

O-126-11

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO 2517280
BY
ZHONG TIAN TEXTILE INTERNATIONAL TRADING LIMITED
TO REGISTER THE TRADE MARK**



IN CLASSES 18 AND 24

AND

**AND IN THE MATTER OF OPPOSITION THERETO
UNDER NO 99887
BY
PLUM PRODUCTS LIMITED**

TRADE MARKS ACT 1994

IN THE MATTER OF application 2517280

By Zhong Tian Textile International Trading Limited

To register the trade mark:



In classes 18 and 25

AND IN THE MATTER OF opposition thereto

Under no. 99887

By Plum Products Limited

BACKGROUND

1. On 26 May 2009, Zhong Tian Textile International Trading Limited (hereafter “Zhong”) applied to register the above mark in respect of goods in classes 18, 22 and 25 of the Nice Classification System¹. Following a voluntary amendment its list of goods was limited to:

Class 18

Leather and imitations of leather; animal skins, hides; trunks and travelling bags; handbags, rucksacks, purses; umbrellas, parasols and walking sticks; whips, harness and saddlery; clothing for animals.

Class 25

Clothing, footwear, headgear.

2. The application was published on 11 September 2009 in the Trade Marks Journal.

3. On 11 December 2009, Plum Products Limited (hereafter “PPL”) filed a notice of opposition, claiming that registration would be contrary to section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). PPL claims that:

“Notwithstanding the additional letter ‘L’, MANDRILL is indistinguishable from MANDRIL.”

¹ International Classification of Goods and Services for the Purposes of the Registration of Marks under the Nice Agreement (15 June 1957, as revised and amended).

The opposition is directed at some of the goods, namely: *'rucksacks and walking sticks'* in class 18 and *'clothing, footwear and headgear'* in class 25. It relies on all goods in classes 22 and 28 of its earlier UK trade mark registration 2374676, the relevant details of which are as follows:

MANDRIL

Class 22

Ropes and ladders

Class 28

Children's play equipment, swings and other play equipment

4. PPL's mark was applied for on 2 October 2004 and its registration procedure was completed on 11 March 2005. Zhong's application was published for opposition purposes on 11 September 2009. PPL's mark is, therefore, an earlier mark not subject to proof of use because at the date of publication, of the application, it had not been registered for five years.²

5. Zhong subsequently filed a counterstatement on 16 March 2010 denying the grounds of opposition.

6. Only PPL filed evidence; neither side requested a hearing or filed written submissions in lieu of a hearing, both being content for a decision to be made from the papers on file.

Evidence

7. PPL's evidence consists of a witness statement in the name of Michael John Percy Deans, a trade mark attorney, acting on behalf of PPL. For the most part this takes the form of submissions, which I will not summarise here but will refer to where appropriate. Attached exhibits consist of a list of retailers of outdoor equipment in NE England (Exhibit MJPD1) and a search of the goods stocked by Millets and Blacks, which include clothing, footwear, headgear, tents, walking equipment and climbing gear within the same index list (Exhibit MJPD2). Both of these exhibits are dated 22 June 2010, which is a date after the date on which the opposition was filed.

DECISION

8. The opposition is based on section 5(2)(b) of the Trade Marks Act 1994, which states:

² See section 6A of the Act (added by virtue of the Trade Marks (Proof of Use, etc.) Regulations 2004: SI 2004/946) which came into force on 5th May 2004.

“(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.”

9. The leading authorities pertinent to this ground are from the Court of Justice of the European Union (CJEU), namely: *Sabel BV v Puma AG* [1998] RPC 199, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc* [1999] RPC 117, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* [2000] F.S.R. 77, *Marca Mode CV v Adidas AG & Adidas Benelux BV* [2000] E.T.M.R. 723, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH* C-120/04 and *Shaker di L. Laudato & C. Sas v Office for Harmonisation in the Internal Market (Trade Marks and Designs)(OHIM) C-334/05 P (LIMONCELLO)*.

