

O-225-20

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. 3368887

BY

SHENZHEN INNOKIN TECHNOLOGY CO., LTD

TO REGISTER THE TRADE MARK:

ZLIDE

FOR GOODS IN CLASS 34

AND

IN THE MATTER OF OPPOSITION TO ITS REGISTRATION

UNDER NO. 416100

BY

J.T. INTERNATIONAL S.A.

Background and pleadings

1) On 22 January 2019 SHENZHEN INNOKIN TECHNOLOGY CO., LTD (“the Applicant”) applied to register the following trade mark for the following goods:

ZLIDE

Class 34: *Tobacco; Electronic cigarettes; Cigarettes; Liquid nicotine solutions for use in electronic cigarettes; Tobacco pipes, not of precious metal; Filter tips; Cigarette lighters; Oral vaporizers for smokers; Flavourings, other than essential oils, for use in electronic cigarettes; Cigarette filters.*

The application was published for opposition purposes on 25 January 2019.

2) The application is opposed by J.T. International S.A. (“the Opponent”). The opposition, which is directed against all the goods applied for, is based upon section 5(2)(b) of the Trade Marks Act 1994 (“the Act”), for the purposes of which the Opponent relies upon EU trade mark registration 17927020 for the following mark and goods:

LOGIC SLIDE

Class 34: *Electronic cigarettes; cases for electronic cigarettes; cases for electronic cigarette accessories; cigarettes; cigars; smokers' mouthpieces for electronic cigarettes; flavorings, other than essential oils, for use in electronic cigarettes; vaporizing devices for tobacco; vaporizers for smoking purposes; oral vaporizers for smokers; cartridges sold filled with chemical flavorings in liquid form for electronic cigarettes; electronic cigarette liquid comprised of flavorings in liquid form, other than essential oils, used to refill electronic cigarette cartridges; liquid nicotine solutions for electronic cigarettes; tobacco substitutes; tobacco; cigarettes containing tobacco substances, not for medicinal purposes; ashtrays; lighters for smokers; smokers' articles, tobacco products.*

The Opponent's mark was filed on 05 July 2018 and completed its registration procedure on 24 October 2018.

3) The significance of the respective dates given above is that (1) the Opponent's mark constitutes an earlier mark in accordance with section 6 of the Act, and (2) it is not subject to the proof of use requirements contained in section 6A of the Act, since it had not been registered for five years or more at the date of filing of the opposed mark.

4) The Opponent claims that the earlier mark is similar to the opposed mark and covers identical and/or similar goods, which will result in a likelihood of confusion or association. In its counterstatement the Applicant admits that some of the goods covered by the application are identical or similar to those covered by the earlier registration, but denies that other goods are similar. The Applicant also denies that the opposed mark is similar to the earlier mark, contending that the two marks have a significantly different impact on consumers, with high levels of dissimilarity from a visual, phonetic, and conceptual perspective.

5) The Opponent is represented by CMS Cameron McKenna Nabarro Olswang LLP. The Applicant was initially represented by Dummett Copp LLP, but during the course of the proceedings changed its representatives to Franks & Co Ltd. During the evidence rounds the Opponent filed submissions dated 9 August 2019. The deadline set for the Applicant to file evidence and/or submissions was set as 9 October 2019. When no evidence was received from the Applicant by this date, the parties were informed that the evidence rounds were now concluded and that if a hearing was not requested by either side by 21 November a decision from the papers would be issued, in which case the parties would have the opportunity to file final written submissions by 5 December 2019.

6) On 5 December the Applicant submitted evidence which it requested should be admitted into the proceedings. It was then given until 18 December to make a formal request for a retrospective extension of time with supporting reasons on Form TM9R. In its subsequently filed TM9R the reasons given by the Applicant were as follows: The Applicant required additional time to submit evidence into the proceedings as it

was not familiar with UK opposition procedure and had recently appointed a new representative. Allowing the late-filed evidence would not cause any prejudice to the Opponent. The Applicant had first submitted the evidence on December 03, 2019, a copy of which was also emailed to the Opponent. On December 05, 2019, the Opponent had stated that it did not wish to file additional submissions and only reaffirm the submissions filed August 09, 2019. Since the Opponent had not wished to file submissions even after receiving the Applicant's evidence, the proceedings would not be delayed by allowing the submission of the Applicant's evidence into proceedings, and there were no related proceedings to be considered.

