

**O-0797-23**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF**

**TRADE MARK APPLICATION NO 3743430**

**BY**

**AESTHETIC TECHNOLOGY LIMITED**

**TO REGISTER**

**PRD TECHNOLOGY**

**AS A TRADE MARK IN CLASS 10**

**AND**

**OPPOSITION THERETO (UNDER NO. 600002414)**

**BY**

**COIGNIEZ-WALRAEVENS BVBA**

## **BACKGROUND**

1) On 14 January 2022, Aesthetic Technology Limited ('the applicant') applied to register 'PRD TECHNOLOGY', as a trade mark, in respect of the following goods:

**Class 10:** Skin treatment apparatus and instruments; light treatment apparatus, devices and instruments for use in photo dynamic therapy, skin rejuvenation, hair removal and the treatment of acne, dermatitis, eczema, pigmentation, psoriasis and rosacea; parts and fittings for the aforesaid goods.

2) The application was published in the Trade Marks Journal on 04 February 2022 and notice of opposition was later filed, under the fast-track opposition procedure, by Coigniez-Walravens BVBA ('the opponent'). The opponent claims that the trade mark application offends under section 5(2)(b) of the Trade Marks Act 1994 ('the Act'). The following trade mark registration is relied upon:

**UKTM No: 3465804**

PRED

**Class 10:** Respiratory apparatus namely breathing circuits for respiratory care; Apparatus for treating respiratory conditions; Medical apparatus for assisting breathing; Therapeutic breathing devices; Medical apparatus and instruments; Medical instruments incorporating lasers; Respiratory apparatus; aerosol therapy apparatus; respiratory apparatus for ventilation of the lungs.

**Filing date: 11 February 2020**

**Date of entry in the register: 08 August 2020**

3) The trade mark relied upon by the opponent is an 'earlier' mark, in accordance with section 6 of the Act. As it had not been registered for five years or more at the filing date of the contested application, it is not subject to the proof of use conditions as per Section 6A of the Act.

4) The applicant filed a counterstatement, in which the following points are made:

- It is denied that the respective goods are identical or similar.
- It is denied that the marks are visually or aurally similar.
- It is submitted that the earlier mark is devoid of distinctive character in relation to the goods for which it is registered. This is because, the applicant claims that 'PRED', when used in relation to spirometry, being the most common of the pulmonary function tests, refers to 'predicted normal values'. This is said to usually be expressed as a percentage '%PRED' as a ratio of a patient's results when compared to predicted normal values. It is, therefore, submitted that the earlier mark, 'PRED', refers to the function of the earlier goods, namely, to measure 'predicted normal values' or to compare the results of the patient with 'predicted normal values'.
- In contrast, the distinctive and dominant element of the contested mark is the letters 'PRD' which has no meaning in relation to the contested goods and is, therefore, distinctive. It is therefore submitted that the respective marks are conceptually dissimilar.

5) Rule 6 of the Trade Marks (Fast Track Opposition)(Amendment) Rules 2013, S.I. 2013 2235, disapplies paragraphs 1-3 of Rule 20 of the Trade Mark Rules 2008, but provides that Rule 20(4) shall continue to apply. Rule 20(4) states that: "(4) The registrar may, at any time, give leave to either party to file evidence upon such terms as the registrar thinks fit."

6) The net effect of these changes is to require parties to seek leave in order to file evidence in fast-track oppositions. Further, rule 62(5) (as amended) states that arguments in fast-track proceedings shall be heard orally only if (i) the Office requests it or (ii) either party to the proceedings requests it and the registrar considers that oral proceedings are necessary to deal with the case justly and at proportionate cost; otherwise, written arguments will be taken.

7) The applicant made a request to file evidence, further to the filing of the counterstatement.<sup>1</sup> The reasons given in support of that request were as follows:

‘The applicant wishes to file evidence to show that the earlier trade mark on which the opposition is based has a low level of distinctiveness. This evidence will consist of specialist extracts from specialist dictionaries and medical reports/papers showing how the word which makes up the earlier mark is used descriptively.’

Due to an administrative error, the above request was overlooked. The applicant resubmitted the same request to file evidence on 22 December 2022. A preliminary view was given to allow that request and to give the applicant a period of one month, until 13 February 2023, to file the relevant evidence. The opponent was given a period of 14 days in which to request a hearing on the matter if it wished to contest that view.<sup>2</sup> No request for a hearing was made within the time allowed and, accordingly, the preliminary view was automatically confirmed. The applicant subsequently filed evidence on 10 February 2023. That evidence consists of the witness statement of Gareth Ian Price, a Chartered Trade Mark Attorney and Director of Trade Marks at Murgitroyd & Company Limited, and Exhibits GIP1 – GIP5 thereto. The opponent was allowed a period in which to request to file evidence in reply<sup>3</sup>. No request was made in the time allowed.

