

O/0963/24

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00003646290

BY SIMPLEHUMAN, LLC

TO REGISTER:

PULSE PUMP

AS A TRADE MARK IN CLASS 21

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. 428284 BY

TOASTER LABS, INC.

BACKGROUND AND PLEADINGS

1. On 24 May 2021, simplehuman, LLC (“the applicant”) applied to register the trade mark on the cover page of this decision in the UK (“the applicant’s mark”). The applicant’s mark was published for opposition purposes on 17 September 2021 and registration is sought for the following goods:

Class 21: Soap dispensers; Liquid dispensers for soap, lotions, and cleaning fluids; Dispensers for cleaning agents; Dispensers for soap and detergents; Dispensers for cleaning fluids; Liquid soap and cleaning solution dispensers; Dispensers for soap and cleaning solutions incorporating pumps; Dispensers for chemical cleaning solutions; Automatic dispensers; Automatic soap dispensers; Dispensers incorporating sensors; Soap dispensers incorporating sensors.

2. The applicant’s mark is derived from an earlier trade mark registered in the United States of America under number 90447227, which has the filing date of 4 January 2021. As such, the applicant’s mark has a priority date of 4 January 2021.
3. On 17 November 2021, the applicant’s mark was opposed by Toaster Labs, Inc. (“the opponent”). The opposition is brought under section 5(2)(b) of the Trade Marks Act 1994 (“the Act”) and is reliant upon the following trade mark:

PULSE¹

International Registration designating the UK under no. 1253188

International registration date: 27 April 2015

Date of protection granted in the UK: 4 April 2017

Relying on all goods namely:

¹ Despite the mark appearing as a figurative mark on the UK trade marks register, I note that the Madrid Protocol module for this mark confirms that it is intended to be a word only mark and I will treat it as such.

Class 10: Dispenser apparatus sold empty and specially designed for dispensing medicated lubricants, creams, or oils for medical purposes.

Class 21: Household containers sold empty in the nature of a dispenser apparatus for a personal lubricant, cream, or oil not for medical purposes.

("the opponent's mark").

4. The opponent argues that the goods for which registration is sought are identical to its own class 21 goods and highly similar to its class 10 goods. Further, the opponent argues that the marks are extremely similar. As a result, the opponent claims that there exists a likelihood of confusion between the marks at issue.
5. The applicant filed a counterstatement wherein it denied the claims against it.
6. The opponent is represented by Hoffman Eitle PartmbB and the applicant is represented by Keltie LLP. Neither party filed evidence in these proceedings. No hearing was requested and neither party filed written submissions in lieu. This decision is taken following a careful consideration of the papers.
7. 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.

PRELIMINARY ISSUE

8. It is noted that the opponent's mark was subject to revocation proceedings brought under cancellation number 506516. Those proceedings went undefended by the opponent and, therefore, subject to a decision issued by the Tribunal on 7 February 2024, the opponent's mark was revoked with an effective revocation date of 5 April

2022. While this is noted, the relevant date in these proceedings stands at 4 January 2021 (being the priority date of the applicant's mark). This means that despite the later revocation date, the opponent's mark remains a validly registered earlier mark for the purposes of this opposition. The revocation, therefore, has no impact upon these proceedings.

DECISION

Section 5(2)(b): legislation and case law

9. Section 5(2)(b) of the Act reads as follows:

“(2) A trade mark shall not be registered if because-

(a) [...]

(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 or association with the earlier trade mark.”

10. Section 5A of the Act states as follows:

“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.”

11. An earlier trade mark is defined in section 6 of the Act, the relevant parts of which state:

“(6)(1) In this Act an “earlier trade mark” means –

- (a) a registered trade mark or international trade mark (UK) which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks.

12. The opponent's mark qualifies as an earlier trade mark under the above provisions. As the opponent's mark had not completed its registration process more than five years before the priority date of the applicant's mark, it is not subject to proof of use pursuant to section 6A of the Act. Consequently, the opponent may rely on the goods for which its mark is registered.

