O/0796/25

TRADE MARKS ACT 1994

IN THE MATTER OF UK TRADE MARK APPLICATION NO. 3951732
IN THE NAME OF GLOBAL TRADING UK LIMITED
IN RESPECT OF THE TRADE MARK

IN CLASSES 3 & 5

AND

THE OPPOSITION THERETO UNDER NO. 447084
BY ACCANTIA GROUP HOLDINGS

Background and pleadings

1. Global Trading UK Limited ("the applicant") applied to register the trade mark no. 3951732 for the mark shown on the cover page of this decision in the UK on 31 August 2023. It was accepted and published in the Trade Marks Journal on 19 January 2024 in respect of the following goods:

> Class 3: *Paper hand towels impregnated with cleaning agents; cleaning preparations; cleaning fluids; glass cleaning preparations; floor cleaning preparations; soaps; detergents; dishwashing detergents; bleach, bleaching preparations; refill packs for hand soap dispensers.*
>
> Class 5: *Air fresheners; air freshener refills; disinfectants; wipes impregnated with disinfectants; sanitisers for household use; hand sanitisers.*

2. On 23 April 2024, Accantia Group Holdings ("the opponent") opposed the trade mark under section 5(2)(b) of the Trade Marks Act 1994 ("the Act"). This is on the basis of its earlier UK Trade Mark no. 1328646 for the mark SIMPLE GREEN. The following goods are relied upon in this opposition:

> Class 3: *Cleaning, polishing, scouring and abrasive preparations and substances; degreasing preparations; household and industrial cleaning preparations in liquid form; detergents; bleaching preparations and other substances for laundry use; all included in Class 3.*

3. The earlier mark was filed on 30 November 1987 and has a registration date of 6 March 1992. By virtue of its earlier filing date, it constitutes an earlier mark in accordance with section 6 of the Act.

4. The opponent argues that the respective goods are identical or similar and that the marks are highly similar. As such, the opponent submits there is a likelihood of confusion between the marks, and the application should be refused in accordance with section 5(2)(b) of the Act.

5. The applicant filed a counterstatement denying the claims made. Whilst the applicant accepts there is similarity between some of the goods, it denies identity or similarity between all of the goods. The applicant also submits that the earlier mark has a low degree of inherent distinctive character, and that small differences between the marks are therefore sufficient to distinguish between them. Overall, the applicant submits there is no likelihood of confusion.

6. As the earlier mark had been registered for a period of over five years at the date on which the application was filed, it is subject to the use provisions set out in section 6A of the Act. The applicant requested that the opponent provide proof of its use in relation to all of the goods relied upon.

7. Both sides filed evidence in these proceedings. This will be summarised to the extent that it is considered necessary. The applicant also filed written submissions during the evidence rounds, which will not be summarised but will be referred to where necessary.

8. A shortform hearing took place before me on 26 June 2025. Only the applicant attended the hearing. The applicant is represented in these proceedings by HGF Limited and was represented at the hearing by Ms Rigel Moss McGrath of the same. The opponent is represented in these proceedings by Baker & McKenzie LLP and filed written submissions in lieu of its attendance at the hearing.

9. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

Evidence

10. The opponent filed its evidence in the form of three witness statements and accompanying exhibits.

11. The first witness statement is in the name of Bruce P FaBrizio, CEO, President and Founder of Sunshine Makers Inc. This introduces three exhibits, namely Exhibit BPF1 – Exhibit BPF3. This goes to the use of the mark by this entity, under the terms of an agreement. The statement is dated 6 September 2024.

12. The second witness statement is filed in the name of Adrian Martorana, the Managing Director of Brand Passion Ltd, the sole UK distributor for Sunshine Makers Inc. in respect of their "SIMPLE GREEN" products. The statement introduces six exhibits, namely Exhibit AM1 to Exhibit AM6. These also go to the use of the earlier mark. This statement is also dated 6 September 2024.

13. The third statement is in the name of Stephen Mark Waine, a trade mark attorney at Murgitroyd and Company.[1] This statement introduces two exhibits, namely SW1 and SW2. These go to the chain of ownership of the earlier registration. This is dated 10 September 2024.

14. The applicant filed its evidence in the form of a witness statement in the name of Rigel Moss McGrath, a Chartered Trade Mark Attorney at the applicant's representative firm. The statement introduces 3 exhibits, namely Exhibit RMM1 to Exhibit RMM3. These go to the size of the market for cleaning products, as well as to the distinctiveness of the two words making up the earlier mark.

Proof of use

15. As set out above, the earlier mark is subject to proof of use in accordance with section 6A of the Act. This is set out below:

Section 6A:

[1] This is a different firm to the opponent's representative firm, but the witness statement was filed in evidence by the opponent's representative.

"(1) This section applies where

(a) an application for registration of a trade mark has been published,

(b) there is an earlier trade mark of a kind falling within section 6(1)(a), (aa) or (ba) in relation to which the conditions set out in section 5(1), (2) or (3) obtain, and

(c) the registration procedure for the earlier trade mark was completed before the start of the relevant period.

(1A) In this section "the relevant period" means the period of 5 years ending with the date of the application for registration mentioned in subsection (1)(a) or (where applicable) the date of the priority claimed for that application.

(2) In opposition proceedings, the registrar shall not refuse to register the trade mark by reason of the earlier trade mark unless the use conditions are met.

