

O/0811/23

TRADE MARKS ACT 1994

CONSOLIDATED PROCEEDINGS

IN THE MATTER OF APPLICATION NOS.

UK00003711126 & UK00003711131

BY HYGAN PRODUCTS LIMITED

TO REGISTER:

HYGAN

AND



AS TRADE MARKS IN CLASSES 1, 3, 7, 8, 16, 21, 25 AND 37

AND

IN THE MATTER OF OPPOSITIONS THERETO

UNDER NOS. OP000431539 & OP000431542

BY HYGAN S.R.L.

Background and pleadings

1. On 18 October 2021, Hygan Products Limited (“the applicant”) applied to register the trade marks shown below – Nos. UK00003711126 and UK00003711131 – and the applications were published for opposition purposes on 3 December 2021.

HYGAN



2. The registrations are sought for the following goods and services:

- | | |
|---------|--|
| Class 1 | Mould release agents; additives for clay; adhesives; adhesives for ceramics; adhesives for glazing; white spirit. |
| Class 3 | Abrasive sanding sponges; sponges impregnated with soap; deglazing materials; deglazing belts; deglazing mats; polishing preparations; polishing papers; grinding preparations; abrasives; cleaning preparations; scouring preparations; abrasive preparations; turpentine; abrasive sheets. |
| Class 7 | Grinding tools; polishing tools and apparatus; potters' wheels; car washers; parts and fitting for all the aforesaid goods; abrasive belts. |
| Class 8 | Grinding hand tools; polishing hand tools; parts and fitting for all the aforesaid goods; knives; blades; scrapers. |

Class 16 Sponges for paint application; modelling tools; transfers; decals; pencils; printed matter; stationery.

Class 21 Sponges; sponges for household purposes; cosmetic sponges; squeegee sponges; kitchen sponges; bath sponges; baby sponges; car care sponges; detailing sponges; sponges for machines; natural sponges; synthetic sponges; abrasive pads; scouring sponges; abrasive sponges; polishing cloths; machine sponges.

Class 25 Workwear; overalls; tops; trousers; coats; jackets; boiler suits; aprons; tabards; all of the aforesaid being workwear.

Class 37 Vehicle detailing services; valet services; car washing.

3. HYGAN S.r.l. ("the opponent") opposes the trade marks on the basis of section 5(2)(b) of the Trade Marks Act 1994 ("the Act"). The oppositions (no. OP000431539 – the lead case – and no. OP000431542 – the second case) are directed against the applicant's Class 1, 3, 16 and 21 goods and its Class 37 services in the UK00003711126 and UK00003711131 applications. The oppositions rely on the trade mark and the goods detailed below.

4. UK00905040522, filed on 26 April 2006 and registered on 16 April 2007.



Class 3 Bleaching preparations and other substances for laundry use; cleaning, scouring and abrasive preparations; soaps; preparations for perfuming linen; perfumery.

Class 21 Household utensils and containers (not of precious metal); sponges, brushes; articles for cleaning purposes.

The consolidated proceedings

5. In its two separate Form TM7s and accompanying statements of grounds, the opponent argues that the applicant's marks are similar to its mark, and that the contested goods and services are identical or highly similar.
6. The applicant filed two separate Form TM8s and counterstatements denying the claims made.
7. On 17 June 2022 the lead case and the second case were joined together in consolidated proceedings.
8. The applicant filed written submissions in lieu of a hearing, whereas the opponent did not.
9. The opponent filed evidence of use, detailed below.
10. The opponent is represented by Barker Brettell LLP and the applicant is represented by Swindell & Pearson Ltd.
11. This decision is taken after careful consideration of the papers.

Evidence

12. The opponent filed a witness statement from Norbert Gummerer, president of the opponent, signed and dated 16 December 2022.
13. Along with the witness statement, there are five exhibits, Exhibit 1 to Exhibit 5.

DECISION

14. Although the UK has left the EU, section 6(3)(a) of the European (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 Trade Marks Act relied on in these proceedings are derived from an EU Directive. That is why this decision continues to make reference to the trade mark case law of EU courts.

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

“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.”

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

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

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

(2) References in this Act to an earlier trade mark include a trade mark in respect of which an application for registration has been made and which, if registered, would be an earlier trade mark by virtue of subsection (1)(a) or (b), subject to its being so registered.”

17. Given its filing date, the trade mark upon which the opponent relies qualifies as an earlier trade mark as defined above.

Proof of use

18. The opponent’s mark had been registered for more than five years at the filing date of the applications and therefore the proof of use provisions apply.

19. The proof of use provisions are set out in section 6A of the Act, the relevant parts of which state:

“(1) This section applies where

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

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

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

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

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

(3) The use conditions are met if-

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

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

(4) For these purposes-

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

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

[(5) Repealed]

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

...”