It is clear from these cases that:

(a) the likelihood of confusion must be appreciated globally, taking account of all relevant factors: *Sabel BV v Puma AG*;

(b) the matter must be judged through the eyes of the average consumer for the goods/services in question; *Sabel BV v Puma AG*, 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: *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel B.V.*;

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details: *Sabel BV v Puma AG*;

(d) the visual, aural and conceptual similarities of the marks must therefore be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components: *Sabel BV v Puma AG*;

(e) a lesser degree of similarity between the marks may be offset by a greater degree of similarity between the goods, and vice versa: *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*;

(f) there is a greater likelihood of confusion where the earlier trade mark has a highly distinctive character, either per se or because of the use that has been made of it: *Sabel BV v Puma AG*;

(g) in determining whether similarity between the goods or services covered by two trade marks is sufficient to give rise to the likelihood of confusion, the distinctive character and reputation of the earlier mark must be taken into account: *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*;

(h) mere association, in the sense that the later mark brings the earlier mark to mind, is not sufficient for the purposes of Section 5(2): *Sabel BV v Puma AG*;

(i) further, 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: *Marca Mode CV v Adidas AG and Adidas Benelux BV*;

(j) but if the association between the marks causes the public to wrongly believe that the respective goods come from the same or economically linked undertakings, there is a likelihood of confusion within the meaning of the section: *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc.*(hereafter *Canon*);

k) assessment of the similarity between two marks means more than taking just one component of a composite trade mark and comparing it with another mark; the comparison must be made by examining each of the marks in question as a whole, which does not mean that the overall impression conveyed to the relevant public by a composite trade mark may not, in certain circumstances, be dominated by one or more of its components: *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*;

l) it is only when all other components of a complex mark are negligible that it is permissible to make the comparison on the basis of the dominant element: *LIMONCELLO*.

Comparison of goods

10. For ease of reference the respective goods are listed below:

PPL's goods	Zhong's goods
Class 22 Ropes and ladders	Class 18 Rucksacks and walking sticks
Class 28 Children's play equipment, swings and other play equipment	Class 25 Clothing, footwear, headgear.

11. In comparing the respective specifications, all relevant factors should be considered, as per *Canon* in which the CJEU stated at paragraph 23 of its judgment:

“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. Other factors which may be considered include the criteria identified in *British Sugar Plc v James Robertson & Sons Limited (Treat)* [1996] R.P.C. 281(hereafter *Treat*) such as the respective trade channels through which the goods or services reach the market.

13. I understand Zhong’s counterstatement to submit that the main products covered by each of the marks are completely different, meaning that there will be no confusion, and consequently both marks can coexist.

14. PPL’s submissions state:

“The opposed Class 18 and Class 25 goods are ordinary items of commerce that the general public may buy, including those who engage in walking, climbing and other outdoor pursuits.”

15. In its view someone wishing to purchase any of the aforementioned goods

“...would likely visit one of the specialist stores selling such goods. They are one and the same as the stores selling climbing ropes.”

Furthermore, PPL submit, some outdoor stores sell play tents and outdoor play equipment which would fall within the Class 28 goods of the opponent.

Zhong’s class 18 goods:

16. The opposed goods within class 18 are *rucksacks* and *walking sticks*. *Ropes* in class 22 include ropes for many purposes and, in broad terms, are used either to secure objects, or to enable the ascent/descent of people or objects. Rucksacks are used to carry items conveniently on the back and can be used in everyday activities such as commuting or shopping, or can be specially adapted for activities such as motorcycling or mountaineering.

17. PPL focuses its case on the similarity between ropes for use in climbing and *rucksacks* in Zhong’s application. Even though these goods may both be for use in outdoor pursuits, such similarity exists only at a very general level. Not all outdoor goods are used by the same consumers and have the same uses. For example, a walker may use a rucksack, but, is unlikely to use a climbing rope. There may be a small area of overlap, in limited circumstances, where a rucksack is designed specifically for mountaineering, but the goods have different uses, one being a safety device for use when climbing, the other as a bag to carry items. In addition, climbing ropes are manufactured to very particular technical specifications and are bought by the end user on the same basis, whereas rucksacks are generally purchased according to required size and aesthetics.