7) In a letter of 10 January the parties were informed that the preliminary view of the Registry was that the request should be refused. The reasons provided to justify a two month retrospective extension of time were essentially that the Applicant had recently changed its professional representation. This was not a sufficient reason. Further, referring to the Opponent's contention that since the Opponent had not wished to file submissions even after receiving the Applicant's evidence, the proceedings would not be delayed by allowing the submission of the Applicant's evidence into proceedings, the Registry pointed out that the Opponent's letter referred to was in response to the official letter of 7 November 2019 and did not refer to the evidence the Applicant had filed. Therefore, the Registry did not take this as an indication that 1) the Opponent was content for the Applicant's evidence to be filed, and 2) it would not like to file evidence in reply. Accordingly, applying the guidance set out in the work manual on the extension of time, the reasons for the evidence to be admitted were not justified.

8) The Applicant was given 7 days in which to challenge this preliminary view by requesting a Case Management Conference. No such request having been received in the time allowed, the Applicant was informed that the Tribunal now considered the case ready for a decision, and a decision would be issued in due course. Accordingly, the evidence filed by the Applicant has not been admitted into these proceedings, and I therefore give this decision after a careful review of all the papers before me.

Section 5(2)(b)

9) 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”.

10) The following principles are gleaned from the decisions of the Court of Justice of the European Union (“CJEU”) in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc* (“Canon”), 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;

(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 will wrongly believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

Comparison of goods

11) In the judgment of the CJEU in *Canon*, Case C-39/97, 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”.

12) In *Gérard Meric v OHIM* Case T- 133/05 (“*Meric*”), the General Court 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 the 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 (Case T-104/01 *Oberhauser v OHIM — Petit Liberto (Fifties)* [2002] ECR II-4359, paragraphs 32 and 33; Case T-110/01 *Vedial v OHIM – France Distribution (HUBERT)* [2002] ECR II-5275, paragraphs 43 and 44; and Case T-10/03 *Koubi v OHIM — Flabesa (CONFORFLEX)* [2004] ECR II-719, paragraphs 41 and 42)”.

13) In its counterstatement the Applicant concedes that the following goods covered by the application are “identical/similar” to those covered by the earlier registration: *Tobacco; Electronic cigarettes; Cigarettes; Liquid nicotine solutions for use in electronic cigarettes; Cigarette lighters; Oral vaporizers for smokers; Flavourings, other than essential oils, for use in electronic cigarettes*. The Applicant denies that the remaining goods covered by the application, namely “*Tobacco pipes, not of precious metal; filter tips; Cigarette filters*”, are identical/similar to those covered by the earlier registration.

For the sake of clarity, I note that the Applicant's *Tobacco; Electronic cigarettes; Cigarettes; Cigarette lighters; Oral vaporizers for smokers; Flavourings, other than essential oils, for use in electronic cigarettes* are all covered by literally identical terms in the Opponent's specification. The respective goods are therefore identical. Similarly, despite the insignificantly slight difference in wording, the Applicant's *Liquid nicotine solutions for use in electronic cigarettes* is clearly covered by the Opponent's *Liquid nicotine solutions for electronic cigarettes*; they are identical. The Applicant's *Tobacco pipes, not of precious metal; filter tips; Cigarette filters* all clearly fall within the ambit of the Opponent's *smokers' articles*, and are therefore identical under the principal explained in *Meric*.

The average consumer and the purchasing process

14) 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*.

15) 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.”