20. Section 100 of the Act is also relevant, which reads:

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

21. Pursuant to section 6A of the Act, the relevant period for assessing whether there has been genuine use of the earlier mark is the five-year period ending with applicant’s filing date i.e. 19 October 2016 to 18 October 2021.
22. It should be noted that the opponent’s mark is a “comparable mark”. As such, Tribunal Practice Notice 2 of 2020 applies in that: “Where all or part of the relevant five-year period for genuine use under sections 6A, 46(1)(a) or (b), or 47 falls before IP Completion Day, evidence of use of the corresponding EUTM in the EU in that part of the relevant period before IP Completion Day will be taken into account in determining whether there has been genuine use of the comparable trade mark. For that part of the relevant period, for the purposes of the genuine use assessment, the UK will be taken to include the EU.”
23. Consequently, I can take account of evidence of use in the EU up to and including IP Completion Day (31 December 2020).
24. In *Walton International Ltd & Anor v Verweij Fashion BV* [2018] EWHC 1608 (Ch) Arnold J (as he then was) summarised the law relating to genuine use as follows:

“114.....The CJEU has considered what amounts to “genuine use” of a trade mark in a series of cases: Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, *La Mer* (cited above), Case C-416/04 P *Sunrider Corp v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237, Case C-442/07 *Verein Radetsky-Order v Bunderversammlung Kameradschaft ‘Feldmarschall Radetsky’* [2008] ECR I-9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Marken BV v*

Hagelkruis Beheer BV [EU:C:2012:816], [2013] ETMR 16, Case C-609/11 P *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], [2014] ETMR, Case C-141/13 P *Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089] and Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434], [2017] Bus LR 1795.

115. The principles established by these cases may be summarised as follows:

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

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

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Leno* at [29]; *Centrotherm* at [71]. Accordingly, affixing of a trade mark on goods as a label of quality is not genuine use unless it guarantees, additionally and simultaneously, to consumers that those goods come from a single undertaking under the control of which the goods are manufactured and which is responsible for their quality: *Gözze* at [43]-[51].

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising

campaigns: *Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37]; *Verein* at [14] and [22]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle* at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23].

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial *raison d'être* of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71]; *Reber* at [29].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: *Ansul* at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Leno* at [29]-[30], [56]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no *de minimis* rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72] and [76]-[77]; *Leno* at [55].

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

Evidence of use

25. An assessment of genuine use is a global assessment, which includes looking at the evidential picture as a whole, not whether each individual piece of evidence shows use by itself.¹

26. To quote from Mr Gummerer’s witness statement: “The Opponent is an Italian manufacturer of specialist chemical cleaning agents and associated products. In particular, its UNYRAIN and ECORAIN lines, which are sub-brands of the Hygan brand, are among the most popular cleaning agents in the hospitality industry, in old people’s homes, hospitals, public bodies and in industry. The Opponent was formed in 1963 and now operates four locations in Italy, Austria and Germany, employing over 80 people.”

27. At paragraph 21 of his witness statement, Mr Gummerer supplies the following figures for EU revenue under the Hygan brand:

Year	Approximate revenue (C)
2016	>6.6 million
2017	>6.9 million
2018	>7.8 million
2019	>9.1 million
2020	>10.7 million
2021	>8.5 million
2022 (up to 14 November)	>10 million

¹ *New Yorker SHK Jeans GmbH & Co KG v OHIM*, T-415/09

28. These figures are admissible up to 31 December 2020, there being no indication that any of the stated revenue was accrued from sales in the UK after that date.
29. The admissible revenue, which is not inconsiderable, is an important piece of evidence in my assessment of whether the opponent has shown genuine use of its mark.
30. Mr Gummerer has supplied five exhibits.
31. Exhibit 1 features a screenshot from hygan.it, the opponent's main website, with a Hygan cleaning product for sale. There are also screenshots from hygiene-shop.eu showing Hygan cleaning products for sale. However, none of these screenshots are dated.
32. Exhibit 2 is the GoDaddy information for the opponent's main website – hygan.it – which suffices to show that the website operates under the auspices of the opponent.
33. Exhibit 3 offers significant evidence of the mark in use, albeit in variant form. It features numerous screenshots from hygan.it which were produced using a wayback machine. The admissible screenshots range from 28 October 2016 to 25 November and show various household cleaning products offered for sale.
34. The screenshots show household cleaning products labelled with the opponent's mark which are intended for general use, but also specifically for floor cleaning, surface cleaning, the cleaning of kitchens and bathrooms, dishwashing, and laundry.
35. All of these screenshots are from within the relevant period, albeit there is nothing to show that the ones which post-date 31 December 2020 are targeted at UK consumers.

