

O/0059/26

TRADE MARKS ACT 1994

CONSOLIDATED PROCEEDINGS

IN THE MATTER OF INTERNATIONAL REGISTRATION NUMBERS WO0000001684608

AND WO0000001684599

BY ADVANCED POWER SOLUTIONS NV
TO REGISTER THE FOLLOWING TRADE MARKS:



AND



IN CLASSES 9, 10, 11, 35 AND 42

AND

OPPOSITIONS THERETO UNDER NUMBERS OP000440496 AND OP000440904

BY ALLIED PUBLICITY SERVICES (MANCHESTER LIMITED)

BACKGROUND AND PLEADINGS

1. International trade marks 1684608 and 1684599 (“the holder’s mark”) consist of the marks shown on the cover page of this decision. The holder is Advanced Power Solutions NV. The holder’s marks are both registered with effect from 15 March 2022, and with effect from the same date, the holder designated the UK as a territory in which it seeks to protect the holder’s mark under the terms of the Protocol to the Madrid Agreement. The holder’s marks were accepted and published in the Trade Marks Journal on 3 February 2023 (1684608 mark) and 17 February 2023, respectively (1684599 mark). The holder seeks protection of its mark in relation to goods and services in classes 9, 10, 11, 35 and 42, as set out in **Annex 1** of this decision.

2. On 27 April 2023 and 17 May 2023, respectively, the holder’s marks were opposed by Allied Publicity Services (Manchester) Limited (“the opponent”). The opposition is based upon section 5(2)(b) of the Trade Marks Act 1994 (“the Act”) and the opposition is directed at some of the goods and services in the applications, specifically those in classes 9 and 42. The opponent relies upon the series of three marks detailed below:¹

aps Group

The logo consists of the lowercase letters 'aps' in a bold, black, sans-serif font. Below the 'ps' part of 'aps', the word 'Group' is written in a smaller, black, sans-serif font.

¹ The opponent also relied on the marks 915704612 and 912878435 in its opposition. These marks were subject to proof of use and the applicant requested proof of use of the marks. However, in its submissions in the evidence rounds the opponent submitted that it was “unnecessary to provide such proof given the relevance of UK003720550 in these proceedings”, which is not subject to proof of use. The opponent went onto request that the proceedings continue “relying on the grounds of opposition based on UK003720550.” Hence these proceedings will be carried out relying on the series of marks as requested.

Series of three marks

UK trade mark number: UK0003720550

Filing date: 11 November 2021

Date of entry in register: 15 April 2022

Relying on some of its goods and services, namely:

Class 9: Scientific, checking (supervision) and teaching apparatus and instruments; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; compact discs, DVDs and other digital recording media; data processing equipment; computers; computer software; computer software programs; downloadable computer software; computer software accessed online; shopper insight tracking computer software; data carriers; parts and fittings for the aforesaid.

Class 42: Scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software; scientific and technological services comprising scanning, data processing and analysis services; scientific and technological services comprising research and analysis services; scientific and technological services comprising research and analysis services 3 relating to data; website/microsite design and construction; graphic and digital design services; design services; artwork services; studio artwork services; 3D rendering services; design services including computer-aided design services, namely, mock-shop creations and visualisations; design services; graphic design services; graphic design of promotional materials; packaging design services; development and research of new marketing materials; development and research of new packaging products; software as a service; information and advice and consultancy services relating to the aforesaid.

3. By virtue of its earlier filing date, the above mark constitutes an earlier mark in accordance with section 6 of the Act. As it was registered on 15 April 2022 less than five years prior to the date the contested mark was filed, this mark is not subject to proof of use in accordance with section 6A of the Act.

4. The opponent submits that the marks are similar to a high degree and that the goods and services at issue are similar or identical. The holder filed a defence and counterclaim denying all the grounds of the opposition.

5. The holder in both oppositions is represented by Anna Cybulka; and the opponent is represented by Appleyard Lees IP LLP. During the evidence rounds, only the opponent filed written submissions dated 7 March 2025, no other evidence was filed. Neither party requested a hearing. Only the opponent filed submissions in lieu. I do not intend to summarise the submissions at this stage. However, I have taken it all into consideration in reaching my decision and will refer to it below, where necessary.

6. 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.

DECISION

7. Sections 5(2)(b) and 5A of the Act state:

“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.

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.”

