TRADE MARKS ACT 1994

IN THE MATTER OF

TRADE MARK APPLICATION NO. UK00003774156

CORE – MASTER

IN THE NAME OF RIGID TECH LTD

AND

AN OPPOSITION UNDER NO. 434924

BY SCHÜTZ GMBH & CO. KGAA

Background and pleadings

1. On 5 April 2022, Rigid Tech Ltd ("the applicant") applied to register the trade mark shown on the cover page of this decision.

2. The application was published for opposition purposes on 22 April 2022 for the following goods in Class 19:

   Parquet flooring; Flooring (Parquet -); Floating floors; Vinyl flooring; Wood flooring; Hardwood flooring; Wooden flooring; Wooden floors; Laminate flooring; Parquet wood flooring; Laminated parquet flooring; Parquet floor boards; Artificial wood flooring; Floor boards (Non-metallic -); Floors, not of metal.

3. The Schütz GmbH & Co. KGaA ("the opponent") filed a notice of opposition on 12 July 2022 on the basis of sections 5(1), 5(2)(a) and (b) of the Trade Marks Act 1994 ("the Act"). The opposition is directed against all the goods in the application. For its claim under section 5(2)(b), the opponent relies upon some of the goods covered by the following United Kingdom ("UK") trade mark:

   Mark: CORMASTER
   Registration No. 00910884385
   Filing date: 15 May 2012
   Registration date: 24 March 2013
   Goods relied upon:

   Class 16 — Lightweight construction materials, namely composite coating materials being semi-finished products of paper and laminated composites of paper in the form of semi-finished products; All the aforesaid goods not of cork.

   Class 17 — Lightweight construction materials, namely composite coating materials being semi-finished products of plastic and laminated composites of plastic in the form of semi-finished products; Fibre materials and spun fibre fabrics, namely carbon fibre fabrics and glass fibre fabrics (the aforesaid goods being semi-finished

products); Carbon fibre fabrics, Fibreglass fabrics (for insulation); Fabric materials and spun fibre materials, namely glass fibres (for insulation), aramid fibres, carbon fibres (the aforesaid goods being semi-finished products); Fibre materials and spun fibre fabrics, namely carbon fibre fabrics and glass fibre fabrics (the aforesaid goods being semi-finished products); Fabric materials and spun fibre materials, namely glass fibres (not being for insulation or textile use), aramid fibres, carbon fibres (the aforesaid goods being semi-finished products); All the aforesaid goods not of cork.

Class 19 Lightweight construction materials, namely composite coating materials being semi-finished products of wood and laminated composites of wood or of plastic in the form of semi-finished products; Materials reinforced with fibre and spun yarn fabrics, for building; All the aforesaid goods not of cork.

4. Given its filing date, the above mark is an earlier trade mark in accordance with section 6 of the Act. As the opponent's mark had completed its registration process more than 5 years before the application date of the contested mark, the mark is subject to proof of use provisions contained in section 6A of the Act. However, the applicant chose not to put the opponent's mark to proof of use. The opponent can, therefore, rely on all the goods in Classes 16, 17 and 19 covered by its registration.

5. The opponent claims that the marks are similar and the goods are identical or similar, with the result that there is a likelihood of confusion.

6. The applicant filed a counterstatement. As these are the only submissions from the applicant, they are reproduced in full below:

> "Having done extensive research into the opposing company's product and profile. We can not understand why there has been an objection.
> - The name they are using is Cormaster. Which is all one word, not spelt how we spelt it and ours is two words.

- The opposing side is a (an) engineered honeycomb sub-structure product used in aviation. Which is worlds apart from ours which is Domestic Flooring with a rigid core. To add to this, we also have a website and domain names for Core-Master which were available and also we have a Limited Company called Core-Master. Company Number 1405444.

We believe that our name is worlds apart and do not feel like anyone looking for domestic flooring is going to come across or even want to look into anything to do with aviation or engineering."

7. The applicant is represented by itself, and the opponent is represented by Beck Greener LLP. Only the opponent filed evidence and submissions in lieu. This decision is taken after careful reading of all the papers filed by the parties.

8. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Act relied upon in these proceedings are derived from an EU Directive. This is why this decision continues to make reference to the trade mark case-law of EU courts.

Evidence

9. The opponent's evidence consists of the witness statement of Mr Ian Bartlett dated 23 January 2023 together with 1 exhibit. Mr Bartlett is a registered trade mark agent and IP litigator and have the conduct of the opposition in these proceedings.