18. The opponent has provided internet print outs to show that climbing ropes and rucksacks are available from the same retail outlet. However, there is no evidence before me that the producers of the goods are the same. Further, because of the differences in nature and intended purpose, the goods are clearly not in competition nor will they be displayed in the same area of the shop or website. I must also consider if the respective goods are complimentary. In this respect I am guided by the General Court (GC) judgement *Boston Scientific Ltd v OHIM (Trade marks and Designs Case)*, Case T-325/06:

“82. It is true that goods are complementary if 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 (see, to that effect, T-169/03 *Sergio Rossi v OHIM – Sissi Rossi (SISSI ROSSI)* [2005] ECR II-685, paragraph 60, upheld on appeal in Case C-214/05 P *Rossi v OHIM* [2006] ECR I-7057; Case T-364/05 *Saint-Gobain Pam v OHIM – Propamsa (PAM PLUVIAL)* [2007] ECR II-757, paragraph 94; and Case T-443/05 *El Corte Inglés v OHIM – Bolaños Sabri (PiraÑAM diseño original Juan Bolaños)* [2007] ECR I-0000, paragraph 48).

In the case of *ropes* and *rucksacks* neither is indispensable or even important for the use of the other and I am therefore bound to conclude that the goods are not complementary.

19. Taking all of these factors into account I find that, at a very general level, there may be some similarity between ropes and rucksacks, by virtue of the fact that ropes includes climbing ropes and these, together with rucksacks can be described as goods for use in outdoor pursuits. However, taking into account all of the differences that have been identified above, I conclude that there is no similarity, or, if there is, it is only on the very low side.

20. Ladders in PPL’s specification (which can only be rope ladders within class 22) have many uses, but there is no evidence before me to suggest they are used in any outdoor pursuits or that they are available in the same retail outlet. The users and uses of *ladders* and *rucksacks* are not similar and they are neither in competition nor complementary. I conclude that these are not similar goods.

21. PPL’s case against Zhong’s *rucksacks* is no stronger when relying upon their goods in class 28. *Children’s play equipment, swings and other play equipment* in the opponent’s earlier mark are large scale items which are likely to be bought for outdoor use by children. The opponent submits that some outdoor retailers sell ‘play tents’ which would fall within the scope of their class 28 registration. They have submitted internet print outs to this effect. However, the goods are unlikely to be displayed in the same area of a store or website as rucksacks. The users, uses and method of use are completely different and the goods are neither in competition nor complementary. After considering the guidance in *Canon* and *Treat* I conclude that there is no similarity between these goods.

22. Whilst I have dealt with PPL's submissions of the similarity of its goods with Zhong's *rucksacks*, for the sake of completeness, I will go on to consider the level of similarity between the remaining goods in Zhong's application and PPL's goods.

23. Zhong's *walking sticks* are available from the more general outdoor goods retailers, but would be sold in different areas of the store or website from climbing ropes. A walking stick is used to support someone in the act of walking while a climbing rope is used to ascend or descend a surface or to tether to objects. The users of the goods are different as are the uses of the goods and method of use. They are neither in competition nor complimentary and I am therefore bound to conclude that there is no similarity between these goods.

25. Similar considerations apply when I compare PPL's *children's play equipment, swings and other play equipment* to *walking sticks* in Zhong's application. Children's play equipment is likely to be bought by the general public for use by children, or by a business providing play equipment. They are normally large, free standing items. A walking stick is a small personal item to aid walking. The users and uses of these goods are different. Where they may be available in large, diverse retailers they would not be displayed in the same area of the shop. The goods are neither complementary nor in competition. I conclude there is no similarity between these goods.