(3) The use conditions are met if –

(a) within the relevant period the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or

(b) the earlier trade mark has not been so used, but there are proper reasons for non- use.

(4) For these purposes -

(a) use of a trade mark includes use in a form (the "variant form") differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor), and

(b) use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(5)-(5A) [Repealed]

(6) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services."

16. Section 100 of the Act states that:

"100. If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it."

17. In *easyGroup Ltd v Nuclei Ltd & Ors* [2023] EWCA Civ 1247, Arnold LJ summarised the law relating to genuine use as follows:

"105. The principles applicable to determining whether there has been genuine use of a trade mark have been considered by the CJEU in a considerable number of cases, the principal decisions being Case C-40/01 Ansul BV v Ajax Brandbeveiliging BV [2003] ECR I-2439, Case C-259/02 La Mer Technology Inc v Laboratories Goemar SA [2004] ECR I-1159, Case C-416/04 P Sunrider Corp v Office for Harmonisation in the Internal Market (Trade Marks and Designs) [2006] ECR I-4237, Case C-442/07 Verein Radetsky-Order v Bundervsvereinigung Kamaradschaft 'Feldmarschall Radetsky'[2008] ECR I-9223, Case C-495/07 Silberquelle GmbH v Maselli-Strickmode GmbH [2009] ECR I-2759, Case C-149/11 Leno Merken BV v Hagelkruis Beheer BV [EU:C:2012:816], Case C-609/11 Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG [EU:C:2013:592], Case C-141/13 P Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs) [EU:C:2014:2089], Case C-689/15 W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse [EU:C:2017:434] and Joined Cases C–720/18 and C–721/18 Ferrari SpA v DU [EU:C:2020:854].

106. Ignoring issues which do not arise in the present case, such as use in relation to spare parts or second-hand goods and use in relation to a sub-category of goods or services, the principles may be summarised as follows:

(1) Genuine use means actual use of the trade mark by the proprietor or by a third party with authority to use the mark: Ansul at [35] and [37].

(2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: Ansul at[36]; Sunrider at [70]; Verein at [13]; Centrotherm at [71]; Leno at [29]; Ferrari at [32].

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: Ansul at [36]; Sunrider at [70]; Verein at [13]; Silberquelle at [17]; Centrotherm at [71]; Leno at [29]; Gözze at [37], [40]; Ferrari at [32].

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: Ansul at [37]. Internal use by the proprietor does not suffice: Ansul at [37]; Verein at [14]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: Silberquelle at [20]-[21]. But use by a non-profit making association can constitute genuine use: Verein at [16]-[23].

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial raison d'être of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: Ansul at [37]-[38]; Verein at [14]; Silberquelle at [18]; Centrotherm at [71].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic

sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: Ansul at [38] and [39]; La Mer at [22]-[23]; Sunrider at [70]-[71], [76]; Centrotherm at [72]-[76]; Reber at [29], [32]-[34]; Leno at [29]-[30], [56]; Ferrari at [33].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no de minimis rule: Ansul at [39]; La Mer at [21], [24] and [25]; Sunrider at [72]; Leno at [55].

(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: Reber at [32].”

18. The relevant period within which the opponent must prove use in these proceedings is the five years directly preceding and ending with the date the application was filed, that being 1 September 2018 - 31 August 2023. The opponent must show that genuine use has been made of the mark relied upon, within the relevant territory of the UK, and in respect of the goods relied upon during the relevant period.

Use with consent

19. In its evidence, the opponent provides documents going to the chain of ownership of the earlier mark and the use of the same, which I will discuss in more detail shortly.

The evidence explains that the "effective licensee" and "exclusive registered user" of the mark appointed a new UK distributor in 2016, and that this distributor has been selling goods under the mark on its website since that time. Further evidence was filed of these sales. The applicant filed submissions during the evidence rounds responding to this evidence stating (my emphasis):

> *"1. The Applicant notes the evidence submitted on behalf of the Opponent in the proceedings relating to the chain of title.*
>
> *2. The Applicant notes the evidence submitted on behalf of the Opponent relating to the use that has been made of the trade mark subject of UK trade mark registration UK00001328646 SIMPLE GREEN. The evidence has been viewed in light of the scale of the market for cleaning products in the UK, as referred to in Exhibit RMM1 to the witness statement of Mrs Rigel Moss McGrath.*
>
> *[…]"*

20. No further comment was made regarding whether or not the use shown constitutes use by or with the consent of the opponent at that stage.

21. In her skeleton argument, Ms Moss McGrath submitted that use of a mark must be either by the opponent (as the proprietor) or by an authorised licensee. Further, Ms Moss McGrath submitted that use by the distributor of what she refers to as an "exclusive licensee" is too far removed to satisfy the requirements for genuine use on behalf of the opponent as the proprietor of the earlier mark.

22. On her first point, I asked Ms Moss McGrath at the hearing if there was any case law she could refer me to that supported her submission that use must be made by the proprietor or an *authorised licensee*. I explained that to my knowledge, and in accordance with the Act, use must simply be by the proprietor or *with its consent*. Ms Moss MsGrath explained that she did not know of any case law and that she was under the impression that this was expressed in the Act, but accepted she may be mistaken on that point. Nonetheless, she continued to argue in any case that the use

shown in the evidence was too far removed from the proprietor of the earlier mark (the opponent), to count towards genuine use in these proceedings.