10. I will return to the evidence later in the decision.

Sections 5(1) and 5(2)(a)

11. The opposition is based upon sections 5(1), 5(2)(a) and 5(2)(b) of the Act, which reads as follows:

5. (1) A trade mark shall not be registered if it is identical with an earlier trade mark and the goods or services for which the trade mark is applied for are identical with the goods or services for which the earlier trade mark is protected.

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

(a) it is identical with an earlier trade mark and is to be registered for goods or services similar to those for which the earlier trade mark is protected."

12. In order to get an objection under the sections 5(1) and 5(2)(a) off the ground, the competing trade marks must be identical.

13. In *S.A. Société LTJ Diffusion v Sadas Vertbaudet SA*, Case C-291/00, the Court of Justice of the European Union ("CJEU") held, that:

> "54 [...] a sign is identical with the trade mark where it reproduces, without any modification or addition, all the elements constituting the trade mark or where, viewed as a whole, it contains differences so insignificant that they may go unnoticed by an average consumer".

14. Further, in *Reed Executive plc v Reed Business Information Ltd*, Court of Appeal [2004] RPC 767, Jacob L.J. found that 'Reed' was not identical to 'Reed Business Information' even for information services. He stated that:

> "40. It was over "Reed Business Information" that battle was joined. The composite is not the same as, for example, use of the word "Reed" in the sentence: "Get business information from Reed". In the latter case the only "trade-marky" bit would be "Reed". In the former, the name as a whole is "Reed Business Information". The use of capital letters is of some visual significance - it conveys to the average user that "Business

Information" is part of the name. If the added words had been wholly and specifically descriptive - really adding nothing at all (eg "Palmolive Soap" compared to "Palmolive") the position might have been different. But "Business Information" is not so descriptive - it is too general for that."

15. The contested mark is 'Core – Master' and the opponent's mark is 'CORMASTER'. The opponent's mark is presented as a single word. The presentation of the applicant's mark as two words separated by a hyphen creates a certain degree of visual difference which the average consumer is likely to notice. I am of the view that the marks are not identical. Therefore, the opposition under sections 5(1) and 5(2)(a) fails.

Section 5(2)(b)

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

(5) (2) A trade mark shall not be registered if because—

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark."

Section 5(2)(b) – Case law

17. The following principles are gleaned from the judgments 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 C3/03, *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 the 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 greater 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 to mind the earlier mark, is not sufficient;

(j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;

(k) if the association between the marks creates a risk that the public will wrongly believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

Comparison of goods

18. When making the comparison, all relevant factors relating to the services in the specifications should be taken into account. In *Canon*, the Court of Justice of the European Union ("CJEU") stated at paragraph 23 of its judgment:

> "In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary".

19. Guidance on this issue has also come from Jacob J. (as he then was) in British Sugar Plc v James Robertson & Sons Ltd (the Treat case), [1996] R.P.C. 281, where he identified the factors for assessing similarity as:

> (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.

20. 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. Treat was decided the way it was because the ordinary and natural, or core, meaning of 'dessert sauce' did not include jam, or because the ordinary and natural description of jam was not 'a dessert sauce'. 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".

21. 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 'complementary' means:

> "[...] 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".

22. In *Sanco SA v OHIM*, Case T-249/11, the General Court ("GC") indicated that goods and services may be regarded as 'complementary' and therefore similar to a degree in circumstances where the nature and purpose of the respective goods and services are very different, i.e. chicken against transport services for chickens. The purpose of examining whether there is a complementary relationship between goods/services is to assess whether the relevant public are liable to believe that responsibility for the goods/services lies with the same undertaking or with economically connected undertakings. As Mr Daniel Alexander Q.C., sitting as the Appointed Person, noted in *Sandra Amelia Mary Elliot v LRC Holdings Limited* BL O/255/13:

> "It may well be the case that wine glasses are almost always used with wine and are, on any normal view, complementary in that sense - but it does not follow that wine and glassware are similar goods for trade mark purposes", whilst on the other hand:
>
> "[…] it is neither necessary nor sufficient for a finding of similarity that the goods in question must be used together or that they are sold together".