8) The parties were provided with a period to either request a hearing or to file written submissions in lieu<sup>4</sup>. Neither party made a request to be heard. Only the applicant filed written submissions in lieu<sup>5</sup>. I have read all those submissions and will refer to them if, and when, it is appropriate to do so. I will also refer to Mr Prices’ evidence when it becomes germane to the issues to be determined.

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<sup>1</sup> As per the applicant's letter of 5 December 2022

<sup>2</sup> As per the official letter of 11 January 2023

<sup>3</sup> As per the official letter of 10 February 2023

<sup>4</sup> As per the official letter of 30 March 2023

<sup>5</sup> Dated 27 April 2023

## DECISION

9) Section 5(2)(b) of the Act states:

“5. - (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 of association with the earlier trade mark.”

## Case law

10) 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 on in these proceedings are derived from an EU Directive. Accordingly, it is appropriate to take account of the case law of EU courts in determining the matter before me.

11) The leading authorities which guide me are from the Court of Justice of the European Union ('CJEU'): *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 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**

12) All relevant factors relating to the goods should be taken into account when making the comparison. In *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer* the CJEU, Case C-39/97, 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.”

13) Guidance on this issue has also come from Jacob J where, in *British Sugar Plc v James Robertson & Sons Limited* [1996] RPC 281, the following factors were highlighted as being relevant:

(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.

14) In terms of being complementary (one of the factors referred to in *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer*), this relates to close connections or relationships that are important or indispensable for the use of the other. In *Boston Scientific Ltd v OHIM* Case T- 325/06, it was stated:

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

In *Sanco SA v OHIM* Case T-249/11, the General Court ('GC') found 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 was 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. noted as the Appointed Person 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.”

15) Finally, I note the decision in *Gérard Meric v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM Case T-133/05) ('Meric')*, where the GC held:

“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 (Case T-104/01 Oberhauser v OHIM – Petit Liberto (Fifties) [2002] ECR II-4359, paragraphs 32 and 33; Case T-110/01 Vedial v OHIM – France Distribution (HUBERT) [2002] ECR II-5275, paragraphs 43 and 44; and Case T-10/03 Koubi v OHIM – Flabesa (CONFORFLEX) [2004] ECR II-719, paragraphs 41 and 42).”

16) The goods to be compared are:

Opponent's goods	Applicant's goods
<p><b>Class 10:</b> Respiratory apparatus namely breathing circuits for respiratory care; Apparatus for treating respiratory conditions; Medical apparatus for</p>	<p><b>Class 10:</b> Skin treatment apparatus and instruments; light treatment apparatus, devices and instruments for use in photo dynamic therapy, skin</p>

<p>assisting breathing; Therapeutic breathing devices; <u>Medical apparatus and instruments</u>; Medical instruments incorporating lasers; Respiratory apparatus; aerosol therapy apparatus; respiratory apparatus for ventilation of the lungs.</p> <p>(my emphasis)</p>	<p>rejuvenation, hair removal and the treatment of acne, dermatitis, eczema, pigmentation, psoriasis and rosacea; parts and fittings for the aforesaid goods.</p>
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17) The applicant concedes that its goods are similar to the opponent's 'Medical apparatus and instruments'. However, the majority of the applicant's goods, with the exception of the 'parts and fittings' for the same, are not just similar to the opponent's goods, they are identical, given that they fall within the opponent's broad term, 'Medical apparatus and instruments', as per *Meric*. I therefore proceed on the basis that the applicant's 'parts and fittings' are highly similar to the opponent's goods (given their obvious overlap in trade channels, user, methods of use, purpose and that they are complementary to each other) and the remainder of the applicant's goods are identical to the earlier goods.

### **Average consumer and the purchasing process**

18) It is necessary to determine who the average consumer is for the respective goods and the manner in which they are likely to be selected. 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.”

I would expect the average consumer of the relevant goods to consist, primarily, of professionals in the medical sector. The goods may vary in price but are unlikely to be at the lower end of the cost scale and are also unlikely to be an impulse purchase. I would expect the consumer to take some care and time over the purchase and to consider factors such as whether the goods perform the required function, ease of use and that they meet their specific needs. Generally speaking, I would expect a high degree of attention to be paid during the purchase. All of the goods are likely to be sought out visually, either in physical stores, their online equivalents or brochures and therefore the visual similarity between the marks is most important. However, I do not discount that there may also be an aural aspect to the purchase.

### **Distinctive character of the earlier mark**

19) The distinctive character of the earlier mark must be considered. The more distinctive it is, either by inherent nature or by 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 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).”

