

42. I turn now to the question of whether the distinctive character of the mark has been enhanced through use.

43. The opponent signed a multi-million-pound deal with Manchester City Football Club in 2016 (extended in 2019) to become the club’s new tablet and handset partner. The mark relied upon is shown at the launch event, in press coverage of the deal, on the club’s official website ([www.mancity.com](http://www.mancity.com)) and is said in the evidence to be shown at all of Manchester City’s Premier League, FA Cup, EFL Cup and UEFA Champions

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<sup>13</sup> [www.dictionary.cambridge.org/dictionary/english/techno](http://www.dictionary.cambridge.org/dictionary/english/techno)

League home fixtures at the Etihad Stadium. To my mind, this results in widespread exposure of the mark in the UK. The opponent has also signed a deal with actor Chris Evans as a brand ambassador, though the evidence relating to this partnership is minimal. Whilst figures relating to the amount invested in promoting the mark have not been provided, I think it reasonable to conclude that these high-profile partnerships would have attracted a significant amount of money. I do note that the opponent's evidence has some flaws, with no mention of market share other than in Africa and no sales figures. However, the evidence as a whole shows extensive use of the mark across the UK for a seven-year period. I am satisfied that the distinctive character of the earlier mark has been enhanced to a medium degree.

### **Likelihood of confusion**

44. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods and services down to the responsible undertakings being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the opponent's trade marks, the average consumer for the goods and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he has retained in his mind.

45. I have found the marks to be visually similar to a degree above medium but not high, aurally similar to a low or medium degree (depending on whether consumers articulate "mobile") and conceptually dissimilar. I have found the earlier mark to have a low degree of inherent distinctive character, enhanced to a medium degree through use. I have identified the average consumer to be a member of the general public who



will purchase the goods predominantly by visual means, though I do not discount an aural element to the purchase. I have concluded that at least a medium degree of attention will be paid during the purchasing process. I have found the goods to be identical, highly similar or similar to a medium degree. For the goods for which I found no similarity, I have already concluded there will be no likelihood of confusion.

46. I bear in mind *The Picasso Estate v OHIM*,<sup>14</sup> in which the CJEU found that:

“20. By stating in paragraph 56 of the judgment under appeal that, where the meaning of at least one of the two signs at issue is clear and specific so that it can be grasped immediately by the relevant public, the conceptual differences observed between those signs may counteract the visual and phonetic similarities between them, and by subsequently holding that that applied in the present case, the Court of First Instance did not in any way err in law.”

47. In the case before me, the earlier mark has a clear concept that will be immediately grasped by the average consumer, whereas the contested mark will be seen as an invented word. I have borne in mind the importance of the first element in trade marks and that the marks share the first two letters (as well as the final letter ‘O’), but do not consider this to be sufficient for a finding of direct confusion. I am also mindful that even where there is a clear conceptual difference between the marks, this does not necessarily preclude there being a likelihood of confusion. However, in this instance the combination of the differences between the marks and the conceptual dissimilarity are sufficient for me to conclude that the marks will not be directly confused.

48. I have considered whether there is potential for there to be indirect confusion. However, having recognised the differences between the marks, I can see no reason why the average consumer would conclude that they originate from the same or economically linked undertakings. They are not natural brand extensions or variants of each other. Consequently, I do not consider there to be a likelihood of indirect confusion.

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<sup>14</sup> Case C-361/04 P

## **CONCLUSION**

49. The opposition has failed, and the application may proceed to registration.

## **COSTS**

50. The applicant has been successful and is entitled to a contribution towards its costs in line with the scale set out in Tribunal Practice Notice 2/2016. In the circumstances, I award the applicant the sum of £350 as a contribution towards the cost of the proceedings. I note that the applicant's professional representation was withdrawn at the very end of the proceedings when no further action was taken.

Considering the opponent's statement and preparing a counterstatement £250

Considering the opponent's evidence £100

**TOTAL £350**

51. I therefore order Tecno Telecom (HK) Limited to pay Jungao Zhang the sum of £350. This sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

**Dated this 30th day of November 2021**

**E VENABLES**

**For the Registrar**