23. The goods to be compared are as follows:

Applicant's goods	Opponent's goods
Class 19 Parquet flooring; Flooring (Parquet -);Floating floors; Vinyl flooring; Wood flooring; Hardwood flooring; Wooden flooring; Wooden floors; Laminate flooring; Parquet wood flooring; Laminated parquet flooring; Parquet floor boards; Artificial wood flooring; Floor boards (Non-metallic -); Floors, not of metal.	Class 16 Lightweight construction materials, namely composite coating materials being semi-finished products of paper and laminated composites of paper in the form of semi-finished products; All the aforesaid goods not of cork. Class 17 Lightweight construction materials, namely composite coating materials being semi-finished products of plastic and laminated composites of plastic in the form of semi-finished products; Fibre materials and spun fibre fabrics, namely carbon fibre fabrics and glass fibre fabrics (the aforesaid goods being semi-finished products); Carbon fibre fabrics, Fibreglass fabrics (for insulation); Fabric materials and spun fibre materials, namely glass fibres (for insulation), aramid fibres, carbon fibres (the aforesaid goods being semi-finished products); Fibre materials and spun fibre fabrics, namely carbon fibre fabrics and glass fibre fabrics (the aforesaid goods being semi-finished products); Fabric materials and spun fibre materials, namely glass fibres (not being for

	insulation or textile use), aramid fibres, carbon fibres (the aforesaid goods being semi-finished products); All the aforesaid goods not of cork. Class 19 Lightweight construction materials, namely composite coating materials being semi-finished products of wood and laminated composites of wood or of plastic in the form of semi-finished products; Materials reinforced with fibre and spun yarn fabrics, for building; All the aforesaid goods not of cork.

24. The opponent claims that the conflicting goods are identical or similar, however, the applicant in its counterstatement neither admitted nor denied this claim. As the purpose of a counterstatement is to admit or deny the grounds set out by the opponent in its notice of opposition, the Registry wrote to the applicant on 6 September 2022 inviting the applicant to admit or deny the opponent's claims. Despite giving multiple opportunities, no response was forthcoming from the applicant. Consequently, the Form TM8 and counterstatement was admitted into proceedings on the basis that the opponent's claim of identity or similarity between the goods has not been denied by the applicant.

25. Although there is deemed admission of identity or similarity between the goods, in the absence of submission on the extent of similarity or indication of goods that are identical, I will make my own assessment of identity or similarity of the conflicting goods.

Parquet flooring; Flooring (Parquet -); Floating floors; Vinyl flooring; Wood flooring; Hardwood flooring; Wooden flooring; Wooden floors; Laminate flooring; Parquet wood flooring; Laminated parquet flooring; Parquet floor boards; Artificial wood flooring; Floor boards (Non-metallic -); Floors, not of metal.

26. The applicant submits that the opponent's goods are used in the aviation section. The opponent has filed evidence to demonstrate that the 'materials reinforced with fibre' from its Class 19 specification are used in construction to level up floors or cover underfloor hearing and include materials such as fibre-reinforced screens or smoothing components ideal for use with various types of floors. I note that the applicant has not challenged the opponent's evidence. The applicant's goods 13ifferrent types of flooring. The conflicting goods are used for or in connection with flooring. Although the nature and purpose of the respective goods are different, the goods are likely to share channels of trade. There is an overlap in the users as both types of goods are used in the construction of buildings, particularly in connection with flooring and target builders or people renovating houses, for example. The relevant consumers are likely to think that the same company manufactures these goods. The goods are complementary in the sense described by case law. However, I do not think that the goods are in competition. Considering these factors, I find that the applicant's goods are similar to a medium degree to the opponent's goods.

The average consumer and the nature of the purchasing act

27. I will proceed to determine who the average consumer is for the respective party's goods discussed above.

28. 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".

29. The conflicting goods are used in connection with flooring. The consumer will select the goods after browsing websites, catalogues or other printed publications or seeing the goods on display in a building merchant or DIY store. The visual element will therefore play a significant role. However, I do not discount the aural element, as the consumer may seek advice from sales staff or order goods on the telephone. The goods are targeted at the public at large (e.g., general consumers or those interested in DIY) and building and renovation professionals. The goods are unlikely to be regular purchases. When choosing the products, the consumer is likely to pay attention to various factors such as style and durability in the case of flooring materials in the applicant's specification and compatibility with various types of floors in the case of the opponent's goods. These factors suggest that the consumers in both groups are likely to pay a medium to higher than medium, although perhaps not at the highest level of attention when selecting the goods.

Distinctive character of earlier mark

30. The distinctive character of the earlier mark must be considered. The more distinctive the mark is, either inherently or through use, the greater the likelihood of confusion (*Sabel BV v Puma AG*). In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 the CJEU stated that:

> "22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to

identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does 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)."

31. Invented words usually have the highest degree of distinctive character, while words which are allusive or suggestive of the goods have the lowest. Distinctiveness can also be enhanced through the use of the mark.

32. The opponent has filed evidence however it has not claimed enhanced distinctiveness of its earlier mark. Moreover, the opponent's evidence also does not demonstrate enhanced distinctiveness, so I only have the inherent position to consider. The opponent's mark is CORMASTER. It has no suggestive meaning in respective of the opponent's goods. I, therefore, find that the opponent's mark is inherently distinctive to a medium degree.