I have no evidence of use before me from the opponent and therefore I have only the inherent distinctiveness of the earlier mark to consider. Mr Price’s evidence purports to show that the term ‘PRED’ is meaningful in relation to medical apparatus for the treatment/care of patients with respiratory conditions and the like (for use in spirometry) and is therefore non-distinctive in relation to the goods relied upon.

20) In accordance with Section 72 of the Act, it is not open to me to conclude that the earlier mark is devoid of any distinctiveness as, to do so, would call into question the validity of that mark and no such grounds have been raised before me. That said, it is appropriate to consider Mr Prices’ evidence to ascertain the degree of the earlier mark’s distinctiveness. The evidence may, for example, show that the mark has a low degree of inherent distinctiveness.

21) I remind myself that my assessment of the likelihood of confusion is not being based upon the following goods covered by the earlier registration: ‘Respiratory apparatus namely breathing circuits for respiratory care; Apparatus for treating respiratory conditions; Medical apparatus for assisting breathing; Therapeutic breathing devices; Respiratory apparatus; aerosol therapy apparatus; respiratory apparatus for ventilation of the lungs’. Rather, my assessment of the likelihood of confusion is being based upon the fact that the opponent’s ‘medical apparatus and instruments’ covers ‘Skin treatment apparatus and instruments; light treatment apparatus, devices and instruments for use in photo dynamic therapy, skin rejuvenation, hair removal and the treatment of acne, dermatitis, eczema, pigmentation, psoriasis and rosacea’. It is on that basis that I have found identity/similarity between the parties’ goods. It follows that it is the distinctiveness of ‘PRED’ for those underlined goods which is relevant and not its distinctiveness in

relation to any other goods which may also be covered by the opponent's broad term, 'Medical apparatus and instruments', or any of the other specific goods listed in its specification.

22) With the above in mind, I find that there is nothing in Mr Price's evidence to show that 'PRED' is descriptive or meaningful in relation to the relevant earlier goods. All of Mr Price's evidence relates to use of the term 'PRED' in relation to, and in the context of, medical apparatus and instruments for the treatment of pulmonary conditions (in the field of spirometry). There is nothing in the evidence to show that 'PRED' has any relevant meaning in relation to the underlined goods above. It is, therefore, not obvious to me that the mark 'PRED' is descriptive or allusive in relation to the relevant earlier goods and I find it to have a normal degree of distinctiveness in relation to them.

### **Comparison of marks**

23) It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

“.....it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

It would be wrong, therefore, artificially to dissect the marks, although it is necessary to take into account their distinctive and dominant components and to give due

weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

24) The marks to be compared are:

## PRED v PRD TECHNOLOGY

The earlier mark consists of PRED in plain letters. It does not lend itself to deconstruction into separate elements. The overall impression of the earlier mark lies simply in that word. Turning to the contested mark, this consists of the initialism, 'PRD', followed by the word 'TECHNOLOGY'. I find that it is the initialism, 'PRD', which has the greatest weight in the overall impression of the mark, owing to its prominent position at the beginning of the mark and that it is distinctive, whereas the word 'TECHNOLOGY' is entirely descriptive. That is not to say that the latter is negligible; the word 'TECHNOLOGY' does contribute to the overall impression given, in particular, the large proportion of the mark that it occupies, but it carries less weight than the letters 'PRD'.

25) From a visual perspective, there is a point of difference due to the presence of 'TECHNOLOGY' in the applicant's mark which is absent from the opponent's mark. In terms of the respective PRED and PRD elements, these both begin with the letters 'PR' and end with the letter 'D'. However, the earlier mark contains an additional letter, 'E' which is not present in the 'PRD' element of the later mark. I bear in mind that it is usually the beginnings of marks which tend to have the greater impact on the perception. However, I also bear in mind that even small differences between marks/element of marks which are relatively short in length can have a striking impact. I find that to be the case here. I find there to be no more than a medium level of visual similarity between the respective 'PRED' and 'PRD' elements and a low degree of visual similarity between the marks overall.

26) Aurally, the opponent contends that the elements 'PRED' and 'PRD' are aurally identical. I disagree. The 'PRD' element of the contested mark is likely to be pronounced as three separate letters i.e. as the initialism, 'P', 'R', 'D'. (The way in

which the well-known word 'TECHNOLOGY' is likely to be articulated is obvious and therefore requires no explanation.) As for the earlier mark, this is likely, in my view, to be pronounced as a single word (not as an initialism) i.e. as the word 'PRED' (to rhyme with 'dread'). If I am right about that, the respective 'PRED' and 'PRD' elements are aurally dissimilar and the marks as a whole are also aurally dissimilar. If I am wrong about that, and the consumer does pronounce it as four separate letters, 'P', 'R', 'E', 'D', there would be a medium degree of aural similarity with the 'PRD' element of the later mark and a low degree of aural similarity between the marks overall.