36. Mr Gummerer acknowledges that the screenshots from hygan.it which feature in Exhibit 4 “were taken after the Relevant Date, [but] these screenshots reflect a product range which is similar to the products which were available to consumers at the Relevant Date.” The screenshots show household cleaning preparations offered for sale, but also a door stop, brooms, dust pans, abrasive sponges, tin foil, kitchen paper and cling film.
37. Exhibit 5 consists of 32 invoices within the relevant period up to IP Completion Day, all being for addresses in Italy except for one invoice addressed to Germany. They range in value from 53.40 euros to 6737.97 euros.
38. The invoices document sales which include a variety of household cleaning and laundry preparations, soap, laundry trolleys, brooms, mops, buckets, paper towels and bin liners. This detailed evidence, which is evenly distributed across almost all of the relevant period, is a significant factor in my assessment of whether genuine use under the mark has been proven.
39. The opponent has supplied no data as to market share or marketing expenditure.

Variant use

40. The mark is shown on the website screenshots offered in evidence in white text on a red background.



41. The Court of Appeal has stated on two occasions following the CJEU's judgment in *Specsavers*,² that registration of a trade mark in black and white covers use of the mark in colour.
42. The white on red version shows a small break in the letter "Y" and the letter "A" by comparison with the solid letters of the black and white version, but that does not alter the distinctive character of the mark and so I consider this to be acceptable variant use.
43. In the website screenshots, household cleaning products have names such as "SO FAIN", "SO RAIN" and "uny rain". Mr Gummerer states that, "The Hygan brand is the Opponent's core trading identity and is applied across all of the Opponent's product range" and, indeed, all the products shown are also labelled with the Hygan mark. I am satisfied that these names are sub-brands of the opponent's mark, and that, as per the *Colloseum* case,³ the presence of these words does not alter the perception that Hygan is the origin of the products at issue.
44. The invoices that are offered in evidence show the mark in black and white or white on red with the words "ENJOY VALUE, Since 1963", or "unyrain HEAVY PROFESSIONAL", or "innovative cleaning products". These additional elements do not alter the distinctive character of the mark.
45. All of the above instances of the mark constitute acceptable variant use.

Sufficient use

46. The revenue accrued from sales in the EU (which I can take into account up to IP Completion Day) is considerable and consistent.

² Paragraph 5 of the judgment of the Court of Appeal in *Specsavers* [2014] EWCA Civ 1294 and *J.W. Spear & Sons Ltd v Zynga, Inc.* [2015] EWCA Civ 290, at paragraph 47

³ *Colloseum Holdings AG v Levi Strauss & Co.*, Case C-12/12

47. There is also corroborating evidence in respect of website screenshots and invoices, albeit there is only one admissible invoice recording the dispatch of goods outside of Italy. In that regard, I note that the General Court restated its interpretation of *Leno Marken* in Case T-398/13, *TVR Automotive Ltd v OHIM* (see paragraph 57 of the judgment). This case concerned national (rather than local) use of what was then known as a Community trade mark (now a European Union trade mark). Consequently, in trade mark opposition and cancellation proceedings the registrar continues to entertain the possibility that use of an EUTM in an area of the Union corresponding to the territory of one Member State may be sufficient to constitute genuine use of an EUTM.

48. I also note that some of the products featured in the invoices also appear in the post-relevant-period screenshots offered in evidence and corroborate Mr Gummerer's statement that these screenshots are representative of the range of products sold during the relevant period.

49. Looking at the evidence in the round having considered all the relevant factors, there has been real commercial exploitation of the mark on the market in accordance with the commercial *raison d'être* of the mark. This has created an outlet for the goods that bear the mark which take the form of various household cleaning preparations and articles. I therefore consider there to be proof of genuine use of the mark in the relevant period. What I must now do is consider what constitutes a fair specification in the context of the opponent's registered terms and the evidence of genuine use supplied.

Fair specification

50. In *Euro Gida Sanayi Ve Ticaret Limited v Gima (UK) Limited*, BL O/345/10, Mr Geoffrey Hobbs Q.C. as the Appointed Person summed up the law as being:

“In the present state of the law, fair protection is to be achieved by identifying and defining not the particular examples of goods or services for which there has been genuine use but the particular categories of goods or

services they should realistically be taken to exemplify. For that purpose the terminology of the resulting specification should accord with the perceptions of the average consumer of the goods or services concerned.”

51. In *Property Renaissance Ltd (t/a Titanic Spa) v Stanley Dock Hotel Ltd (t/a Titanic Hotel Liverpool) & Ors* [2016] EWHC 3103 (Ch), Mr Justice Carr summed up the law relating to partial revocation as follows:

“iii) Where the trade mark proprietor has made genuine use of the mark in respect of some goods or services covered by the general wording of the specification, and not others, it is necessary for the court to arrive at a fair specification in the circumstance, which may require amendment; *Thomas Pink Ltd v Victoria’s Secret UK Ltd* [2014] EWHC 2631 (Ch) (“Thomas Pink”) at [52].