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

v Metro-Goldwyn-Mayer Inc, 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 THE GOODS AND SERVICES

9. A full list of the holder's goods and services can be found in **Annex 1** of this decision, as previously mentioned. Despite this, I have listed the relevant to the opposition parties' goods and services below for ease of reference:

The holder's goods and services	The opponent's goods and services
<p>Class 9: apparatus and instruments for accumulating electricity; power-banks; power units [batteries]; electrical cells and batteries; electric batteries; electric accumulators; electrochemical cells; accumulators; primary and secondary cells; photovoltaic apparatus for generating electricity; solar panels; battery testers; power monitoring and control devices; battery adapters; battery chargers; charging stations; charging docks; headphones; wireless headsets; earbuds; cases for headphones; alarms; alarm bells, electric; the above mentioned services are not related to the rail sector or the transportation of goods or people.</p>	<p>Class 9: scientific, checking (supervision) and teaching apparatus and instruments; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; compact discs, DVDs and other digital recording media; data-processing equipment; computers; computer software; computer software programs; downloadable computer software; computer software accessed online; shopper insight tracking computer software; data carriers; parts and fittings for the aforesaid.</p> <p>Class 42: scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of</p>

<p>Class 42: Conducting engineering surveys; testing, authentication and quality control; engineering services; mechanical engineering; certification [quality control]; the above mentioned services are not related to the vehicle parts or the vehicle components or the rail sector or the transportation of goods or people. ²</p>	<p>computer hardware and software; scientific and technological services comprising scanning, data processing and analysis services; scientific and technological services comprising research and analysis services relating to data; website/micro-site design and construction; graphic and digital design services; design services; artwork services; studio artwork services; 3D rendering services; design services including computer-aided design services, namely, mock-shop creations and visualisations; design services; graphic design services; graphic design of promotional materials; packaging design services; development and research of new marketing materials; development and research of new packaging products; software as a service; information and advice and consultancy services relating to the aforesaid.</p>
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10. I note that the goods and services opposed in the holder’s application are identical. In addition, the opponent relies upon the same goods and services opposing both oppositions. Therefore, I will compare the goods and services collectively and my findings will relate to both of the holder’s marks.

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

“In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account.

² Following a notification from WIPO the specification in class 42 was amended to read as above. This was confirmed by the UKIPO via correspondence dated 27 December 2023 and 6 January, respectively for each opposition. The opponent confirmed that the opposition was to be maintained despite the changes to the specification.

Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary.”

12. 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.

13. In *Boston Scientific Ltd v OHIM*,³ the General Court (“GC”) stated that “complementary” means:

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

14. In *Gérard Meric v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* case T-133/05, the General Court (“GC”) stated:

³ Case T-325/06

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

15. The holder denies that the goods and services are identical or similar to those in the opponent's mark. To the contrary, the opponent submits that all of the goods and services in classes 9 and 42 are identical or similar.

16. The opponent submits specific comparisons with its class 9 and 42 goods and services with particular goods and services in the holder's specification, such as a submission of identity between the holder's *“headphones; wireless headsets; earbuds”* and its *“apparatus for recording, transmission or reproduction of sounds or images.”* However, in relation to many of the goods and services at issue, the opponent has made generalised submissions; the opponent has not clarified the specific goods and services within both parties' classes that it finds to be similar. In these circumstances, I remind myself of the case of *Abus August Bremicket Sohne KG v Muhammad Ali (O/0911/24) Mr Iain Purvis K.C.*,⁴ and I will proceed by only comparing goods and services that I consider offer the best prospect of a finding of similarity within the classes mentioned.

17. In addition, I note that the holder's goods and services have the limitation *“the above-mentioned services are not related to the rail sector or the transportation of goods or people,”* which applies to all the terms. Accordingly, I have taken this into account in my comparison of the goods and services.

Class 9

Power units [batteries]; electrical cells and batteries; electric batteries; electrochemical cells.

18. The holder's goods are batteries at large, including batteries that are designed for computers e.g. laptops. The opponent's goods *“computer; parts and fittings”* concerns computer components such as rechargeable batteries used in computers. Accordingly, I consider that the above goods would be encompassed by the term *“computer; parts and*

⁴ Paragraph 28

fittings for the aforesaid.” Therefore, I find the goods to be identical on the principle outlined in *Meric*.

Apparatus and instruments for accumulating electricity; electric accumulators; accumulators.