Comparison of marks

33. 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 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."

34. It would be wrong, therefore, artificially to 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.

Earlier mark	Contested mark
CORMASTER	Core - Master

35. The earlier mark consists of the word CORMASTER. Although presented as a single word, the average consumer is likely to see it as a combination of the words 'cor' and 'master'. The overall impression of the mark lies in the single word 'CORMASTER'.

36. The contested mark consists of two words Core and Master separated by a hyphen. The overall impression of the mark lies in this combination.

37. Visually, both marks share 9 letters. In terms of difference, the contested mark contains the additional letter 'e' after the first letter 'r'. The mark is presented as two words separated by a hyphen. Considering these factors, I find that the marks are visually similar to a high degree.

38. Aurally, the hyphen in the contested mark is unlikely to be pronounced. Both marks will be pronounced identically giving the conventional pronunciation of the words ‘core/cor’ and ‘master’. The marks are, therefore, aurally identical.

39. Conceptually, I consider that the average consumer will see the two words 'COR' and 'MASTER' in the opponent's mark and construe it accordingly. The word core in the opponent's mark would be understood as the centre part of something.[1] Although 'cor' in the applicant's mark is a slang word used for surprise[2], some average consumers are likely to attribute it the same meaning as the word 'core', particularly if they encounter the mark aurally. The most relevant meaning of the word master in the context of the respective parties' marks appears to be someone who is extremely skilled at something.[3] I find that the marks are conceptually identical, where the average consumer attributes the same meaning to the word cor/core. The marks are conceptually similar to a medium degree where the word 'cor' is seen as a slang word.

Likelihood of confusion

40. In determining whether there is a likelihood of confusion, I need to bear in mind several factors. The first is the interdependency principle, i.e. a lesser degree of similarity between the respective goods may be offset by a greater degree of similarity between the trade marks (Canon at [17]). It is also necessary for me to bear in mind the distinctive character of the opponent’s trade mark, as the more distinctive the trade mark is, the greater the likelihood of confusion (Sabel at [24]). I must also keep in mind the average consumer for the goods, the nature of the purchasing process and the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks, relying instead upon the imperfect picture of them he has retained in his mind (Lloyd Schuhfabrik at [26]).

[1] https://www.collinsdictionary.com/dictionary/english/core accessed on 31 July 2023
[2] https://www.collinsdictionary.com/dictionary/english/cor accessed on 31 July 2023.
[3] https://www.collinsdictionary.com/dictionary/english/master accessed on 31 July 2023.

41. Confusion can be direct (which occurs when the average consumer mistakes one mark for the other) or indirect (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 undertaking being the same or related).

42. The difference between direct and indirect confusion was explained in *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, by Iain Purvis Q.C., sitting as the Appointed Person, where he 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."

43. Earlier in the decision, I found that the respective marks to be visually similar to a high degree, aurally identical and conceptually either identical or similar to a medium degree. I also found that the goods will be selected primarily by visual means, with a medium to higher than medium degree of attention by the general public and professionals. The goods are similar to a medium degree and the earlier mark is inherently distinctive to a medium degree.

44. In my view, a proportion of average consumers are likely to purchase the goods further to word-of-mouth recommendations. In those circumstances, the aural identity between the marks is likely to lead those average consumers to think

that it is the same undertaking that offers similar goods. Accordingly, I find that, from the aural perspective, there is a likelihood of direct confusion.

45. Where visual considerations are likely to dominate the selection process, I find that there is also a likelihood of direct confusion. The similarity between the marks arising from the shared letters is likely to outweigh the difference introduced by the letter 'e' and hyphen in the applicant's mark. The consumers are unlikely to retain the visual difference in imperfect recollection particularly in circumstances where conceptual and aural identity exist between the marks. The consumer is, therefore, likely to misremember the marks, bearing in mind imperfect recollection, and mistake one mark for the other. There is, therefore, a likelihood of direct confusion.

Conclusion

46. The opposition under section 5(2)(b) succeeds in its entirety.

Costs

47. The opponent has been successful and is entitled to a contribution towards its costs. Awards of costs are governed by Tribunal Practice Notice ("TPN") 2/2016. In awarding costs, I bear in mind that the opponent's evidence was light. I hereby award costs to the opponent on the following basis:

Preparing a statement of case and Considering other side's statement:	£200
Filing evidence:	£200
Filing written submissions:	£200
Official fee:	£100
Total:	£700

48. I order Rigid Tech Ltd to pay Schütz GmbH & Co. KgaA the sum of £700. This sum is to be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 1st August 2023

Karol Thomas
For the Registrar
The Comptroller-General