23. On the second point raised in the skeleton arguments, which (as above) was reiterated by Ms Moss McGrath at the hearing, I asked Ms Moss McGrath why this was not raised in the applicant's submissions during the evidence rounds, when the evidence on this point was noted. I explained that it felt late in the proceedings to be raising this issue for the first time. Ms Moss McGrath stated that the applicant had no intention of making any admission within its submissions that the trade mark was being used with the consent of the opponent. Further, she submitted that the applicant is not challenging the veracity of the evidence, rather they are simply doubting the relevance of the evidence provided to the case.

24. The evidence filed in these proceedings has been provided for the purpose of showing use of the mark in accordance with section 6A of the Act. In my view, it is implicit in the filing of the evidence of this use by the opponent, particularly considering it is accompanied by the details of the chain of title and the explanation regarding licensees and distributors, that it is the opponent's position the use shown is with its consent. I do note this is not explicitly stated in the evidence and I accept the applicant is not actually accusing the opponent of lying in this instance. However, questioning whether the evidence provided by the opponent shows use with its consent (primarily on the basis of the proposed exclusivity of a license dating from 1989, which again I will discuss in more detail below), is in my view, one step further than simply making submissions that, for example, the level of sales shown aren't high enough or that there is nothing to place the use shown in the UK. It is my view that if the applicant wished to challenge the opponent on this point, after the opponent had provided evidence explaining that the use of the mark was by a distributor appointed by a party about which there appears to be no dispute has the opponent's consent to use the mark, then it should have raised this during the evidence rounds. Instead, the applicant simply stated, somewhat ambiguously, that the evidence relating to the chain of title of the mark was "noted". Had this been mentioned earlier it would have provided the opponent with an opportunity to answer the questions raised by the applicant on this point, particularly regarding whether the opponent had consented to a distributor being appointed by the licensee, despite the original agreement seeming to point to the

exclusivity of the licensee. Whilst I therefore still intend to consider this issue below, I do so with the fact that the opponent was not provided with an opportunity to reply to the applicant's criticisms in mind.

25. It remains my view at this stage that section 6A(3)(a) of the Act simply specifies that for use of a mark to be considered in an assessment of genuine use, it must either be by the proprietor or with its consent. Consent may be express or implied, and it may be inferred by the facts and circumstances of the case.[2] In this case, the owner of the mark throughout the relevant period appears to have been the current proprietor of the earlier mark, that being the opponent, Accantia Group Holdings. Prior to this, according to the witness statement of Mr FaBrizio, the mark was owned by The Albion Group Limited ("Albion"), who became Accantia Health and Beauty Limited ("Accantia Health") after a name change. Before this, the mark was owned by Sunshine Makers Inc., ("Sunshine") who remained an "effective Licensee" and "exclusive registered user" after the assignment of the trade mark to Albion, and who claim to have been using the mark for cleaning products in the UK since at least as early as the 1990s. Mr FaBrizio provides at Exhibit BF1 a copy of an agreement between Albion and Sunshine dating from 1989, which states that Albion consents to the use of the mark by Sunshine. The agreement is said to be binding on subsidiaries and related parties. Also provided at this exhibit is a document which Mr FaBrizio explains is a Registered User recordal from the UK IPO, which dates back to 1992 and lists Sunshine as a registered user of the mark. Whilst the agreement and recordal were made when the mark was owned by Albion (now Accantia Health) and not the opponent and current proprietor in this case, it appears on balance that the opponent will be at the least a "related party" as specified by the agreement, and that this agreement will therefore be binding on the proprietor, providing Sunshine with continuing express consent to use the mark. Alternatively, and at the very least, it is in any case apparent that use of the mark has continued to be controlled by Sunshine after this further assignment to the opponent, and consent by the opponent for this to continue after its acquisition of the mark from what appears to be another entity in its group is in my view, in the circumstances, implied.

[2] See *Makro Zelfbedieningsgroothandel CV and others v Diesel SpA,* Case C-324/08.

26. Mr FaBrizio goes on to explain that Sunshine sell in the UK through a distributor, that being Brand Passion Ltd ("Brand Passion"),[3] who market the goods via the website simplegreen.co.uk. I note Ms Moss MsGrath's submission at the hearing that as Sunshine are an exclusive licensee,[4] the granting of a sublicense would need to be established in the agreement itself, or by way of a separate agreement. It does not appear from the evidence that there is any claim that a sublicense has been granted in this instance. However, it appears that Sunshine have simply appointed Brand Passion as a distributor to help facilitate its own use of the mark in the UK, and as I have set out above, Sunshine's use is, in my view, with the consent of the opponent. In any case, even if I am wrong on this point, I note Brand Passion were appointed by Sunshine 2016, and it does not appear that the opponent has made any attempt to object to this arrangement between since that time. Further, it is clear that Brand Passion and the opponent have a cooperative relationship, which has enabled the proprietor to gather the evidence of use for these proceedings from this party. On balance, even if the evidence provided is considered to show use only by Brand Passion, who are not strictly "authorised" by the original agreement provided, it is my view that consent by the proprietor for Brand Passion to operate as Sunshine's distributor in the UK throughout the relevant period is, in the circumstances, inferred. I will therefore go on to consider the evidence of use on this basis.