19. I have compared these terms collectively as they are all pieces of apparatus that are used for energy storage and conversion, including rechargeable batteries. As noted above, the opponent has not provided a specific comparison of these terms and those in its specification. However, I compared these terms against the closest clash that I could identify within the opponent’s specification, being “*computers; parts and fittings for the aforesaid*”. I consider that all of the above goods can include goods such as batteries that are used in computers. Accordingly, I consider that the above goods would be encompass the term “*computer; parts and fittings for the aforesaid.*” Therefore, I find the goods to be identical on the principle outlined in *Meric*.

Power-banks

20. In general, a power bank is a temporary power supply that provides power support to various devices, such as computers. They tend to be compact lightweight devices that are designed to provide power for charging and operating electronic devices, when, for example, users are on the move. I find that there is similarity between the holder’s goods and the term ‘*computers*’ in the opponent’s specification. This is on the basis that the goods may share the same user and may also coincide in trade channels, as they may be available at the same retailers. However, the goods will not overlap in purpose, method of use or nature. Further, it is not my view that the goods are complementary, nor are they in competition. Taking the above into account, I find that the goods will be similar to a low degree.

Primary and secondary cells

21. In the absence of any submissions or evidence to assist me, it is my understanding that primary cells are non-rechargeable batteries that are designed to be used once and then

discarded, whereas secondary cells are another name for a rechargeable battery. In relation to “[...] *secondary cells*”, they include batteries at large, including batteries that are designed for computers e.g. laptops. Accordingly, I consider that the above goods would be encompassed by the term “*computer; parts and fittings for the aforesaid.*” Therefore, I find the goods to be identical on the principle outlined in *Meric*. However, this reasoning does not apply to primary cells. In the absence of any evidence or submissions, it is not my view that rechargeable batteries are used to power computers themselves. In relation to “*primary cells[...]*”, it is my view that there may be an overlap in trade channels and potentially end purpose (as they are both used to charge items). I do not consider that there will be an overlap in users or method of use. Further, the goods are not complementary or competitive. Therefore, I find the goods to be similar to a very low degree.

Photovoltaic apparatus for generating electricity; solar panels; alarms; alarm bells, electric; battery adapters; battery chargers; charging stations; charging docks; battery testers; power monitoring and control devices.

22. In the case of the above goods, when considered against the terms relied upon by the opponent, I find that the respective uses are distinct and any overlap in the respective users is likely to be on a fairly artificial level. The nature of the goods is not similar, and the trade channels are unlikely to be shared. I cannot identify a competitive or complementary relationship with any of the goods or services relied upon. Whilst I acknowledge that software may be used in some circumstances in conjunction with some of the above goods, or to manage the information captured by those goods, I do not consider that there is a sufficient overlap in the relevant factors to reach a finding of similarity. The above goods are dissimilar to the goods and services relied upon by the opponent.

Headphones; wireless headsets; earbuds.

23. The opponent submits that there is identity between the holder’s “*headphones; wireless headsets; earbuds*” and the opponent’s “*apparatus for recording, transmission or reproduction of sound or images.*” I agree that the holder’s goods would fall into the wider category of “*apparatus for [...] reproduction of sound [...]*,” in the opponent’s specification. Therefore, I find the goods to be identical on the principle outlined in *Meric*.

Cases for headphones

Comparing the holder's above goods with the opponent's "*apparatus for recording, transmission or reproduction of sound or images,*" I consider that there is similarity between the goods. As mentioned above, I consider that the holder's headphones would be *Meric* identical to the opponent's goods. The holder's goods are designed specifically to protect goods, such as headphones that are included in the opponent's term, and are therefore complementary, as these accessories are significant for the safe handling of goods included in the opponent's term. I consider it likely that the goods will share the same distribution channels, such as online shops and online marketplaces offering audiovisual equipment. Also, the relevant public will coincide, consisting of the general public seeking audiovisual devices and their accessories. Taking the above into account, I find the goods to be similar to a low to medium degree.

Class 42

Conducting engineering surveys; testing, authentication and quality control; engineering services; mechanical engineering certification [quality control] the above mentioned services are not related to the rail sector or the transportation of goods or people.