16) The average consumer for the goods of both parties' specifications will be adult members of the general public who smoke or "vape".¹ Though subject to heavy duty, tobacco products are not particularly expensive and are all likely to be purchased reasonably frequently. For goods such as cigars, cigarettes, liquid nicotine solutions, etc. factors such as the type or strength of the product will be considered. Overall, a medium degree of attention will be paid during the purchasing process for all these goods, neither higher nor lower than the norm. Products such as tobacco pipes and electronic cigarette devices will be purchased less frequently. Some tobacco pipes may be relatively expensive, but most pipes and vaporizing devices are not particularly expensive items. Appearance, comfort and convenience of use will play a role in their selection. I have no evidence on this point, but note that in *Nico ventures Holdings Limited v The London Vape Company Ltd* [2017] EWHC 3393 (Ch) Birss J (at paragraph 11) approved a finding that, having regard to the prices for vaporizing devices (ranging from about £40 to about £200), the average consumer will pay a "reasonably high" degree of attention to their selection.

17) In the UK, the purchasing process for tobacco products is legally regulated. Cigarettes must be hidden from view and the consumer must request them from the shop assistant, so aural considerations are of particular importance; but once the consumer has requested a particular brand, he or she can see the brand name presented in plain font on the packaging at the point of purchase, so to that extent visual considerations can play some part. Vaping equipment such as ecigarettes and the liquids in question are either kept behind counters or in locked glass display cases. These are not goods that the consumer can simply select from a shelf. The consumer will still have to ask for them, but can normally see them, so Visual considerations may play somewhat more of a role for electronic products, cigarette lighters, etc., where packaging regulation is less strict, and for smoking articles such as pipes.

¹ Tobacco products cannot be sold in England and Wales to anyone under the age of 18, see The Children and Young Persons (Sale of Tobacco) Order 2007, Article 2 which amended s.7 of the Children and Young Persons Act 1933. In Scotland and Northern Ireland the minimum age at which tobacco can be purchased is also 18. Electronic cigarettes are also restricted to those over the age of 18 by s.3 of the Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations 2015.

Comparison of the marks

18) 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.”

19) 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.

20) The marks to be compared are shown below:

The opposed mark	The earlier mark
ZLIDE	LOGIC SLIDE

21) The opposed mark consists of the word ZLIDE in mildly stylised lettering. The earlier mark is a word mark. The protection of a word mark applies to the word(s) and

not to the graphic or stylistic characteristics which that/those word(s) might possess². The mild stylisation of the opposed mark is thus essentially irrelevant to the comparison. Even if the stylisation of the opposed mark is not considered negligible, however, it is in any event clear that it is the word element ZLIDE which is overwhelmingly predominant in the opposed mark's distinctive character and overall impression. The earlier mark consists of two words of equal length, and there is no evidence before me to suggest that either individually or in combination they are in any way descriptive or allusive of the goods in question. There is a rough rule of thumb that the consumer normally attaches more importance to the beginnings of word marks. However, this is no more than a rule of thumb. Each case must be considered on its merits. My assessment must take account of the overall impression created by the marks³. I do not find this rule of thumb a helpful guide in the present case. Though the meaning of both words viewed individually is immediately understandable, used in this combination they do not form a phrase will itself suggest an immediately understandable overall concept to the consumer of the goods in question. I think this very lack of an immediately apparent overall meaning is significant for the distinctive character of the mark. Neither word dominates the other, each contributing to the distinctiveness of the mark overall.

22) Visually, the mild stylisation of the opposed mark is missing from the earlier mark, but I have already pointed out why this is essentially irrelevant to the comparison. Notional and fair use of the earlier word mark would cover its use in any font⁴, The earlier mark is clearly longer than the opposed mark, consisting of two words by contrast with the opposed mark's single word; moreover, there is no counterpart in the opposed mark to the first word of the earlier mark, which shares only one letter with the opposed mark. On the other hand the only difference between the opposed mark

² See *Regenbogen*, T-254/06, at paragraph 43.

³ Cf. *Spa Monopole, compagnie fermière de Spa SA/NV v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) Case T-438/07*:

"23 Admittedly, the consumer normally attaches more importance to the first part of words (Joined Cases T-183/02 and T-184/02 *El Corte Inglés v OHIM – González Cabello and Iberia Líneas Aéreas de España (MUNDICOR)* [2004] ECR II-965, paragraph 81). However, that argument cannot hold in all cases (see judgment of 16 May 2007 in Case T-158/05 *Trek Bicycle v OHIM – Audi (ALL TREK)*, not published in the ECR, paragraph 70 and the case-law cited) and does not, in any event, cast doubt on the principle that the assessment of the similarity of marks must take account of the overall impression created by them."