Extent of the use

27. In his witness statement, Mr Martorana explains that Brand Passion is the sole distributor of SIMPLE GREEN products for Sunshine in the UK. He explains it has been a distributor in the UK since 2016, and that sales of products under the mark have been made each year since. He explains that the products are industrial and household cleaning items, and Exhibit AM1 provides examples from Brand Passion's website under www.simplegreen.co.uk. The pages provided display goods including an "all purpose" cleaner, heavy duty industrial cleaning and degreasing products, and aviation cleaner and degreaser. The pages show use of the word mark as registered,

[3] I note Brand Passion operate under the trading name Simple Green UK.
[4] I note Sunshine Makers, Inc. are referred to in the agreement and the witness statement of Mr FaBrizio as the "exclusive registered user".

in addition to the slightly stylised version copied below, which I consider to be fair use of the registered word mark:

28. However, I note the pages provided from this website are dated in 2024, meaning they fall outside of the relevant period for showing use.

29. Exhibit AM2 provides the UK eBay page “simplegreenuk”. The page states:

> *“Simple Green UK is the distributor for Simple Green - one of the best performing, environment friendly & biodegradable cleaning products. All our products are excellent for use around the Home, Garage, DIY, Caravans, Hobby, Scuba & much much more!”*

30. The page gives the business details as Brand Passion Ltd, and explains they’ve been a member since 2015, although I note the copyright details on the page indicates the print out itself was taken in 2024. However, three emails are also provided with this exhibit detailing three UK sales, one in 2021, one in 2022, and one in July 2023. All three sales are of Simple Green All Purpose Concentrated Cleaner & Degreaser.

31. Exhibit AM3 provides what appears to be an undated brochure, again showing the slightly stylised Simple Green mark displayed at paragraph 27. This lists the product range as comprising three items, those being:

- Simple Green Original All-Purpose Cleaner & Degreaser;
- Simple Green Crystal Industrial Cleaner and Degreaser; and
- Extreme Simple Green Aviation & Heavy Duty Degreaser.

32. The brochure appears from the web and email address provided to be aimed at UK consumers. Further undated promotional material showing the registered word mark, the slightly stylised mark, and the products, are also provided at this exhibit, as well as email confirmation of a SIMPLE GREEN advertisement/promotional article being included in “Industrial Process News” for the March/April 2019 issue. It is said this has a readership of approximately 15,000, with a minimum of 5000 copies distributed. A “NEWS” page is also provided at this exhibit which makes use of the word mark as registered and the slightly stylised mark. This discusses cleaning with SIMPLE GREEN products and is dated “2019”.

33. Exhibit AM4 provides a Trust Pilot page supplying reviews of products under the mark. This displays eleven 5* reviews, ten of which are spread throughout the relevant period. Exhibit AM5 provides three letters dating from 2019 to potential UK customers met at “stands” (presumably at a trade fair), which provide additional details about Simple Green aviation cleaner. Exhibit AM6 provides price lists for goods under the mark, two of which date within the relevant period in 2019 and 2021. These show prices in GBP and detail various components included in the three products outlined at paragraph 31, as well as “additional products” including empty spray bottles, foam bottles and brush applicators.

34. It is exhibit BF2 to Mr FaBrizio’s statement that provides UK sales figures for goods under the mark. These show the sales for before and after the relevant period (including sales made by a former UK distributor), as well as during, as follows:

Country	Customer	2014	2015	2016	2017	2018
United Kingdom	0001000165 - Brand Passion	$0.00	$0.00	$0.00	$0.00	$0.00
United Kingdom	5BPAS01 - Brand Passion	$0.00	$315.26	$12,020.62	$17,357.73	$20,219.21
United Kingdom	5ECS01 - ECS Enviromental Cleaning	$6,231.90	$12,370.68	$0.00	$0.00	$0.00
	Total by year	$ 8,245.90	$ 14,700.94	$ 14,036.62	$ 19,374.73	$ 22,237.21
	Total all 10 years	$ 219,180.66				

	2019	2020	2021	2022	2023	2024
	$0.00	$25,828.48	$30,581.01	$10,018.02	$17,075.00	$20,170.06
	$24,783.69	$0.00	$0.00	$0.00	$0.00	$0.00
	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
$	26,802.69	$ 27,848.48	$ 32,602.01	$ 12,040.02	$ 19,098.00	$ 22,194.06

35. Webpages showing the goods but dated outside of the relevant period are also provided at Exhibit BF3 to the witness statement of Mr FaBrizio.

36. Whilst I have not gone into great detail about every exhibit provided, these have all been considered in full. It is clear from the sum of the evidence that the use of the mark in the UK is not extensive. There appear to be three key products offered under the mark, and UK sales figures indicate a modest turnover relating to sales of the goods each year within the relevant period, ranging between approximately 12,000 and 32,000 USD each year. I note there is little dated promotional material provided. However, the combination of the material provided showing the mark including the price lists, the evidence of sales taking place in the UK via eBay and the Trust Pilot reviews, alongside the UK sales figures, clearly indicate there was a small but consistent level of use of the earlier mark within the UK within the relevant period. I do not consider this use to be token.