24. The opponent submits that the holder's services are similar to "*scientific and technological services and research and design relation thereto; industrial analysis and research services*" in the opponent's specification. However, the opponent has failed to explain, using the *Canon/Treat* factors discussed above, on what basis there is similarity between the services; this has not been helpful in my comparison of the services. It is my understanding, in the absence of evidence or any further submissions, that the opponent's services are carried out by engineers or technical experts/companies, who draw up reports and projects after analysis of processes and are based on a number of techniques. As a result, I consider that these services may coincide with trade channels, users and may be provided by the same undertakings. Therefore, I find the services to at least be similar to a low to medium degree.

25. As some degree of similarity between the goods and services is necessary to engage the test for a likelihood of confusion, my findings above mean that the opposition aimed against

those goods I have found to be dissimilar will fail.⁵ For ease of reference, the opposition fails against the following goods in the holder's specification:

Class 9: photovoltaic apparatus for generating electricity; solar panels; alarms; alarm bells, electric; battery adapters; battery chargers; charging stations; charging docks; battery testers; power monitoring and control devices.

AVERAGE CONSUMER AND THE PURCHASING ACT

26. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties' goods and services. I must then determine the manner in which the goods and services are likely to be selected by the average consumer. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J (as he then was) 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."





27. The average consumer for the goods at issue will be members of the general public or, a business or professional user. I consider that the average consumer of the services at issue is likely to be professionals. Goods like batteries for everyday consumer goods are likely to be relatively frequent, inexpensive purchases. Others, such as larger batteries and the services at issue, are likely to be more occasional purchases/selections which attract a greater cost. The average consumer's thought process will vary accordingly, with the former being more casual purchases and the latter being more considered. In the main, the goods are likely to be purchased from retailers, where they will be self-selected by the average consumer. The goods and services may also be purchased from more specialist suppliers or online retailers, where they will be selected after viewing information in brochures, catalogues or on websites.

⁵ *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA

28. The average consumer will consider various factors, such as cost and whether the goods and services meet their specific needs. In addition, in relation to the services, the average consumer will consider whether the services perform specific functions and the credibility of the suppliers. The purchasing process for the goods and services will be predominantly visual in nature. Nevertheless, I do not discount aural considerations entirely, since it is possible that the average consumer may wish to discuss the goods and services with a sales representative or the supplier. Taking all of the factors into account, the level of attention paid during the selection process of the services will be medium to high and the goods will be medium.

COMPARISON OF THE MARKS

29. The respective trade marks are shown below:

The holder's marks	The opponent's mark
 <p>(the '608 mark)</p>  <p>(the '599 mark)</p>	<p>aps Group</p>   <p>(series of three marks)</p>

30. It is clear from *Sabel BV 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 trade marks must be assessed by reference to all the overall impressions created by the trade 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.”

31. 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.

Overall impression

Overall impression of the holder's marks

32. The holder's '608 mark consists of the text 'aps' which is the largest text in the mark and appears in a white lower case slightly stylised font on a blue background. Even though the first two letters 'ap' are connected with a single line, the significant proportion of the average consumers would be able to distinguish and readily understand the individual letters. In the bottom right of the mark, under the letters 'ps' lies the words 'Advanced Power Solutions' that also appear in white; which I consider has a laudatory connotation. Given the size of the letters 'aps', I consider that these letters play a greater role in the overall impression of the mark, with the text 'Advanced Power Solutions', the colours in the mark and the slight stylisation all playing a lesser role in the mark.

33. The holder's '599 mark consists of the text 'aps' which appears in a grey lower case slightly stylised font. The letters play a greater role in the overall impression of the mark, with the slight stylisation and colour playing a lesser role. The overall impression of the marks lies in the combination of all the elements.

Overall impression of the opponent's series of marks

34. The first mark in the opponent's series of marks consists of the word 'aps Group'. I note that the registration of a word mark protects the words itself.⁶ 'aps' is presented in lower case and 'Group' appears in title case. The opponent submits that 'aps' is the dominant part in all of its marks in the series with the word 'Group' playing a non-distinctive role. I agree with the opponent that the text 'aps' is the dominant and distinctive element of the mark as I consider that the word 'Group' denotes the corporate structure of the opponent. It is my view that the word 'Group' has no trade mark significance. I do not consider that the words would form a unit.

35. The second mark in the opponent's series of marks consists of the text 'aps Group'. 'aps' is presented in lower case and 'Group' appears in title case. 'aps' is emboldened and positioned above the word 'Group', which is not emboldened. Both of the words appear in a black standard text. As mentioned previously, the opponent submits that 'aps' is the dominant part in its marks. I agree with the opponent that 'aps' plays a greater role, in part due to the emboldening of 'aps' and in part due to the 'group' denoting the corporate structure of the opponent. Consequently, the dominant and distinctive element of the mark is 'aps'.