iv) In cases of partial revocation, pursuant to section 46(5) of the Trade Marks Act 1994, the question is how would the average consumer fairly describe the services in relation to which the trade mark has been used; *Thomas Pink* at [53].

v) It is not the task of the court to describe the use made by the trade mark proprietor in the narrowest possible terms unless that is what the average consumer would do. For example, in *Pan World Brands v Tripp Ltd* (Extreme Trade Mark) [2008] RPC 2 it was held that use in relation to holdalls justified a registration for luggage generally; *Thomas Pink* at [53].

vi) A trade mark proprietor should not be allowed to monopolise the use of a trade mark in relation to a general category of goods or services simply because he has used it in relation to a few. Conversely, a proprietor cannot reasonably be expected to use a mark in relation to all possible variations of the particular goods or services covered by the registration. *Maier v Asos Plc* [2015] EWCA Civ 220 (“Asos”) at [56] and [60].

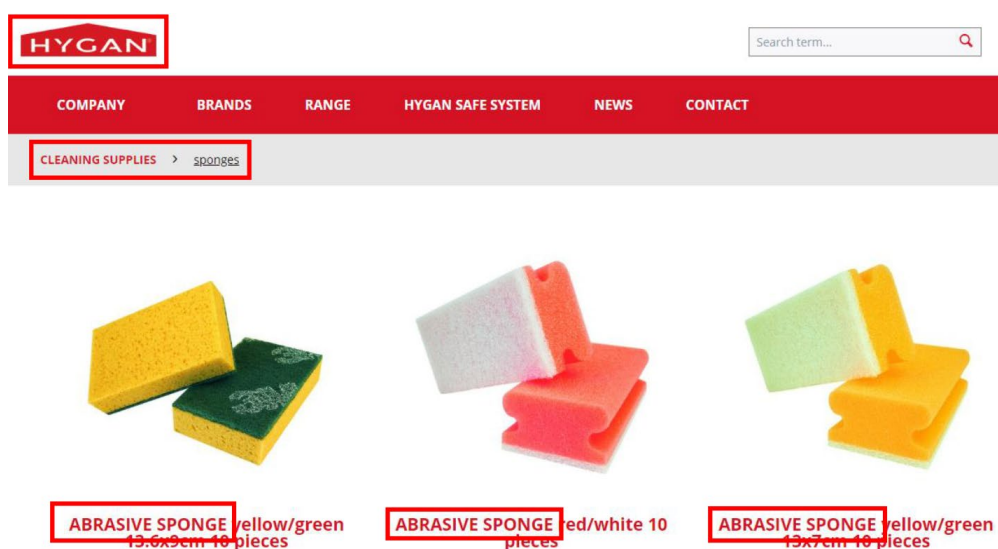
vii) In some cases, it may be possible to identify subcategories of goods or services within a general term which are capable of being viewed independently. In such cases, use in relation to only one subcategory will not constitute use in relation to all other subcategories. On the other hand, protection must not be cut down to those precise goods or services in relation to which the mark has been used. This would be to strip the proprietor of protection for all goods or services which the average consumer would consider to belong to the same group or category as those for which the mark has been used and which are not in substance different from them; *Mundipharma AG v OHIM (Case T-256/04) ECR II-449; EU:T:2007:46.*”

52. There are numerous references in the invoices to laundry products in general, along with 7 specific references to “Bleach for Laundry System” and 3 specific references to “delicate” laundry detergent. There are also screenshots showing a website tab for “laundry detergent” and a bottle of “Concentrated mild detergent for all delicate items of clothing ...”. I am satisfied that the opponent can retain “Bleaching preparations and other substances for laundry use”.
53. With regard to “cleaning, scouring and abrasive preparations”, there are numerous examples in the evidence of household cleaning preparations. While there are no direct references to scouring preparations in the evidence, scouring is a form of household cleaning, and so I see no reason to delete the word “scouring” from the opponent’s term. There are two documented sales of abrasive preparations and, given that the invoices offered in evidence are a sample of total sales set against the turnover figures provided, I consider this sufficient evidence of the opponent retailing abrasive preparations. I modify the opponent’s term to “cleaning, scouring and abrasive preparations for household purposes”.
54. There are numerous references in the evidence to “soaps”.

55. There is insufficient evidence to justify the retention of “preparations for perfuming linen” and “perfumery” at large. While there are a small number of references to the deodorising capability of some of the products sold under the mark, I can find only one reference to a product that can be said to be perfumed, a 6 pack of room fragrance spray, sold on 30 January 2019.

56. In respect of “Household utensils and containers (not of precious metal)”, there is one sale of a “trasch cart” which I take to be a trolley for rubbish, and three sales of laundry carts. However, these do not fall within the natural meaning of household containers.