37. At this stage, I do note the applicant's evidence provided at Exhibit RMM1 discussing the huge size of the UK "household cleaners" market just after the relevant period (said to be £1.21 billion in 2024), as well as the size of the professional cleaning products market within the relevant period (said to be $1414.4 million in 2021 and $1,714.7 million in 2023). However, whilst the opponent's sales figures are very small in comparison to the same, the consistency of the sales figures throughout the majority of the relevant period does assist the opponent's position in this respect. Whilst I find the sales figures to be very modest, I do not consider the use shown to be trivial. I therefore find the mark to have been genuinely used in UK.

38. In respect of the goods for which the mark has been used, I consider that use is claimed in respect of the following:

> Class 3: *Cleaning, polishing, scouring and abrasive preparations and substances; degreasing preparations; household and industrial cleaning preparations in liquid form; detergents; bleaching preparations and other substances for laundry use; all included in Class 3.*

39. The evidence clearly shows three key products being offered by the opponent. Two of these appear to be industrial cleaning products, whilst one appears to be for household and/or professional use. It is my view that the opponent has shown genuine use of the mark in respect goods falling within the following categories from the specification above:

> Class 3: *Cleaning preparations; degreasing preparations; household and industrial cleaning preparations in liquid form; detergents; all included in Class 3.*

40. I therefore consider what would constitute a fair specification based on the use shown. I find the term *cleaning preparations* and arguably *degreasing preparations* and *detergents* in class 3 to be inherently broad, with all of these arguably covering preparations for various types of cleaning or degreasing, including for personal use. With regard to the perception of the average consumer and the purpose and intended use of the goods shown in the evidence, it is my view that the below will represent a fair specification within these proceedings.[5]

> Class 3: *Household and industrial cleaning preparations; Household and industrial degreasing preparations; household and industrial cleaning preparations in liquid form; household and industrial detergents; all included in Class 3.*

41. I will now move on to consider the opposition based on section 5(2)(b) of the Act on this basis.

[5] See *Merck KGaA v Merck Sharp & Dohme Corp & Ors* [2017] EWCA Civ 1834 in which the Court of Appeal set out the proper approach to partial revocation, which may be applied to framing a fair specification in relation to proof of use.

Decision

Section 5(2)(b)

42. Section 5(2)(b) of the Act is as follows:

> *"5(2) A trade mark shall not be registered if because-*
> *(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark".*

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

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

The Principles

44. 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 and services

45. In the judgment of the Court of Justice of the European Union ("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".*

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

> *(a) The respective uses of the respective goods or services;*
>
> *(b) The respective users of the respective goods or services;*
>
> *(c) The physical nature of the goods or acts of service;*
>
> *(d) The respective trade channels through which the goods or services reach the market;*
>
> *(e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be, found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;*

(f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

47. In *YouView TV Ltd v Total Ltd* [2012] EWHC 3158 (Ch), Floyd J. (as he then was) stated that:

"… Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR) [2012] ETMR 42 at [47]-[49]. Nevertheless the principle should not be taken too far. Each involved a straining of the relevant language, which is incorrect. Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question."

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

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

49. In *Gérard Meric v Office for Harmonisation in the Internal Market,* Case T- 133/05, the GC stated that:

"29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 Institut fur 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".

50. With this in mind, the goods for comparison are as follows:

Earlier goods	Contested goods
Class 3: *Household and industrial cleaning preparations; Household and industrial degreasing preparations; household and industrial cleaning preparations in liquid form; household and industrial detergents; all included in Class 3.*	Class 3: *Paper hand towels impregnated with cleaning agents; cleaning preparations; cleaning fluids; glass cleaning preparations; floor cleaning preparations; soaps; detergents; dishwashing detergents; bleach, bleaching preparations; refill packs for hand soap dispensers.* Class 5: *Air fresheners; air freshener refills; disinfectants; wipes impregnated with disinfectants; sanitisers for household use; hand sanitisers.*

Contested class 3

51. I consider the following contested goods to fall within the category of *household and industrial cleaning preparations* (or vice versa) as covered by the earlier mark, and to therefore be identical in accordance with the principles set out in *Meric*:

Paper hand towels impregnated with cleaning agents; cleaning preparations; cleaning fluids; glass cleaning preparations; floor cleaning preparations; soaps; detergents; dishwashing detergents; bleach, bleaching preparations.

52. The contested goods in class 3 also include *refill packs for hand soap dispensers.* I do not consider these to fall within the meaning of *household or industrial cleaning preparations,* or the other goods covered by the earlier mark. Whilst hand soap is obviously used for cleaning, it is for personal use, rather than household or industrial use. I accept there may be some overlap in nature with the earlier goods *household and industrial cleaning preparations* to the extent they may both be in liquid form, but this is true for a wide range of items. The ingredients used in the goods will likely differ, with soaps for personal use being made from those suitable for use on the skin. The purpose is different, with one being for washing hands and the other for household or industrial cleaning. The method of use will also differ for this reason. The goods are not in competition or complementary, and are unlikely to share trade channels or be placed near each other on shelves in retail stores. Whilst there may be an overlap in users to the extent that both goods may be used by members of the general public, this is not sufficient to find similarity between them. Overall, I find the goods to be dissimilar.