36. The third mark in the opponent's series of marks consists of the text 'aps Group'. Other than the text being presented in white on a blue background, every other aspect of the discussion above, in relation to the second mark in the series, applies here. Consequently, I also find that the dominant and distinctive element of the mark is 'aps'.

My approach

37. Looking at the opponent's series of marks, it appears that if the opposition is not successful relying on the first mark in the series it would not be successful in relation to the remainder of the marks in the series. This is because the second and third marks in the series would not put the opponent in a better position. Therefore, I will conduct the remainder of my comparison relying on the first mark in the series and will return to the other marks in the series at a later point, if necessary.

⁶ *La Superquimica v EUIPO*, Case T-24/17, at paragraph [39]

Visual comparison

The '608 mark and the first mark of the series

38. Visually, the marks coincide in the presence of the text 'aps', which I have found plays a greater role in the overall impression of both parties' marks. However, I note that the stylisation, colour, blue background and presence of the words 'Advanced Power Solutions' in the holder's mark and the presence of the word 'Group' in the opponent's mark are all points of difference. I note that as the opponent's mark is a word-only mark it can be used in any standard typeface, form and colour,⁷ including the font and colour used in the holder's mark. Further, taking into consideration the case of *Specsavers*,⁸ although it is not legitimate to perform a comparison between a word mark and a stylised mark by considering specific ways in which the words might be presented, the typeface and colour in which the contested mark is presented in this case do not provide a point of distinction in themselves. Taking all of the above into account, contrary to the submission by the opponent that the marks are visually highly similar, I find the marks to be visually similar to a medium degree.

The '599 mark and the first mark of the series

39. Visually, the marks coincide in the presence of the text 'aps', which I have found plays a greater role in the overall impression of both parties' marks. However, I note that the stylisation and colour in the holder's mark alongside the presence of the word 'group' in the opponent's mark and emboldening of the text 'aps' are points of difference. As previously mentioned, I note that as the opponent's mark is a word-only mark it could be used in any standard typeface, font and colour, including the colour and font used in the holder's mark.⁹ As discussed above, I remind myself of the case of *Specsavers*, in that although it is not legitimate to perform a comparison between a word mark and a stylised mark by considering specific ways in which the words might be presented, the typeface and colour in which the contested mark is presented in this case do not provide a point of distinction in themselves. Taking, all of the above into account, contrary to the opponent's submissions that I mentioned above, I find the marks to be visually similar to a medium to high degree.

Aural comparison

The '608 mark and the first mark of the series

⁷ *LA Superquimica v EUIPO*, Case T-24/17, at paragraph [39]

⁸ *Specsavers International Healthcare Ltd & Ors v Asda Stores Ltd* [2012] EWCA Civ 24

⁹ *LA Superquimica v EUIPO*, Case T-24/17, at paragraph [39]

40. Aurally, the marks will share the pronunciation of 'aps', i.e. as the letters A-P-S. However, the marks will differ in the pronunciation of 'Advanced Power Solutions' that appears in the holder's mark, which will be given its ordinary pronunciation. In addition, the marks will differ in the pronunciation of 'Group' in the opponent's mark. Taking the above into account, I consider the marks, contrary to the opponent's submission of high aural similarity, to be similar to a low to medium degree.

The '599 mark and the first mark of the series

41. Aurally, the marks will share the pronunciation of 'aps', i.e. as the letters A-P-S. However, the marks will differ in the pronunciation of 'Group' in the opponent's mark. Taking the above into account, I consider the marks, contrary to the opponent's submission of high aural similarity, to be similar to a medium degree.

Conceptual comparison

The '608 mark and the first mark of the series

42. Conceptually, I agree with the opponent that the initialism 'aps' in the holder's mark will be seen by the average consumer as 'Advanced Power Solutions' as the words appear under the initials. I consider that the average consumer will interpret this to mean solutions for power that are ahead in terms of development; I consider that these words have a laudatory connotation. In relation to the opponent's mark, as 'aps' in this mark is not elaborated upon within the mark itself, therefore, aps will be viewed as an initialism, which will be given no meaning. 'Group' in the opponent's mark will be given interpreted as denoting the corporate structure of the opponent; the opponent's mark will convey the concept of the 'aps' corporate structure. Taking the above into consideration, I find the marks to be conceptually different.