57. When it comes to be “sponges ...”, there are a number of documented sales of “abrasive sponges” of which there are post-relevant-period photographs:



58. These scourer/sponge combinations, used for washing dishes and so on, are the only types of sponges in evidence, and I consider it fair to limit the opponent to “sponges for household cleaning purposes”

59. In respect of “... brushes”, the only evidence of brushes being sold under the mark are the documented sales of two brooms, together with numerous post-relevant-period photographs of various types of brooms. It would therefore not be fair for the opponent to retain brushes at large, nor can I see an

obvious sub-category of brushes that would fairly reflect the opponent's use of the mark. I limit the specification to "brooms".

60. In considering the opponent's "articles for cleaning purposes", there are a number of documented sales of mops, buckets, and cleaning cloths, such that "articles for household cleaning purposes" would be a fair specification.

61. To sum up, I consider a fair specification for the opponent's mark to be:

Class 3 Bleaching preparations and other substances for laundry use; cleaning, scouring and abrasive preparations for household purposes; soaps.

Class 21 sponges for household cleaning purposes; brooms; articles for household cleaning purposes.

Case law

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

(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 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 the goods and services

63. When making the comparison, all relevant factors relating to the goods and services in the specifications should be taken into account. In *Canon*, Case C-39/97, the Court of Justice of the European Union (“CJEU”) stated that:

“23. 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.”

64. Guidance on this issue has also come from Jacob J. (as he then was) in 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.

65. 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.”

66. In *Sky v Skykick* [2020] EWHC 990 (Ch), Lord Justice Arnold considered the validity of trade marks registered for, amongst many other things, the general term ‘computer software’. In the course of his judgment, he set out the following summary of the correct approach to interpreting broad and/or vague terms:

“...the applicable principles of interpretation are as follows:

(1) General terms are to be interpreted as covering the goods or services clearly covered by the literal meaning of the terms, and not other goods or services.

(2) In the case of services, the terms used should not be interpreted widely, but confined to the core of the possible meanings attributable to the terms.

(3) An unclear or imprecise term should be narrowly interpreted as extending only to such goods or services as it clearly covers.

(4) A term which cannot be interpreted is to be disregarded.”

67. 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 that:

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

68. 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 OHIM*, Case T-325/06, the 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 the responsibility for those goods lies with the same undertaking.”

69. In *Sanco SA v OHIM*, Case T-249/11, the 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. noted, as the Appointed Person, in *Sandra Amalia Mary Elliot v LRC Holdings Limited*, BL-0-255-13:

“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.”

While 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.”

70. The goods and services at issue are below.

Opponent’s goods	Applicant’s goods and services
	<u>Class 1</u> Mould release agents; additives for clay; adhesives; adhesives for ceramics; adhesives for glazing; white spirit.
<u>Class 3</u> Bleaching preparations and other substances for laundry use; cleaning, scouring and abrasive preparations for household purposes; soaps.	<u>Class 3</u> Abrasive sanding sponges; sponges impregnated with soap; deglazing materials; deglazing belts; deglazing mats; polishing preparations; polishing

	papers; grinding preparations; abrasives; cleaning preparations; scouring preparations; abrasive preparations; turpentine; abrasive sheets.
	<u>Class 16</u> Sponges for paint application; modelling tools; transfers; decals; pencils; printed matter; stationery.
<u>Class 21</u> Sponges for household cleaning purposes; brooms; articles for household cleaning purposes.	<u>Class 21</u> Sponges; sponges for household purposes; cosmetic sponges; squeegee sponges; kitchen sponges; bath sponges; baby sponges; car care sponges; detailing sponges; sponges for machines; natural sponges; synthetic sponges; abrasive pads; scouring sponges; abrasive sponges; polishing cloths; machine sponges.
	<u>Class 37</u> Vehicle detailing services; valet services; car washing.

Class 1

71. In respect of "Mould release agents", the Collins online dictionary defines "release agent" as:

"chemistry

a substance applied to a surface to stop things sticking to it, used commercially in food packaging, concrete construction, and the moulding of plastics.”⁴

72. Therefore, I take mould release agents to be substances that ensure that items being moulded do not stick to their moulds. On that basis, the applicant’s goods are highly specialised by comparison with the opponent’s Class 3 “cleaning, scouring and abrasive preparations for household purposes”. They differ in purpose and method of use. They would be obtained through separate trade channels. They are neither complementary, nor are they in competition. The respective goods are dissimilar. I make the same finding for “additives for clay”, “adhesives”, “adhesives for ceramics” and “adhesives for glazing” as specialist goods that differ in purpose, method of use, and trade channels and which are neither complementary, nor in competition.

73. I compare “white spirit”, whose uses in this class include industrial cleaning, with the opponent’s Class 3 “cleaning ... preparations for household purposes”. While both have cleaning properties, white spirit is more corrosive than a typical household cleaning preparation, and the goods’ purposes and methods of use differ as between industrial and household use. Their users and trade channels are also separate. The goods are not complementary, nor are they in competition. They are dissimilar.