⁴ See *Peek & Cloppenburg v OHIM T-386/07* at paragraph 47 and *S.A. Société LTJ Diffusion v. Sadas Verbaudet SA*, Case C-291/0 at paragraph 54.

and the second word of the earlier mark is that their initial letters are different. Although there is certainly a visual distinctiveness between Z and S, I think that imperfect recollection may tend to blunt it. Overall, the degree of visual similarity of the marks lies between low and medium.

23) Aurally, the earlier mark consists of three syllables by contrast with the opposed mark's single syllable. Moreover, the initial two syllables of the earlier mark (i.e. its initial word) have no counterpart in the opposed mark and no aural similarity with it. On the other hand, the syllable which forms the earlier mark's second word is aurally highly similar with the opposed mark, the sole difference consisting in their initial sounds; those of Z and S respectively. The difference between these sounds is that Z is a "voiced" consonant and S is a "breathed" consonant. In my view this difference may in practice easily be missed, and the two confused, in the purchasing situation – particularly when one bears in mind the fact that SLIDE is a familiar word, and the well-known tendency of the human eye to see what it expects to see and the human ear to hear what it expects to hear⁵. Overall, the degree of aural similarity of the marks lies between low and medium.

24) LOGIC and SLIDE are both words with a clear and immediate meaning for the average consumer. As I have already observed, though the meaning of both words viewed individually is immediately understandable, and each thus represents a recognisable concept, in the combination in which they appear in the earlier mark they do not form a phrase which will itself suggest an immediately understandable overall concept to the consumer of the goods in question. No evidence was submitted to the contrary.

25) ZLIDE is not a familiar English word and will not as such represent a recognisable concept for the UK consumer. As I have already observed, however, I bear in mind the well-known tendency of the human eye to see what it expects to see and the human ear to hear what it expects to hear. I have also already found that in practice the words ZLIDE and SLIDE may easily be confused during oral use in the purchasing

⁵ See in this connection the comment of Arnold J at paragraph 120 in *Och-Ziff Management Europe Ltd v Och Capital LLP* [2011] FSR 11.

process. It will be less easy to confuse them visually. Even though the consumer notices that the word ZLIDE is not SLIDE, however, I think that the former will bring the latter familiar word to mind. The word LOGIC in the earlier mark is an element of conceptual dissimilarity; which, however, will be counteracted where the consumer confuses ZLIDE with SLIDE, thus providing an element of conceptual similarity. Where the difference between ZLIDE and SLIDE is noticed, there will be conceptual dissimilarity between the marks, Even here, however, I consider that the unfamiliar ZLIDE will readily bring the familiar word SLIDE to mind for the average consumer.

The distinctiveness of the earlier mark

26) The degree of distinctiveness of the earlier mark must be assessed. This is because the more distinctive the earlier mark, either on the basis of inherent qualities or because of use made, the greater the likelihood of confusion (see *Sabel BV v. Puma AG*, paragraph 24). 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).”

27) I have no evidence of acquired distinctiveness to consider. This leaves the question of inherent distinctive character. “LOGIC SLIDE”, though not consisting of invented words, is neither descriptive nor in any way allusive of the relevant goods. It therefore has a relatively high degree of distinctive character when used in connection with them.

Likelihood of Confusion

28) The factors assessed so far have a degree of interdependency (*Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer Inc*, paragraph 17), a global assessment of them must be made when determining whether there exists a likelihood of confusion (*Sabel BV v. Puma AG*, paragraph 22). However, there is no scientific formula to apply. It is a matter of considering the relevant factors from the viewpoint of the average consumer and determining whether they are likely to be confused.