The '608 mark and the first mark of the series

43. Conceptually, the opponent's mark will be interpreted the same as outlined above. In relation to the holder's mark, I consider that 'aps' will be viewed as an initialism with no meaning. I find the marks to be conceptually different.

DISTINCTIVE CHARACTER OF THE OPPONENT'S MARK

44. 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 C108/97 and C-109/97 Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-2779, 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).”

45. 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 distinctive character of a mark can be enhanced by virtue of the use that has been made of it. The opponent has not filed any evidence in support of enhanced distinctiveness; therefore, I only have to assess the inherent distinctiveness of the mark.

First mark of the series

46. As mentioned previously, the letters ‘aps’ will be viewed as an initialism and ‘group’ will denote the corporate structure of the opponent; the opponent’s mark will convey the concept of the ‘aps’ corporate structure. It is not uncommon for an initialism to be used in a trade mark and the use of the word ‘Group’ is will have no trade mark significance. The mark is neither

descriptive nor allusive of the goods and services at issue. Taking all of the above into account, I consider that the mark is inherently distinctive to a medium degree.

LIKELIHOOD OF CONFUSION

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

48. I have found the goods and services to be vary in similarity, from similar to a low degree to identical. I have found the marks to vary in visual similarity from to a medium degree ('608 mark) to a medium to high degree ('599 mark). Further, I have found the marks to vary in aural similarity from similar to a low to medium degree ('608 mark) to similar to a medium degree ('599 mark). I found the marks to be conceptually different. I have found the average consumer to be the general public, business or professional users and the goods and services are likely to be purchased visually. Although I do not discount aural considerations and the purchasing process. I have found that the degree of attention paid during the purchasing process will vary from medium to medium to high. I have found the marks to be inherently distinctive to a medium degree.

The '599 mark and the first mark of the series

49. Taking all of the above into account and bearing in mind the principle of imperfect recollection, I consider that the differences between the marks are insufficient to avoid direct confusion. In my view, it is plausible that the average consumer will overlook the word 'Group'

in the opponent's mark, especially given the lesser role that I have found 'Group' will play in the overall impression of the mark. Further, the marks share the 'APS' element, which I found played the dominant role in the opponent's mark and lies at the beginning of the opponent's mark, where the average consumer tends to pay a greater degree of attention. In addition, the aural and visual similarity of the marks supports the finding of direct confusion between the marks. I also consider that it is unlikely that any conceptual differences between the marks will offset the visual and aural similarities.¹⁰ I consider it likely that the marks will be misremembered or mistakenly recalled as each other. Consequently, I consider there to be a likelihood of direct confusion, even on those goods that I have found to be similar to a very low and low degree. Even applying a medium to high degree of attention, the marks will be misremembered or mistakenly recalled as each other. In the event that I am mistaken with this finding of direct confusion, I will proceed to consider indirect confusion later in this decision.

The '608 mark and the first mark of the series

50. Taking all of the above into account and bearing in mind the principle of imperfect recollection, I consider that the difference between the marks is insufficient to avoid direct confusion. The marks share the 'APS' element, which I found played the dominant role in both marks and lies at the beginning of the opponent's mark, where the average consumer tends to play a greater degree of attention. In addition, I consider that the average consumer would overlook the word 'Group' in the opponent's mark, and they will also overlook 'Advanced Power Solutions', which I found plays a lesser role in the overall impression of the mark. Further, the aural and visual similarity of the marks supports the finding of direct confusion between the marks. I also consider that it is unlikely that any conceptual differences between the marks will offset the visual and aural similarities.¹¹ In addition, I note that the average consumers won't have the opportunity to compare the marks directly side by side. I consider it likely that the marks will be misremembered or mistakenly recalled as each other. Consequently, I consider there to be a likelihood of direct confusion, even on those goods that I have found to be similar to a very low and low degree. Even applying a medium to high degree of attention, the marks will be misremembered or mistakenly recalled as each other. In the event that I am mistaken with this finding of direct confusion, I will proceed to consider indirect confusion.

¹⁰ Nokia Oyj v OHIM.

¹¹ Nokia Oyj v OHIM.

51. Indirect confusion was described in the following terms by Iain Purvis Q.C., sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10:

“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.

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).”