27) Conceptually, the parties are agreed that the 'PRD' element of the contested mark has no meaning. The opponent submits that its mark, 'PRED', also has no meaning. The applicant, on the other hand refers to the evidence of Mr Price in support of its contention that 'PRED' does have a recognised meaning in relation to the goods for which the earlier mark is registered. I have already found that 'PRED' does not have a meaning in relation to the relevant earlier goods. Nevertheless, I have considered whether the average consumer, being a professional in the medical field, is still likely to perceive a concept from the word 'PRED', due to their exposure to that word in relation to other goods, of the kind shown in Mr Prices' evidence, which are also aimed at medical professionals. My view is that there is unlikely to be a sufficiently significant proportion of such consumers. The evidence before me does not, in my view, establish that the term 'PRED' will immediately be perceived as meaning 'predicted value'/'predicted normal values' when encountered outside of the specific context shown in the applicant's evidence. I find that 'PRED' is likely to be perceived as meaningless in relation to the relevant earlier goods. Bearing all of this in mind, and that the word 'TECHNOLOGY' in the contested mark does not create a distinctive conceptual difference between the marks, I find the conceptual position to be effectively neutral.

### **Likelihood of confusion**

28) I must now feed all of my earlier findings into the global assessment of the likelihood of confusion, keeping in mind the following factors: i) the interdependency principle, whereby a lesser degree of similarity between the goods may be offset by

a greater similarity between the marks, and vice versa (*Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*); ii) the principle that the more distinctive the earlier mark is, the greater the likelihood of confusion (*Sabel BV v Puma AG*), and; iii) the factor of imperfect recollection i.e. that consumers rarely have the opportunity to compare marks side by side but must rather rely on the imperfect picture that they have kept in their mind (*Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V.*).

29) The respective goods are identical, or at least highly similar. The respective 'PRED' and 'PRD' elements are visually similar to a medium degree and the marks, overall, are visually similar to a low degree. Aurally, the 'PRED' and 'PRD' elements are dissimilar and the marks, overall, are aurally dissimilar or, if I am wrong about that, the respective 'PRED' and 'PRD' elements are aurally similar to a medium degree and the marks, overall, are aurally similar to a low degree. Conceptually, the position is, effectively, neutral. The purchasing act is likely to be mainly visual, although I bear in mind the potential for aural use. The opponent's mark also has a normal degree of inherent distinctiveness in relation to the relevant earlier goods which are covered by the opponent's broad term 'medical apparatus and instruments'. However, the degree of attention paid to the purchase is likely to be high. Although that degree of attention does not mean that imperfect recollection has no role to play, it does mean that its effects are likely to be lessened. Bearing this in mind, together with all of the aforesaid factors, I find that it is unlikely that the marks will be directly confused. I also consider it improbable that, having realised that the marks are not the same, the average consumer would, nevertheless, put the similarities between them down to the goods coming from the same or linked undertaking(s).

30) I add here that I would have reached the same conclusion even if I had found that the degree of attention paid by the average consumer was likely to be lower (i.e. of a medium level). Even in those circumstances, when weighed against all of the other relevant factors, I still do not consider that the marks would be directly or indirectly confused. I also have not overlooked the opponent's contention that the 'PRD' element of the contested mark may be perceived as an abbreviation of its 'PRED' mark. Suffice it to say, that I consider this to be highly unlikely. **The opposition under section 5(2)(b) fails.**

## **COSTS**

31) As the applicant has been successful, it is entitled to an award of costs. Although these proceedings started out on the fast-track procedure, the fact that the applicant's request for leave to file evidence was granted and such evidence was subsequently filed, means that the relevant scale I must consider in awarding costs is that set out in Annex A of Tribunal Practice Notice 2/2016, which applies to standard opposition cases (and not the scale set out in TPN 2 of 2015 which applies to fast-track cases where no evidence has been filed). Applying the guidance in the relevant TPN, I award costs to the applicant on the following basis:

Preparing a statement and considering the opponent's statement	£300
Preparing and filing evidence	£500
Preparing and filing written submissions	£300
<b>Total:</b>	<b>£1100</b>

32) I order Coigniez-Walraevens BVBA to pay Aesthetic Technology Limited the sum of **£1100**. This sum is to be paid within twenty-one days of the expiry of the appeal period or, if an appeal is filed, within twenty-one days of the final determination of this case if any such appeal against this decision is unsuccessful.

**Dated this 21st day of August 2023**

**Beverley Hedley**  
**For the Registrar,**  
**the Comptroller-General**