29) I have found:

- The goods are identical.
- It is the word element ZLIDE which is in any event very heavily predominant in the opposed mark’s distinctive character, and that in the earlier mark neither word dominates the other, each contributing to the distinctive character of the mark overall.
- Overall, the degree of both visual and aural similarity of the marks lies between low and medium. The word LOGIC in the earlier mark is an element of conceptual dissimilarity; which, however, will be counteracted where the consumer confuses ZLIDE with SLIDE, thus providing an element of conceptual similarity. Where the difference between ZLIDE and SLIDE is noticed, there will be conceptual dissimilarity between the marks, Even here, however, I

consider that the unfamiliar ZLIDE will readily bring the familiar word SLIDE to mind for the average consumer.

- The earlier mark has a relatively high degree of distinctive character.
- The average consumer for the goods of both parties' specifications will be members of the general public who smoke or "vape". Tobacco products are not particularly expensive and are likely to be purchased reasonably frequently. Overall, a medium degree of attention will be paid during the purchasing process for all these goods, neither higher nor lower than the norm. Products such as tobacco pipes and electronic cigarette devices will be purchased less frequently. Some tobacco pipes may be relatively expensive, but most pipes and vaporizing devices are not particularly expensive items. The average consumer will pay a "reasonably high" degree of attention to their selection.
- In purchasing cigarettes aural considerations are of particular importance, but visual considerations can play some part. Visual considerations may play somewhat more of a role for electronic products such as vaporizers, cigarette lighters, etc., and for smoking articles such as pipes.

30) Given my findings on visual, aural and conceptual similarity, the average consumer's degree of attention, and the purchasing process, even bearing in mind that the goods are identical I do not find a likelihood that that the marks will be directly confused, i.e. mistaken for one another. Even allowing for imperfect recollection, I do not consider that it will escape the consumer that the earlier mark consists of two quite distinct words, and the opposed mark of only one. That leaves the question of indirect confusion to be considered.

31) Sitting as the Appointed Person in *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, Mr Iain Purvis, QC, explained (at paragraph 16) that indirect confusion can occur 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”. In *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17 (at paragraph 81), Mr James Mellor, QC, sitting as the Appointed Person, warned that the tribunal should guard against undertaking too detailed an analysis of what should be an emulation of an instinctive reaction in the mind of the average consumer when encountering the later mark with an imperfect recollection of the earlier mark in mind.

32) I have already observed that, though the meaning of the words LOGIC and SLIDE viewed individually is immediately understandable, and each thus represents a recognisable concept, in the combination in which they appear in the earlier mark they do not form a phrase which will itself suggest an immediately understandable overall concept to the consumer of the goods in question. In other words, the average consumer would not perceive the composite earlier mark as a unit having a different meaning from the meanings of its separate component words. No evidence was submitted to the contrary.

33) This being so, I consider that, on encountering the earlier mark, there is a likelihood that a significant proportion of the relevant public may interpret it as consisting of a primary or house mark used in conjunction with a sub-brand. Where the consumer registers the difference between the ZLIDE of the Applicant’s mark and the SLIDE in the Opponent’s mark there will be no confusion. Even when used on identical goods, a consumer who has noticed the difference will regard it as unlikely that the brand owner would deliberately blur the mark by using different initial letters. The similarity will be put down to coincidence.

34) Even where a reasonably high degree of attention is paid in the purchasing process, however, particularly since I think that ZLIDE will call the familiar SLIDE strongly to mind for the average UK consumer, I consider that there is still scope for SLIDE to be imperfectly recollected as, and confused with, ZLIDE (and *vice versa*) by a significant proportion of the relevant public, and thus to be interpreted as a sub-brand of the same or a related undertaking, where the marks are used with identical

goods. There is thus a likelihood of indirect confusion in respect of all the goods of the Applicant's specification.

Outcome

35) The opposition has therefore succeeded in its entirety and the opposed mark may not proceed to registration.

Costs

36) The Opponent has been successful and is entitled to a contribution towards its costs. Costs are awarded on the basis of the scale published in Tribunal Practice Notice 2/2016. I hereby order Shenzhen Innokin Technology Co., Ltd to pay J.T. International S.A. the sum of £800. This sum is calculated as follows:

Opposition fee	£100
Preparing a statement and considering the other side's statement	£300
Written submissions	£400

This sum should be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 9th day of April 2020

Martin Boyle

**For the Registrar,
The Comptroller-General**