52. Further, I note the case of *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, wherein Arnold LJ referred to the comments of James Mellor Q.C. (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at paragraph 16 that “a finding of a likelihood of indirect confusion is not a

consolation prize for those who fail to establish a likelihood of direct confusion". Arnold LJ agreed, pointing out that there must be a "proper basis" for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

The '599 mark and the first mark of the series

53. However, even if the differences were noticed and recalled, in my view, consumers would believe that the marks are alternative marks used by the same undertaking. I consider that the presence of the identical 'aps' element in the marks will lead the average consumer to think that the marks came from the same or related undertaking as a rebrand, sub-brand or brand extension of the owner of the opponent's mark, or vice versa. This is on the basis that the shared element, being 'aps', is, in my view, sufficiently distinctive to lead the average consumer into believing that these marks are owned by the same or economically connected undertakings. In addition, the presence of the additional word 'Group' in the opponent's mark points to the likelihood of confusion not only more than one trade mark featuring 'aps' being used by the same undertaking but also a natural evolution of the brand to extend from 'aps' to the 'aps group'. As for the differences in stylisation and presentation of the marks (such as the typeface, colour used in the applicant's mark), these will be seen as logical and consistent with a rebranding, which will be indicative of an alternative mark being used by the same or economically linked undertakings. Consequently, I consider there to be a likelihood of indirect confusion between the marks, even on those goods that I have found to be similar to a very low and low degree and where I have found the degree of attention paid by the average consumer is medium to high.

The '608 mark and the first mark of the series

54. However, even if the differences were noticed and recalled, in my view, consumers would believe that the marks are alternative marks used by the same undertaking. I consider that the reasoning applied above also applies in relation to the holder's mark in this instance. However, I note that the added 'Advanced Power Solutions' will be viewed by the average consumer as being an explanation of what 'aps' stands for, and the additional presence of this together with the background and the stylisation may be all viewed by the average consumer as a rebranding. Consequently, I consider there to be a likelihood of indirect confusion between the marks, even on those goods that I have found to be similar to a very low and low degree

and where I have found the degree of attention paid by the average consumer is medium to high.

FINAL REMARKS

55. As I have found a likelihood of confusion in relation to the applications and the first mark in the opponent's series, there is no additional benefit of me considering the second and third marks in the series.

CONCLUSION

56. The opposition under section 5(2)(b) has been successful in part. The opposition succeeds in relation to the following goods and services, for which the application is refused:

Class 9: apparatus and instruments for accumulating electricity; power-banks; power units [batteries]; electrical cells and batteries; electric batteries; electric accumulators; electrochemical cells; accumulators; primary and secondary cells; headphones; wireless headsets; earbuds; cases for headphones; the above mentioned services are not related to the rail sector or the transportation of goods or people.

Class 42: Conducting engineering surveys; testing, authentication and quality control; engineering services; mechanical engineering; certification [quality control]; the above mentioned services are not related to the vehicle parts or the vehicle components or the rail sector or the transportation of goods or people.

57. The application can proceed to registration in respect of the following goods:

Class 9: photovoltaic apparatus for generating electricity; solar panels; alarms; alarm bells, electric; battery adapters; battery chargers; charging stations; charging docks; battery testers; power monitoring and control devices.

Class 10: Hearing aids.

Class 11: Lighting apparatus; electric torches; head torches; pocket torches; rechargeable torches; solar powered torches; torches for lighting; searchlights; the above mentioned goods are not related to the vehicle parts or the vehicle components or the rail sector or the transportation of goods or people.

Class 35: Retail and wholesale store services / online retail and wholesale store services in connection with apparatus and instruments for accumulating electricity, power-banks, power units [batteries], electrical cells and batteries, electric batteries, electric accumulators, electrochemical cells, accumulators, primary and secondary cells, photovoltaic apparatus for generating electricity, solar panels, battery testers, power monitoring and control devices; retail and wholesale store services / online retail and wholesale store services in connection with battery adapters, battery chargers, charging stations, charging docks, headphones, wireless headsets, earbuds, cases for headphones, alarms, electric alarm bells, hearing aids, lighting apparatus, electric torches, head torches, pocket torches, rechargeable torches, solar powered torches, torches for lighting, searchlights; the above mentioned services are not related to the vehicle parts or the vehicle components or the rail sector or the transportation of goods or people.