74. In all of the above cases, I can see no other point of similarity which would put the opponent in a stronger position.

Class 3

75. “Abrasives” and “abrasive preparations” are *Meric* identical to the opponent’s “... abrasive preparations for household purposes” in that the goods

⁴ www.collinsdictionary.com/dictionary/english/release-agent

designated by the earlier mark are included in the more general categories designated by the trade mark application.

76. “Cleaning preparations” are *Meric* identical to the opponent’s “cleaning ... preparations for household purposes” in that the goods designated by the earlier mark are included in a more general category designated by the trade mark application.

77. “Scouring preparations” are *Meric* identical to the opponent’s “... scouring ... preparations for household purposes” in that the goods designated by the earlier mark are included in a more general category designated by the trade mark application.

78. “Sponges impregnated with soap” are *Meric* identical to the opponent’s “sponges for household cleaning purposes” in that the goods designated by the trade mark application are included in a more general category designated by the earlier mark.

79. I compare “polishing preparations” with the opponent’s “cleaning ... preparations for household purposes”. “Polish” is defined by the Collins online dictionary as: “a substance that you put on the surface of an object in order to clean it, protect it, and make it shine.”⁵ Both are preparations and both share the purpose of cleaning, albeit polish also protects and shines. They share the same method of use. They would be shelved alongside each other in supermarkets. They are not complementary but are in competition as between cleaning preparations that remove dirt, and polishes that remove dirt, protect and shine. These goods are highly similar.

80. I compare “polishing papers” with the opponent’s “cleaning ... preparations for household purposes”. The former are physical items, whereas the latter are liquids, powders, or creams. Their methods of use differ to that extent. Both share the purpose of cleaning, albeit polishing also protects and shines. They

⁵ www.collinsdictionary.com/dictionary/english/polish

would be shelved alongside each other in supermarkets. They are not complementary but are in competition as between cleaning preparations that remove dirt, and polishes that remove dirt, protect and shine. These goods are of medium similarity.

81. I compare “abrasive sanding sponges”, “deglazing materials”, “deglazing belts”, “deglazing mats” and “abrasive sheets” with the opponent’s “... abrasive preparations for household purposes”. All are abrasive in nature, albeit the applicant’s goods are physical items, whereas the opponent’s goods could be liquids, powders, or creams, and they differ to that extent in method of use. They share the same broad purpose in that they seek to remove layers from a particular item and/or make it smooth. The respective goods will be sold through the same trade channels. They are not complementary but may be in competition as between abrasive materials and abrasive preparations. I find the respective goods to be of medium similarity.

82. I compare “grinding preparations” with the opponent’s “... abrasive preparations for household purposes”. However, the former goods are not abrasive in themselves. Rather, they are used as part of the grinding process. They share a broad purpose, to be used in a grinding/abrading process. They differ in method of use to the extent that grinding preparations would be used in conjunction with grinding machinery, whereas abrasive preparations would be applied directly. Both sets of goods would be sold through the same trade channels, but they are not complementary, nor are they in direct competition. I find the respective goods to be of medium similarity.

83. I compare “turpentine” with the opponent’s “cleaning ... preparations for household purposes”. Both have cleaning properties, in that turpentine can be used for cleaning paint brushes, but it can also be used for thinning paint. It is also more corrosive than a typical household cleaning preparation and would generally be found in a DIY store, whereas household cleaning preparations would generally be found in a supermarket. These goods are neither complementary, nor are they in competition. They are dissimilar.

Class 16

84. I compare “sponges for paint application” with the opponent’s Class 21 “sponges for household cleaning purposes”. Both are sponges and both are hand held, but they differ in purpose. They can both be found in DIY stores but shelved separately. They are neither complementary, nor are they in competition. I find the respective goods to be of medium similarity.

85. I cannot see any meaningful points of similarity between “modelling tools”, “transfers”, “decals”, “pencils”, “printed matter” and “stationery” and the opponent’s goods. They are dissimilar.

Class 21

86. “Sponges” are *Merix* identical to the opponent’s “sponges for household cleaning purposes” in that the goods designated by the earlier mark are included in a more general category designated by the trade mark application.

87. “Sponges for household purposes” are *Merix* identical to the opponent’s “sponges for household cleaning purposes” in that the goods designated by the earlier mark are included in a more general category designated by the trade mark application.

88. “Squeegee sponges”, “kitchen sponges” and “scouring sponges” are *Merix* identical to the opponent’s “sponges for household cleaning purposes” in that the goods designated by the trade mark application are included in a more general category designated by the earlier mark.

89. “Synthetic sponges” are *Merix* identical to the opponent’s “sponges for household cleaning purposes” in that the goods designated by the earlier mark are included in a more general category designated by the trade mark application.