13. The following principles are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v Office for Harmonization in the Internal Market (Trade Marks and Designs) ("OHIM")*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P:

- (a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;
- (b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;
- (c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

- (d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;
- (e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;
- (f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;
- (g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;
- (h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;
- (i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;
- (j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;
- (k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

Comparison of the goods

14. The competing goods are as follows:

The opponent's goods	The applicant's goods
<p data-bbox="252 309 384 342"><u>Class 10</u></p> <p data-bbox="252 365 807 562">Dispenser apparatus sold empty and specially designed for dispensing medicated lubricants, creams, or oils for medical purposes.</p> <p data-bbox="252 640 384 674"><u>Class 21</u></p> <p data-bbox="252 696 807 893">Household containers sold empty in the nature of a dispenser apparatus for a personal lubricant, cream, or oil not for medical purposes.</p>	<p data-bbox="829 309 962 342"><u>Class 21</u></p> <p data-bbox="829 365 1396 1111">Soap dispensers; Liquid dispensers for soap, lotions, and cleaning fluids; Dispensers for cleaning agents; Dispensers for soap and detergents; Dispensers for cleaning fluids; Liquid soap and cleaning solution dispensers; Dispensers for soap and cleaning solutions incorporating pumps; Dispensers for chemical cleaning solutions; Automatic dispensers; Automatic soap dispensers; Dispensers incorporating sensors; Soap dispensers incorporating sensors.</p>

15. When making the comparison, all relevant factors relating to the goods and services in the specifications should be taken into account. 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 that:

“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”.

16. 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.

17. The applicant, in its counterstatement, disputes that the goods at issue are similar and argues that the uses, users and channels of trade for the goods all vary greatly depending on the nature of the liquid being dispensed. The opponent, on the other hand, argues that the goods are identical and/or highly similar.

Soap dispensers; Liquid dispensers for soap; Dispensers for soap; Liquid soap and cleaning solution dispensers; Dispensers for soap [...] incorporating pumps; Automatic soap dispensers; Soap dispensers incorporating sensors.

18. The above dispenser goods of the applicant are all limited to use for soap. The opponent's term is "household containers sold empty in the nature of a dispenser apparatus for a personal lubricant, cream, or oil not for medical purposes". While the opponent's goods are not reserved for use with soap, I see no reason why the nature and method of use of the parties' goods would not be the same. Regardless of what is being dispensed, the goods are all dispensers that will be used in the same way. In addition, I see no reason why the purpose of the goods would not overlap either. I say this because while the content of the dispenser may ultimately differ, the aim of both goods is to store and dispense a substance when required

by the user. As for user and trade channels, I am of the view that the goods are all aimed at the general public at large and will be produced and sold by the same undertakings. I make the latter point on the basis that I consider it likely that an undertaking that makes dispensers for specific purposes (such as for dispensing soap) will also make them for a wide range of other purposes (such as for dispensing creams or oils). While I appreciate that the goods are not complementary to one another and neither are they competitive, I am of the view that the aforementioned overlaps are sufficient to give rise to a finding of a high degree of similarity between these goods.

Automatic dispensers; dispensers incorporating sensors; dispensers for cleaning fluids; liquid dispensers for [...] lotions, and cleaning fluids; dispensers for cleaning agents; dispensers for [...] cleaning solutions incorporating pumps.

19. While the above goods can all be said to be dispensers that are capable of being used to store and dispense soap, they are worded sufficiently broad enough so as to also cover the storage and dispensation of lubricants, creams or oils. I say this because these types of substances can cover those used for cleansing purposes. For example, I see no reason why oil cannot cover a cleaning oil that is used to clear the pores of a user's face. As such, I consider that the above terms of the applicant can be said to encompass the opponent's term of "household containers sold empty in the nature of a dispenser apparatus for a personal lubricant, cream, or oil not for medical purposes", or vice versa. As a result, I find that the goods are identical under the principle outlined in the case of *Gérard Meric v Office for Harmonisation in the Internal Market, Case T- 133/05*.² Alternatively, if I am wrong to find that the goods are identical, I utilise the same reasoning adopted in the preceding paragraph and find that the goods are similar to a high degree based on overlap in nature, method of use, purpose, user and trade channels.

² See paragraph 29 of that decision wherein the General Court set out that if goods were worded broadly enough to cover goods in other terms, then that was sufficient to give rise to a finding of identity.

Dispensers for chemical cleaning solutions; dispensers for [...] detergents.