COSTS

58. The opponent enjoyed a greater degree of success in relation to the goods and services opposed and is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice 1/2023. However, the costs award will be slightly reduced to reflect the holder's success in the opposition. The award is calculated as follows:

Official fee (x2) ¹²	£200
Preparing a statement and considering the other side's statement	£200
Filing submissions and submissions in lieu	£450
Total	£850

59. I therefore order Advanced Power Solutions Nv to pay Allied Publicity Services (Manchester Limited) the sum of £850. This sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the final determination of the appeal proceedings.

Dated this 27th day of January 2026

A KLASS

For the Registrar

¹² I note that whilst the proceedings were consolidated, prior to that two oppositions were filed by the opponent.

Annex 1

WO0000001684608

Class 9: Apparatus and instruments for accumulating electricity; power-banks; power units [batteries]; electrical cells and batteries; electric batteries; electric accumulators; electrochemical cells; accumulators; primary and secondary cells; photovoltaic apparatus for generating electricity; solar panels; battery testers; power monitoring and control devices; battery adapters; battery chargers; charging stations; charging docks; headphones; wireless headsets; earbuds; cases for headphones; alarms; alarm bells, electric; the above mentioned goods are not related to the vehicle parts or the vehicle components or the rail sector or the transportation of goods or people.

Class 10: Hearing aids.

Class 11: Lighting apparatus; electric torches; head torches; pocket torches; rechargeable torches; solar powered torches; torches for lighting; searchlights; the above mentioned goods are not related to the vehicle parts or the vehicle components or the rail sector or the transportation of goods or people.

Class 35: Retail and wholesale store services / online retail and wholesale store services in connection with apparatus and instruments for accumulating electricity, power-banks, power units [batteries], electrical cells and batteries, electric batteries, electric accumulators, electrochemical cells, accumulators, primary and secondary cells, photovoltaic apparatus for generating electricity, solar panels, battery testers, power monitoring and control devices; retail and wholesale store services / online retail and wholesale store services in connection with battery adapters, battery chargers, charging stations, charging docks, headphones, wireless headsets, earbuds, cases for headphones, alarms, electric alarm bells, hearing aids, lighting apparatus, electric torches, head torches, pocket torches, rechargeable torches, solar powered torches, torches for lighting, searchlights; the above mentioned services are not related to the vehicle parts or the vehicle components or the rail sector or the transportation of goods or people.

Class 42: Conducting engineering surveys; testing, authentication and quality control; engineering services; mechanical engineering; certification [quality control]; the above mentioned services are not related to the vehicle parts or the vehicle components or the rail sector or the transportation of goods or people.

WO0000001684599

Class 9: Apparatus and instruments for accumulating electricity; power-banks; power units [batteries]; electrical cells and batteries; electric batteries; electric accumulators; electrochemical cells; accumulators; primary and secondary cells; photovoltaic apparatus for generating electricity; solar panels; battery testers; power monitoring and control devices; battery adapters; battery chargers; charging stations; charging docks; headphones; wireless headsets; earbuds; cases for headphones; alarms; alarm bells, electric; the above mentioned goods are not related to the vehicle parts or the vehicle components or the rail sector or the transportation of goods or people.

Class 10: Hearing aids.

Class 11: Lighting apparatus; electric torches; head torches; pocket torches; rechargeable torches; solar powered torches; torches for lighting; searchlights; the above mentioned goods are not related to the vehicle parts or the vehicle components or the rail sector or the transportation of goods or people.

Class 35: Retail and wholesale store services / online retail and wholesale store services in connection with apparatus and instruments for accumulating electricity, power-banks, power units [batteries], electrical cells and batteries, electric batteries, electric accumulators, electrochemical cells, accumulators, primary and secondary cells, photovoltaic apparatus for generating electricity, solar panels, battery testers, power monitoring and control devices; retail and wholesale store services / online retail and wholesale store services in connection with battery adapters, battery chargers, charging stations, charging docks, headphones, wireless headsets, earbuds, cases for headphones, alarms, electric alarm bells, hearing aids, lighting apparatus, electric torches, head torches, pocket torches, rechargeable torches, solar powered torches, torches for lighting, searchlights; the above mentioned services are not related to the vehicle parts or the vehicle components or the rail sector or the transportation of goods or people.

Class 42: Conducting engineering surveys; testing, authentication and quality control; engineering services; mechanical engineering; certification [quality control]; the above mentioned services are not related to the vehicle parts or the vehicle components or the rail sector or the transportation of goods or people.