Contested class 5

53. The contested mark includes the following goods in class 5:

> *disinfectants; wipes impregnated with disinfectants; sanitisers for household use*

54. I consider these goods to be most similar to the earlier *household and industrial cleaning preparations* in class 3. There may be an overlap in nature, in that both sets of goods may come in the form of sprays or wipes suitable for use on household and/or industrial surfaces. There may be an overlap in purpose in that both may be used to remove germs from surfaces, however, the earlier goods' primary purpose will be to remove dirt and grime, whereas the contested goods may not be suitable for this purpose. It seems likely there will be an overlap in trade channels, and users will be shared both in terms of professional cleaners or procurement teams and members of the general public. I don't consider the goods complementary but there may be an element of competition, for example where the earlier goods offer disinfectant or

sanitising properties alongside their cleaning properties. It seems likely that goods will be placed for sale at least near each other, for example in supermarkets in the household cleaning aisle. Overall, I consider these goods to be similar to at least a medium degree.

55. The contested goods in class 5 include *air fresheners* and *air freshener refills.* Again, I consider these to be most similar to the earlier class 3 goods *household and industrial cleaning preparations.* The purpose of the goods will differ, with the contested goods being to freshen air, and the contested goods being for cleaning purposes, although both may promote benefits such as eliminating odours from the household. Whilst there may be some overlap in nature in that both sets of goods may come in the form of aerosol sprays which dispense a mist, the specific make up of the goods will differ with both designed to meet their largely different purposes. Consumers will be shared only to the extent both may be used by the general public or professional cleaners for example. The goods may well be placed near each other in household cleaning aisles in supermarkets, and there may be an overlap in trade channels. However, it seems unlikely that there will be any significant competition between the goods. The goods will not be complementary. Overall, I find these goods to be similar to the earlier opponent's earlier goods in class 3 to a low degree.

56. Finally, the contested goods cover *hand sanitisers* in class 5. For reasons similar to those expressed in relation to the contested *refill packs for hand soap dispensers,* I do not find any similarity between the goods. These are goods for personal use rather than household or industrial use. The purpose is not shared, nor is the method of use. Whilst both may be liquids, again the nature will differ overall, as will the trade channels. The goods are not complementary or in competition and will not be placed near each other in stores. Trade channels will likely differ. Whilst there may be an overlap in users to the extent that both goods may be used by members of the general public, this is not sufficient to find similarity between them.

Comparison of marks

57. 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."*

58. 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.

59. The respective trade marks are shown below:

Earlier trade mark	**Contested trade mark**
SIMPLE GREEN	

60. I note at this stage that the word 'GREEN' in the earlier mark is subject to the following disclaimer:

> *"Registration of this mark shall give no right to the exclusive use of the word "Green"."*

61. Tribunal Practice Notice 1/2020 sets out the Tribunal's updated approach to disclaimers in the context of proceedings as follows:

> *"**2. Change of practice***
>
> *The element(s) of a trade mark that is (are) subject to a disclaimer will be taken into account in the assessment of a likelihood of confusion with (or other damage from) a later mark, even where the disclaimed element is the only point of similarity with the later mark.*
>
> *Marks with rights limited to a specified colour (or colours) may be held to be confusingly similar to later trade marks in different colour(s), if the marks are sufficiently similar overall."*

62. The change in approach stemmed from the CJEU judgement in in Hansson C-705/17. I therefore intend to consider the earlier mark in its entirety, in the normal way.

63. The earlier mark comprises the two words SIMPLE and GREEN. Neither word is particularly distinctive, and the overall impression resides in the combination of the two words and the mark as a whole.

64. The contested mark comprises the two words SIMPLY GREEN, along with a simple leaf and stem device. I do not consider any of the elements of the mark particularly distinctive. Words generally stand out to consumers more than device elements, and in this instance I consider the words of the mark to make the greatest impact in its overall impression. Whilst GREEN is slightly bolder, the word Simply will be read first, and the two words play a relatively equal role in the mark. The device element is fairly large and is not negligible, but it has a smaller impact on the overall impression, followed by the use of the colour green. The choice of the very ordinary font has a minimal impact overall.

Visual comparison

65. Visually, the two marks share 10 out of 11 letters of the word elements. The earlier mark is filed as a word mark which protects the words contained in the mark, whatever form, colour or typeface are used: see *LA Superquimica* v *EUIPO*, Case T-24/17, paragraph 39. The use of the very basic font and solid colour green in the contested mark therefore has little impact on the visual comparison in this instance. The leaf and stem device acts as a point of visual difference between the marks. Overall, I find the marks visually similar to a fairly high degree.

Aural comparison

66. The verbal elements of the earlier mark will be pronounced as two words and three syllables, in the ordinary way. The verbal elements of the contested mark will also be pronounced as two words and three syllables in the ordinary way. The second word and third syllable is identical in each mark. The first syllable of the first word in each mark will also be identical. They differ aurally by way of the second syllable of the first word in each mark, which comprises an "ULL" sound in the earlier mark and a "LEE" sound in the contested mark. Overall, I consider the marks aurally similar to a fairly high degree.

Conceptual comparison

67. Within its final written submissions, the opponent argues the marks are conceptually highly similar.

68. At the hearing, Ms Moss McGrath for the applicant submitted that the words SIMPLE GREEN hang together to suggest a product with few ingredients, those being "green" ingredients.[6] I take this to mean ingredients that are environmentally friendly. When asked about the meaning of the contested mark, Ms Moss McGrath submitted:

[6] An extract from the Examination Guide in the UK IPO Manual of Trade Mark Practice is provided by the applicant at Exhibit RMM2. This sets out the UK IPO's interpretation of the word GREEN as having a meaning in relation to environmentally friendly products, explaining an objection on the basis of descriptiveness would be appropriate in relation to this word if applied for alone or alongside other descriptive terms. One example given is of "green cleaning products".