20. I do not consider that the above dispenser goods can be said to cover those used for the storing/dispensing of the same products as the opponent's term, being "household containers sold empty in the nature of a dispenser apparatus for a personal lubricant, cream, or oil not for medical purposes". On the face of it, it may appear as those dispensers covered by the applicant's terms are for industrial use. However, I see no reason why they cannot equally cover household cleaning solutions (which are likely to be chemical in nature) or detergents that the general public will use. I make this finding on the basis that the above terms are not expressly limited to industrial use and can, therefore, cover goods for use in the household. As a result, I am of the view that the same overlaps that I have found at paragraph 18 apply here. Therefore, following the same reasons discussed in that paragraph, I find that these goods are similar to a high degree on the basis that they overlap in nature, method of use, purpose, trade channels and user.³

The average consumer and the nature of the purchasing act

21. The case law, as set out earlier, requires that I determine who the average consumer is for the respective parties' goods. I must then decide the manner in which these goods are likely to be selected by the average consumer in the course of trade. 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

³ Briefly, I wish to point out that while dispensers for household cleaning supplies may be found at different locations or sections of retailers, I consider that the overlap in producer remains sufficient to warrant a finding of overlap in trade channels.

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

22. The goods at issue are ordinary consumers goods that will be selected by the general public at large. The goods will all be available via general retailers or their online equivalents. In physical stores, the goods will be displayed on shelves where they will be self-selected by the consumer. When the selection takes place online, the goods will be selected after viewing an image of it on a webpage. Clearly, the visual component will dominate the selection process, though I do not discount the aural component entirely as suggestions may come via word of mouth recommendations or advice from sales assistants. The goods are likely to be selected at a fairly infrequent basis and at a relatively low cost. When selecting the goods, the consumer is likely to consider factors such as materials used, capacity, design and, for automatic dispensers, the sensitivity of the dispensing sensor. Despite being low cost goods, I consider that these factors warrant a finding that the consumer is likely to select the goods having paid a medium degree of attention.

Comparison of the marks

23. It is clear from *Sabel v Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the trade marks must be assessed by reference to the overall impressions created by the trade marks, bearing in mind their distinctive and dominant components.

24. 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.”

25. It would be wrong, therefore, to artificially dissect the trade marks, although it is necessary to take into account the distinctive and dominant components of the 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.

26. The respective trade marks are shown below:

The opponent's mark	The applicant's mark
PULSE	PULSE PUMP

27. I have no submissions from either party but I do note that the applicant, in its counterstatement, argues that while the marks share the word 'PULSE', the addition of the word 'PUMP' shifts the concept of the mark, giving it an altogether different meaning. Further, the applicant argues that 'PUMP' is the most distinctive part of the applicant's mark. I will consider these arguments at the relevant points below.

Overall impression

28. The applicant's mark is a word only mark consisting of the words 'PULSE PUMP'. Despite the applicant's comments referred to above, I disagree that 'PUMP' is the most distinctive part of the mark. I say this because 'PUMP', in the context of the goods at issue, is descriptive. As such, I find that 'PULSE' will play the greater role in the overall impression of the applicant's mark, with 'PUMP' playing a lesser role.

29. The opponent's mark is a word only mark that consists solely of the word 'PULSE'. There are no other elements that contribute to the overall impression of this mark, which lies in the word itself.

Visual comparison

30. Visually, the marks share the word 'PULSE'. This is the first (and dominant) element of the applicant's mark and the sole element of the opponent's. The marks differ in the presence of the word 'PUMP' at the end of the applicant's mark. While this plays a lesser role, it will still contribute as a point of visual difference. Taking all of this into account whilst also bearing in mind (1) the overall impressions of the marks and (2) the fact that consumers tend to focus on the beginnings of marks,⁴ I find that these marks are visually similar to between a medium and high degree.

Aural comparison

31. Despite the descriptive nature of 'PUMP' in the applicant's mark, it will still be pronounced. I say this whilst bearing in mind the comments of Mr Phillip Harris, sitting as the Appointed Person, in the case of *Purity Hemp Company Improving Life as Nature Intended* (Case BL O/115/22) wherein he stated that the descriptiveness of an element does not render it aurally invisible. As a result, the pronunciation of the applicant's mark will consist of two syllables that will be pronounced in the ordinary way. As for the opponent's mark, this will consist of just one syllable which, again, will be pronounced in the ordinary way. At just one and two syllables in length, the parties' marks are, aurally, short marks. On this point, I remind myself that while there is no special test which applies to the comparison of 'short' marks,⁵ I am of the view that in the present case, the shortness of the marks at issue means that the average consumer is more likely to notice the differences. Taking all of this into account, I find that the marks are similar to a medium degree.