Zhong's Class 25 Goods

26. *Clothing, footwear and headgear* in Zhong's class 25 covers a wide range of goods for a wide variety of purposes. Such goods may be adapted or designed for outdoor activities. However, I have nothing before me to show that the users of Zhong's goods and the users of *ropes* under class 22 are likely to be the same, other than in the very specific context that ropes can include climbing ropes and Zhong's goods can also include goods adapted for use in outdoor activities. However, none of these goods are in competition nor are they complementary. Furthermore, they would not be located within the same area of the store. Taking all these factors into account and being mindful of the guidance provided by *Canon* and *Treat* I find no similarity between these goods.

27. Finally I must consider the level of similarity between Zhong's class 25 goods and PPL's goods in class 28. Applying all of the tests outlined above, the uses of the goods and users of the goods are different. There may be a possibility of an overlap in terms of trade channels but, the evidence fails to illustrate that the respective goods are generally provided by the same retail outlet. Further, even where it occurs, the goods will not be on the same shelves or in the same area of the shop as each other. They are not in competition nor complementary. I find no similarity between these goods.

28. In conclusion, PPL's best case appears to be in respect of the similarity between its *ropes* and Zhong's *rucksacks*, which, as I have stated above at paragraph 20, are not similar, or if they are, only to a very low level.

The average consumer

29. *Ropes* and *ladders* (the latter must be made of rope in order to be proper to Class 22) have a relatively narrow range of applications and can be used in a nautical environment, as rescue equipment, or in activities such as mountaineering or caving. As such, the average consumer will have reasonably specialised knowledge and will apply greater consideration than they would when purchasing more everyday goods. These activities will require that the goods are made to high safety and technical standards and knowledge of these will form part of the considerations during the purchasing act.

30. In respect of PPL's Class 28 goods, the terms cover equipment of relatively low value and are therefore susceptible to impulse purchasing, while others goods covered may cost considerably more and will involve a higher level of consideration. The average consumer of such goods will be drawn from the general public and business purchasers who provide children's play facilities.

31. *Rucksacks* are available in a wide range of prices. Some are purchased casually for carrying items and, for the most part, the main considerations are fashion and practicality. *Rucksacks* can also be specifically adapted for particular activities such as motorcycling, running and cycling or other outdoor activities. As a result there is a range of average consumers with varying knowledge and requirements who will apply varying levels of consideration to the purchasing act. The nature of such a purchasing act will predominantly be a visual one.

32. *Walking sticks* have a very specific purpose, namely, to assist individuals whilst walking and will generally appeal to members of the general public who require such assistance. The purchasing act will predominantly be a visual one and will be reasonably well considered, but certainly not of the highest level that may be associated with high cost goods.

33. Finally, in respect to Zhong's clothing, footwear, headgear, I am mindful of the comments of Mr Simon Thorley, sitting as the Appointed Person, in the *React trade mark case [2000] R.P.C. 285*:


*"There is no evidence to support Ms Clark's submission that, in the absence of any particular reputation, consumers select clothes by eye rather than by placing orders by word of mouth. Nevertheless, my own experience tells me it is true of most casual shopping. I have not overlooked the fact that catalogues and telephone orders play a significant role in this trade, but in my experience the initial selection of goods is still made by eye and subsequent order usually placed primarily by reference to a catalogue number. I am therefore prepared to accept that a majority of the public rely primarily on visual means to identify the trade origin of clothing, although I would not go so far as to say that aural means of identification are not relied upon."*³

³ The GC has continued to identify the importance of visual comparison when considering the purchasing act in respect of clothing (see for example Joined Cases T-117/03 to T-119/03 and T-171/03 *New Look Ltd v OHIM (NLSPOET et al)* [2004] ECR II-3471 at [49]-[50] and Case T-414/05 *NHL Enterprises BV v OHIM (LA KINGS)* [2009] ECR II).

Taking these comments into account, the purchasing act will, generally be described as visual and will involve a reasonable degree of care and attention but not the highest degree of attention. As Mr Thorley noted, the purchasing process is primarily a visual one but I do not ignore the aural considerations that may be involved.

Comparison of marks

34. The marks to be compared are:

PPL's earlier mark	Zhong's application
MANDRIL	

35. In making a comparison between the marks, I must consider the respective marks' visual, aural and conceptual similarities with reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components,⁴ but without engaging in an artificial dissection of the marks, because the average consumer normally perceives a mark as a whole and does not analyse its details.