"I think we would have to agree that conceptually they are very similar to one another, given the terms concerned."

69. It appears that a high conceptual similarity of the marks is not in dispute between the parties.

70. I agree with the applicant's submission that to at least a significant portion of consumers the earlier mark would convey the idea of products comprising either only a few "green" (environmentally friendly) ingredients, or of products that comprise environmentally friendly ingredients and are simple to use. In respect of the contested mark, I consider this will convey to the consumer the idea of products comprising environmentally friendly ingredients only. The leaf device in the contested mark, when viewed in the context of the mark as a whole, simply reinforces the idea of something being environmentally friendly, and does little to help to differentiate the marks conceptually. I proceed on the basis of the parties' agreed position that there is a high level of conceptual similarity between the marks.

Average consumer and the purchasing act

71. 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.

72. 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."

73. The average consumers of the goods will include both members of the general public as well as professionals in the cleaning industry, or responsible for the procurement of industrial cleaning goods. Members of the general public will consider the purpose and possibly the method of use of the goods, alongside the ingredients used and possibly the scent of the same. However, the goods will likely be relatively low cost, frequent purchases. Members of the general public will be no more than a medium level of attention in respect of the same. Professionals may pay a slightly higher level of attention, due to the impact using the right goods will have on their business. They may also consider factors such as the cost of a product vs any potential time savings or other benefits offered by the goods more carefully. However, I still do not consider this will warrant the highest degree of attention, and it is my view that professionals may pay a slightly above medium level of attention to the goods.

74. The goods will primarily be purchased visually, with these either being displayed on shelves in stores or online via retail or wholesale websites for example. However, I note the goods may also be subject to verbal recommendations, and in the case of professionals in particular, orders may be placed over the phone. Whilst visual considerations are therefore key, I cannot disregard the aural considerations entirely.

Distinctive character of the earlier trade mark

75. 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 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)."

76. In its final written submissions, the opponent submits that the mark holds a "normal" level of distinctiveness. I disagree. The earlier mark as a minimum strongly alludes to the idea that the goods are made from simple (limited), environmentally friendly ingredients, or alternatively, that they are made from environmentally ingredients and are simple to use. I note however, that registered marks must be afforded at least some level of distinctive character.[7] As such I find the earlier mark to hold a low degree of distinctive character inherently.

77. As the opponent has filed evidence in these proceedings, I must also consider whether the distinctive character of the earlier mark has been enhanced through use. When considering this question, it is the perception of the average consumer at the relevant date that is key.

78. I have already summarised the majority of the evidence in my summary of proof of use at paragraphs 27 to 37 of this decision. Whilst I note that in addition to the evidence set out previously there is also a very small amount of evidence dating from prior to the relevant period, this is not substantial. Overall, considering the very modest sales figures provided, the lack of significant information regarding promotional spend,

[7] *Formula One Licensing BV v OHIM,* Case C-196/11P

and the limited promotional material provided, it is my view that the evidence falls far from showing that the distinctiveness of the earlier mark would have been enhanced amongst UK consumers at the relevant date.

GLOBAL ASSESSMENT – Conclusions on Likelihood of Confusion

79. Prior to reaching a decision under Section 5(2), I must first consider all relevant factors, including those as set out within the principles A-K at paragraph 44 of this decision. I must view the likelihood of confusion through the eyes of the average consumer, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them they have kept in their mind. I must consider the level of attention paid by the average consumer, and consider the impact of the visual, aural and conceptual similarities of the marks by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. I must consider that the level of distinctive character held by the earlier mark will have an impact on the likelihood of confusion. I must remember that the distinctiveness of the common elements is key.[8] I must keep in mind that a lesser degree of similarity between the goods may be offset by a greater degree of similarity between the marks, and vice versa. I must also consider that how the goods are obtained may have a bearing on how likely the consumer is to be confused.

80. In respect of section 5(2)(b) of the Act, there are two types of confusion that I may find. The first type of confusion is direct confusion. This occurs where the average consumer mistakenly confuses one trade mark for another. The second is indirect confusion. This occurs where the average consumer notices the differences between the marks, but due to the similarities between the common elements, they believe that both products derive from the same or economically linked undertakings.[9]

[8] See *Kurt Geiger v A-List Corporate Limited*, BL O-075-13, in which Mr Iain Purvis Q.C. as the Appointed Person pointed out that the level of 'distinctive character' is only likely to increase the likelihood of confusion to the extent that it resides in the element(s) of the marks that are identical or similar.
[9] *L.A. Sugar Limited v Back Beat Inc*, BL O/375/10

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

82. In this instance, I found the goods to range from identical to dissimilar. Where the goods are found to be dissimilar, there can be no likelihood of confusion between them.[10] The opposition therefore fails in respect of the following goods:

Class 3: *Refill packs for hand soap dispensers.*
Class 5: *Hand sanitisers.*

83. In respect of the remaining goods, I consider that I found a fairly high degree of visual and aural similarity, and a high degree of conceptual similarity between the marks, although I keep in mind that the similar concepts are not particularly unique or distinctive in the context of the goods. However, the relatively high degree of similarity of the marks overall points in favour of a likelihood of confusion. Where the consumer is a member of the general public, I found they would pay at best a medium degree of attention to the goods, with professionals paying a slightly above medium degree. Pointing this time against a likelihood of confusion, I found the earlier mark holds only a low level of distinctive character inherently in respect of the goods, and that this has not been enhanced through use.