90. I compare “car care sponges” and “detailing sponges”, which are used for cleaning cars, with the opponent’s “sponges for household cleaning purposes”. All are sponges and all are hand held. A typical sponge can be used for both household cleaning and cleaning a car and so would be found in the same retailers. The goods are highly similar.
91. I compare “polishing cloths” with the opponent’s “articles for household cleaning purposes”. Both are hand held and both share the purpose of cleaning, albeit polishing also protects and shines. They would be shelved together in supermarkets. They are not complementary but are in competition as between articles that are used with to remove dirt and articles that are used to remove dirt, but also to protect and shine. These goods are highly similar.
92. I compare “cosmetic sponges” with the opponent’s “sponges for household cleaning purposes”. Both are sponges and both are hand held, but they differ in purpose. They can both be found in supermarkets but shelved separately. They are neither complementary, nor are they in competition. I find the respective goods to be of medium similarity.
93. I compare “bath sponges”, “baby sponges” and “natural sponges” with the opponent’s “sponges for household cleaning purposes”. All are sponges and all are hand held, but they differ in purpose. They can both be found in supermarkets but shelved separately. They are neither complementary, nor are they in competition. I find the respective goods to be of medium similarity.
94. I compare “sponges for machines” and “machine sponges” (which I take to be sponges that are used on cleaning machines) with the opponent’s “sponges for household cleaning purposes”. All are sponges and all are used for cleaning purposes, albeit the former may also be used for cleaning commercial premises. They differ in method of use. Both would be sold through outlets that sell cleaning supplies. They are not complementary but could be in competition as between cleaning by hand and cleaning using a machine. I find the respective goods to be of medium similarity.

95. I compare “abrasive sponges” and “abrasive pads” with the opponent’s Class 3 “... abrasive preparations for household purposes”. All are abrasive in nature, albeit the applicant’s goods are physical items, whereas the opponent’s goods are liquids, powders, or creams, and they differ to that extent in method of use. They share the same broad purpose in that they seek to remove layers from a particular item and/or make it smooth. The respective goods will be sold through the same trade channels. They are not complementary but may be in competition as between abrasive materials and abrasive liquids. I find the respective goods to be of medium similarity.

Class 37

96. I compare “Vehicle detailing services”, “valet services” and “car washing” with the opponent’s Class 3 “household cleaning ... preparations”. The respective services and goods differ in nature, purpose and method of use. The services are intended to save the average consumer the work of cleaning their car whereas the goods are used by the average consumer for household cleaning. The trade channels differ in that car cleaning services do not act as outlets for household cleaning preparations. The services and the goods are not complementary. Customers would not think that the responsibility for car cleaning services and household cleaning goods would lie with the same undertaking. The services and the goods are not in competition. They are dissimilar.

97. In respect of the above services, I find that no other of the opponent’s goods put it in a stronger position.

98. As some degree of similarity is required for there to be a likelihood of confusion⁶, the opposition must fail in respect of the following goods:

⁶ *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA

- Class 1 Mould release agents; additives for clay; adhesives; adhesives for ceramics; adhesives for glazing; white spirit.
- Class 3 Turpentine.
- Class 16 Modelling tools; transfers; decals; pencils; printed matter; stationery.
- Class 37 Vehicle detailing services; valet services; car washing.

The average consumer and the nature of the purchasing act

99. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties' services. I must then determine the manner in which the 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.”

100. For the contested goods (cleaning, scouring, abrasive, and grinding preparations and articles, and sponges of various kinds), they would typically be purchased by members of the public intent on doing some cleaning of some kind, some painting and decorating, or another form of DIY. The purchase of such goods would not require a great deal of attention and the

costs involved would be generally modest. Overall, while they would be more than an impulse buy, I consider that the level of attention paid during the purchasing process would be low.

101. Buying the contested goods would be primarily a visual process in that the goods in question could normally be selected from the shelves without the need for verbal enquiries. I do not, however, entirely rule out verbal considerations.




Comparison of the trade marks

102. 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.”

103. 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.

104. The respective marks are shown below.

Opponent's trade mark	Applicant's trade marks
	
	

105. The opponent's mark is a figurative mark which consists of the word "HYGAN" in white block capitals inside a dark grey pentagon. The word is the dominant element of the mark, with the geometric shape it inhabits playing a minor role in forming the overall impression.

106. The applicant's word mark is the word "HYGAN" which is the only thing that contributes to the overall impression.

107. The applicant's figurative mark is the word "hygan" in freehand-style lower case dark blue, below which are some wavy lines in green, dark blue, and light blue. The word "hygan" is the dominant of the two elements, although the wavy lines make a contribution to the overall impression.

108. Visually, both the opponent's mark and the applicant's word mark share the word "HYGAN" in block capitals. By comparison with the applicant's plain word mark, the opponent's mark inhabits a geometric shape that makes a minor visual contribution, such that I consider the respective marks to be visually highly similar.