Visual comparison

36. Zhong's mark contains a device whereas the earlier mark consists of a single word. The device element takes up the top three quarters of the mark, with the word element having equal dominance with the device element. Both marks consist of one word, the first seven letters of which are the same. The only difference is the addition of a letter 'L' in the applicant's mark. The word in the application is stylised but it does not alter the fact that the word is eight letters long with no emphasis added to any part. Taking all of these factors into account, I consider there to be a reasonably high degree of visual similarity between the marks.

Aural comparison

37. PPL submits that:

⁴ Sabel v Puma AG, para. 23

“Faced with a label showing [the] Applicant’s mark or wishing to order Goods bearing [the] Applicant’s mark in writing, by telephone or through some form of e-commerce, I do not see how I could refer to it in any other way than by the word MANDRIL. I am unable to pronounce this word other than identically with MANDRILL.”⁵

38. In contrast Zhong’s counterstatement claims:

“...the opponent’s trademark is named as “MANDRIL”, it is combined with the seven English characters, and the pronunciation is “MAN”, “DR”, “IL”. Our trademark is completely different from any aspects such as visual, aural and conceptual, our trademark is a special mountain pattern only.”

39. As stated above⁶, in accordance with established case law, I must consider the marks as a whole, which includes consideration of the word element of the applicant’s mark. In fact, in order to compare the marks aurally it is the word element which is the significant factor, as the consumer will not attempt to vocalise the device element. Both marks have the first three letters ‘MAN’. Zhong’s mark ends ‘DRILL’, while the earlier right ends with ‘DRIL’. Both marks are likely to be split into two syllables resulting in the wholes being pronounced ‘MAN-DRIL’ and ‘MAN-DRILL’. I note that, in their counterstatement, Zhong have split the mark into three syllables and while I acknowledge that this is an alternative pronunciation, it does not serve to distance either mark from the other and could apply equally to both. The additional ‘L’ in the application is not likely to make any difference in terms of the pronunciation. Taking all of the above into account, I find the marks are aurally identical.

Conceptual

40. The Collins English Dictionary⁷ defines ‘Mandrill’ as *“An Old World monkey, Mandrillus sphinx, of W Africa. It has a short tail and brown hair, and the ridged muzzle, nose, and hindquarters are red and blue”*. PPL also draws attention to this meaning.

41. No evidence has been provided to show that MANDRIL would be understood, by the average consumer to be a species of monkey and it would be wrong for me to assume that this understanding exists.⁸ In so far as the average consumer will attribute a meaning to the word MANDRIL, that meaning will be identical but, taking

⁵ In a subsequent letter to the Registry, dated 21 July 2010, PPL’s representative stated that the above referenced statement got MANDRIL and MANDRILL the wrong way round.

⁶ At paragraph 35

⁷ 2000 Edition, Harper Collins

⁸ In considering this point I have born in mind the comments of Anna Carboni sitting as the appointed person in ‘CHORKEE’ when she said: *“I have no problem with the idea that judicial notice should be taken of the fact that the Cherokee Nation is a Native American tribe. This is a matter that can easily be established from an encyclopaedia or internet reference sites to which it is proper to refer. But I do not think that it is right to take judicial notice of the fact that the average consumer of clothing in the United Kingdom would be aware of this. I am far from satisfied that this is the case.”* O-048-08, paragraph 37

all of the relevant factors into account, I must conclude that the average consumer will consider both MANDRIL and MANDRILL to be invented words and that neither mark brings the relevant goods to mind.

42. In addition to the words, Zhong's mark also includes the stylised mountain device that forms a distinctive part of the mark. It is evident from this additional device element that the marks cannot be conceptually identical. Taking all of the above into account, the respective marks potential point of conceptual similarity resides in the word element. However, I am unable to conclude that the average consumer will know the meaning of the word, and further because the device element of Zhong's mark provides a conceptual identity absent in PPL's mark, I conclude that the marks are not conceptually similar.