⁴ *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

⁵ See paragraph 44 of *BOSCO*, BL O/301/20

Conceptual comparison

32. The applicant's mark consists of the words 'PULSE PUMP'. Each of these words will have well-known meanings to the UK consumer. However, when viewed in combination, I do not consider that the applicant's mark will have any unitary meaning. As a result, its concept will be derived from the individual words themselves. Both words have multiple meanings and I do not intend to go into detail in respect of those meanings here as, regardless of how the word 'PULSE' is understood in the applicant's mark, the consumer will derive that same meaning from the opponent's mark, which consists solely of that word. As for 'PUMP', I say again that the meaning derived from it will be irrelevant as, regardless, it will be viewed as a point of conceptual difference between the marks. On this point, I remind myself of the applicant's comments I have discussed above in that this additional word 'shifts the concept of the mark'. While I agree to some extent, I am of the view that this *shift* is only slight. I say this due to the fact that 'PUMP' plays a lesser role in the overall impression of the mark due to its descriptive nature.⁶ Therefore, owing to the identical use of the well-known word 'PULSE', I consider that the marks are conceptually similar to a high degree.

Distinctive character of the opponent's mark

33. 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-

⁶ While I appreciate that, as per the case of *EMILIANA* (Case BL O/052/22), conceptual comparisons are usually done without reference to the goods or services at issue. However, in the present case, I am of the view that the obvious descriptive nature of 'PUMP' cannot be ignored.

108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

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

34. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The opponent has not filed any evidence of use and, therefore, I have only the inherent position to consider.

35. The opponent’s mark consists solely of the word ‘PULSE’. While this has no descriptive or allusive qualities to the goods upon which the opponent relies, it will be understood as an ordinary dictionary word with a well-known meaning. As a result, I do not consider that its use from a trade mark perspective is particularly remarkable. As such, I do not consider that it is a mark that qualifies as one that enjoys a high level of distinctive character. Instead, I find that the inherent distinctive character of the opponent’s mark sits at a medium degree.

Likelihood of confusion

36. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that

exists between the marks and the goods down to the responsible undertakings being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the opponent's mark, the average consumer for the goods and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that they have retained in their minds.

37. I have found the goods are either identical or similar to a high degree. The average consumer base is formed of members of the general public who will select the goods via primarily visual means (although I do not discount an aural component) after having paid a medium degree of attention. I have found the marks at issue to be visually similar to between a medium and high degree, aurally similar to a medium degree and conceptually similar to a high degree. I have found the opponent's mark to enjoy a medium degree of inherent distinctive character.

38. Taking all of these factors into account and particularly bearing in mind the principle of imperfect recollection, I consider that the parties' marks will be misremembered or inaccurately recalled for one another. I make this finding on the basis that the only point of difference between them comes in the descriptive term 'PUMP'. Therefore, when the consumer is confronted by the marks whilst looking to select goods relating to dispensing pumps (being the goods at issue here), they are likely to misremember which mark contained the descriptive word 'PUMP' and which did not. Consequently, I consider that there is a likelihood of direct confusion between the marks.

39. For the sake of completeness, I will proceed to consider whether there exists a likelihood of indirect confusion. In doing so, I remind myself of the case of *L.A.*

Sugar Limited v By Back Beat Inc, BL O/375/10, wherein Mr Iain Purvis Q.C., as the Appointed Person, explained that:

“16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: ‘The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark’.

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

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

40. While the above examples in *L.A. Sugar* are noted, they are not intended to be treated as an exhaustive list of the only instances wherein indirect confusion occurs.

41. In the event that the consumers are able to use the descriptive word 'PUMP' to accurately recall the marks for one another, I consider that they will believe that the marks originate from the same or economically connected undertakings. I say this because the word 'PUMP' will be understood as a reference to the range of dispenser pump goods and, therefore, be indicative of a sub-brand of the 'PULSE' brand that has expended into producing and selling dispenser pumps. I find that consumers will readily make this connection and assume that the goods under the applicant's mark share the same source of origin as the opponent's mark, being an entity known as 'PULSE'. Consequently, I consider that there exists a likelihood of indirect confusion between the marks.

CONCLUSION

42. The opposition succeeds in its entirety and the application is, subject to any successful appeal of my decision, refused registration for all goods.

COSTS

43. The opponent has succeeded in full and, therefore, is entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 2/2016. In the circumstances, I hereby award the opponent the sum of £300 as a contribution towards its costs. The sum is calculated as follows:

Preparing the notice of opposition and considering the counterstatement:	£200
Official fees:	£100

Total:

£300

44.I hereby order simplehuman, LLC to pay Toaster Labs, Inc. the sum of £300. The above sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 9th day of October 2024

A COOPER

For the Registrar