109. The opponent's mark and the applicant's figurative mark share the same word albeit they are respectively block capitals versus freehand-style lower case. The word in the opponent's mark is inside a geometric shape,

while the word in the applicant's figurative mark has wavy lines underneath it. The respective marks are of medium visual similarity.

110. Aurally, the opponent's mark and the applicant's marks are identical.

111. The opponent's mark and the applicant's word mark word share the word "HYGAN" which would be seen as an invented word not giving rise to a particular concept. Neither does the geometric shape in the opponent's mark bring a particular idea to mind. These marks are conceptually neutral.

112. The opponent's mark and the applicant's figurative mark share the same conceptually neutral word. The wavy lines in the applicant's figurative mark, being in blue and green, are very mildly allusive of the sea. Technically, this means that the marks are conceptually dissimilar overall.

Distinctive character of the earlier mark

113. 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).”

114. 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 or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities.

115. The word “HYGAN” is an invented word. The word, together with the geometric shape it inhabits, is not suggestive of the opponent’s goods. The mark is inherently distinctive to a high degree.

116. The opponent has not pleaded that the distinctive character of its mark has been enhanced through use and I have already found that it is inherently distinctive to a high degree. However, as it has filed evidence of use, I will make a finding for completeness. The relevant market for assessing enhanced distinctiveness is the UK market. All the evidence under consideration relates to use in the EU, with no UK-specific use being documented, and therefore there is no evidence that the inherent distinctiveness of the mark has been enhanced through use.

Likelihood of confusion

117. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods and 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 goods or services and 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 goods and services and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that they have retained in their mind.

118. Earlier in this decision, I found the respective goods to be identical, highly similar, or of medium similarity, except where I found them to be dissimilar.

119. I have found the earlier mark to be of high inherent distinctiveness.

120. The average consumer of the goods at issue would be a member of the public paying a low level of attention during the purchasing process. Visual considerations would predominate, but verbal factors are not entirely ruled out.

121. The opponent's mark and the applicant's word mark share the identical highly distinctive word "HYGAN", and they are highly similar visually. The geometric shape that the word in the opponent's mark inhabits is unremarkable. As such, one mark could easily be mis-recalled for the other. For those goods where I have found similarity, the level of similarity ranges from medium to identical, and the level of attention paid during the purchase of such goods would be low. Consequently, in these cases, and based on the principle of imperfect recollection, there is a likelihood of direct confusion. Should the average consumer notice the differences between the opponent's mark and the applicant's word mark, they would consider them as brand variations. They would see an economic connection between the two marks,

viewing the opponent's mark as a stylised rendering of the plain word "HYGAN" and indicative of goods sold by the same undertaking and so there would be a likelihood of indirect confusion.

122. The opponent's mark and the applicant's figurative mark share the identical highly distinctive word "HYGAN" in block capitals and freehand-style lower case respectively. While the marks differ to some extent, it is the shared word itself that dominates the marks' overall impressions. The word inhabits an unremarkable geometric shape or is situated above some wavy lines that are very mildly allusive of the sea. The level of attention paid during the purchasing process of the goods for which I have found similarity is low and it is therefore perfectly possible that the average consumer could mis-recall the geometric shape or the wavy lines as belonging to the other party's mark. On that basis, there would be a likelihood of direct confusion. However, were the average consumer to notice the differences between the marks, they would see them as brand variations which spring from the identical word "HYGAN". They would therefore see an economic connection between the two marks indicative of goods sold by the same undertaking and there would be a likelihood of indirect confusion.

CONCLUSION

123. Subject to appeal, the opposition succeeds in both the lead case, no. OP000431539, and the second case, no. OP000431542, for the following of the applicant's contested goods:

Class 3 Abrasive sanding sponges; sponges impregnated with soap; deglazing materials; deglazing belts; deglazing mats; polishing preparations; polishing papers; grinding preparations; abrasives; cleaning preparations; scouring preparations; abrasive preparations; abrasive sheets.

Class 16 Sponges for paint application.

Class 21 Sponges; sponges for household purposes; cosmetic sponges; squeegee sponges; kitchen sponges; bath sponges; baby sponges; car care sponges; detailing sponges; sponges for machines; natural sponges; synthetic sponges; abrasive pads; scouring sponges; abrasive sponges; polishing cloths; machine sponges.

124. The applications proceed to registration for the following of the applicant's contested goods and services:

Class 1 Mould release agents; additives for clay; adhesives; adhesives for ceramics; adhesives for glazing; white spirit.

Class 3 Turpentine.

Class 16 Modelling tools; transfers; decals; pencils; printed matter; stationery.

Class 37 Vehicle detailing services; valet services; car washing.

125. The applications proceed for the applicant's uncontested Class 7, Class 8, and Class 25 goods.

COSTS

126. In terms of the goods and services, the parties have had a roughly equal level of success and so they will each bear their own costs.

Dated this 25th day of August 2023

JOHN WILLIAMS
For the Registrar