43. Taking into account the reasonably high level of visual similarity, the fact that the marks are aurally identical and that I have found that there is no conceptual similarity, I conclude that there is a reasonably high degree of similarity between the marks overall.

Distinctive character of the earlier mark

44. In order to make an overall global assessment of the likelihood of confusion, I must also assess the distinctive character of PPL's trade mark. The distinctive character of a trade mark can be appraised only, first, by reference to the goods in respect of which it has been registered and, secondly, by reference to the way it is perceived by the relevant public.⁹ In determining the distinctive character of a trade mark, it is necessary to make an overall assessment of the greater or lesser capacity of the trade mark to identify the goods for which it has been registered as coming from a particular undertaking and thus to distinguish those goods from those of other undertakings.¹⁰ No evidence of use has been filed by PPL, so I have only to consider the inherent level of distinctiveness. I have already concluded that the mark is likely to be viewed by the average consumer as a made up word. As such it enjoys a high level of inherent distinctive character.

Likelihood of confusion

45. PPL's mark, MANDRIL, does not split into separate distinctive and dominant components. It will be viewed as the single word MANDRIL which is its only constituent part; consequently, the distinctiveness of the mark rests in the word.

46. The mark as a whole is described by Zhong as, '*a special mountain pattern only*'. This is not the case as Zhong's mark is clearly a composite mark which consists of the word MANDRILL below a device. As I have concluded earlier the stylised mountain device and the word MANDRILL share equal dominance in the mark. The word element is not stylised to such an extent that it is outside the normal range of typefaces which are familiar in a trade mark context. It is clearly readable and, as I have said, it is a distinctive part of the overall mark.

⁹ Rewe Zentral AG v OHIM (LITE) [2002] ETMR 91

¹⁰ Windsurfing Chiemsee v Huber and Attenberger Joined Cases C-108/97 and C-109/97 [1999] ETMR 585

47. I have also found that while MANDRILL has a dictionary meaning the average consumer will perceive it as an invented word. As such, the mark enjoys a high level of distinctive character.

48. In assessing the likelihood of confusion I must adopt the global approach advocated by case law and take into account the fact that marks are rarely recalled perfectly, the consumer relying instead on the imperfect picture of them he has in kept in his mind.¹¹ I must also keep in mind the average consumer for the services, the nature of the purchasing process and have regard to 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 services and vice versa.

49. I have found that the marks share a reasonably high level of visual similarity and are they are aurally identical, but that they are not conceptually similar. This results in a reasonably high level of similarity overall. I have also identified a high level of distinctive character in PPL's earlier mark. In respect of the goods I have concluded that Zhong's *rucksacks* are not similar to PPL's *ropes* or, if they are, it is only on the very low side. In respect of the remainder of Zhong's goods I have found no similarity with any of PPL's goods. It has been established by the CJEU and the GC that where there is no similarity between the respective goods there can be no likelihood of confusion¹². Therefore, I only need to consider the likelihood of confusion in respect of Zhong's *rucksacks*.

50. I take all of the factors above into account and conclude that the very low level of similarity (at best) between *ropes* and *rucksacks* outweighs the similarities between the respective marks. The average consumer will not expect the respective goods to emanate from the same or linked undertakings. **Therefore, the ground of opposition is rejected and I find the opposition fails in its entirety.**

COSTS

51. The opposition having failed the applicant, Zhong Tian Textile International Trading Limited, is entitled to a contribution towards its costs on the following basis:

Considering the other side's statement and preparing a statement: £300

Considering the other side's evidence: £300

Total: £600

54. I order Plum Products Limited to pay Zhong Tian Textile International Trading Limited the sum of £400. This sum is to be paid within seven days of the expiry of

¹¹ *Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V* paragraph 27

¹² See *Waterford Wedgwood v Assembled Investments (Proprietary) Ltd.*, T-105/05, paragraph 35 and C-398/07 appeal before the CJEU.

the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 12 day of April 2011

**Ms AI Skilton
For the Registrar,**