84. In *Face2FaceHR Partners Limited v Peninsula Business Services Limited*, O/0368/23, Emma Himsworth K.C., as the Appointed Person, reviewed the case law in *Whyte and Mackay v Origin* [2015] EWHC 1271 (Ch) and *Nicoventures Holdings Limited v The London Vape Co Ltd* [2017] EHWC 3303 (Ch), as well as guidance in the Common Communication on the Common Practice of Relative Grounds of Refusal - Likelihood of Confusion (impact of non-distinctive/weak components) dated 2 October 2014, which is referred to in the case law. Miss Himsworth summarised the correct approach when assessing the likelihood of confusion where the only common

[10] See *eSure Insurance v Direct Line Insurance,* [2008] ETMR 77 CA

element between the marks in issue has no or low distinctiveness as follows, at paragraph 44:

> *"(1) The distinctiveness of the mark as a whole must be assessed, taking into account that a minimum degree of distinctiveness must be acknowledged.*
>
> *(2) The distinctiveness of each of the components of both marks must be assessed with priority being given to the coinciding elements.*
>
> *(3) The focus of the assessment of the likelihood of confusion should be on the impact of the non-coinciding components on the overall impression of the mark.*
>
> *(4) Account must be taken of the similarities/differences in the non-coinciding elements of the marks.*
>
> *(5) A coincidence of an element with a low level of distinctiveness will not usually lead to a likelihood of confusion.*
>
> *(6) There may be a finding of a likelihood of confusion if (a) the non-coinciding elements of the mark are of lower (or equally low) degree of distinctiveness or are of insignificant visual impact and the overall impression is similar; or (b) the overall impression of the marks is highly similar or identical."*

85. I have considered all of the factors in this case carefully, with the points set out by Miss Himsworth K.C. in mind. Whilst I note the earlier mark holds a low degree of distinctive character, I find this to be a case where point (6) of the above at least partially applies. Keeping in mind the consumer's imperfect recollection, and the high levels of similarity between the marks and their overall impressions in particular, and the low level of distinctiveness held by the leaf and stem device in the contested mark, it is my view that where there is at least a medium degree of similarity between the goods, there will be a likelihood of direct confusion in this instance. I find it would be easy for the consumer of these goods, particularly where a member of the public is concerned, to fail to recall, or not to notice the difference in one letter and the presence

of a simple leaf and stem device, which in my view is at least as equally low in distinctiveness as the corresponding elements in this case.

86. However, where the similarity between the goods is low, this goes someway to balance out the similarities between the marks, and alongside the low degree of distinctiveness of the earlier mark, makes confusion less likely. Overall, considering all of the factors, it is my view that where the similarity between the goods is low, there will be no likelihood of direct confusion between the marks.

87. I note briefly that if I am wrong in my finding of direct confusion on the basis that consumers will not misremember or fail to notice the leaf device present in the contested mark, it is my view that there will be a likelihood of indirect confusion between the marks where the goods are similar to at least a medium degree. It is my view this would come about by way of the imperfect recollection of the letters ‘e’ and ‘y’ in the marks, with the consumer failing to notice the difference in this element, whilst at the same time considering the leaf device to simply be an additional decorative element added to the earlier mark. However, it remains my view that where the similarity between the goods is only low, there will be no likelihood of confusion for the same reasons previously set out in respect of direct confusion.

88. For the reasons set out above, the opposition therefore succeeds under section 5(2)(b) of the Act in respect of the following goods:

> Class 3: *Paper hand towels impregnated with cleaning agents; cleaning preparations; cleaning fluids; glass cleaning preparations; floor cleaning preparations; soaps; detergents; dishwashing detergents; bleach, bleaching preparations;*
>
> Class 5: *Disinfectants; wipes impregnated with disinfectants; sanitisers for household use.*

89. The opposition fails in respect of the following goods:

> Class 3: *Refill packs for hand soap dispensers.*

Class 5: *Air fresheners; air freshener refills; hand sanitisers.*

Final Remarks

90. The opposition has been partially successful. Subject to any successful appeal, the application will proceed to registration for the following goods only:

Class 3: *Refill packs for hand soap dispensers.*
Class 5: *Air fresheners; air freshener refills; hand sanitisers.*

COSTS

91. Both parties have achieved some success in these proceedings. However, the opponent has achieved a greater portion of success overall. In the circumstances I award the opponent the sum of £1240 as a contribution towards the cost of the proceedings, in accordance with Tribunal Practice Notice 1/2023. This figure includes a 20% reduction to account for the applicant's partial success. The sum is calculated as follows:

Official fee:	£100
Preparing and filing the TM7 and considering the counterstatement:	£250
Preparing and filing the evidence:	£800
Preparing and filing written submissions in lieu of a hearing:	£400
20% reduction to account for the applicant's partial success:	-£310
Total:	**£1240**

92. I therefore order Global Trading UK Limited to pay Accantia Group Holdings the sum of £1240. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 28th day of August 2025

R. Le Breton

For the Registrar