

O/0846/23

TRADE MARKS ACT 1994

IN THE MATTER OF INTERNATIONAL REGISTRATION

NO. WO0000001678241

IN THE NAME OF MACS HOLDING GMBH

FOR THE FOLLOWING MARK:

**Alfa**

AS A TRADE MARK IN CLASSES 1, 2, 3, 4, 5, 6, 7, 8, 9, 10,  
11, 12, 16, 17, 18, 19, 20, 21, 22, 24, 25, 27, 35, 37 & 39

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. OP600002664 BY

ALFAGRES S.A.

## BACKGROUND AND PLEADINGS

1. MACS HOLDING GmbH (“the applicant”) is the holder of the International Registration shown on the cover page of this decision (“the IR”). The IR was registered on 22 December 2021 and, with effect from the same date, the applicant designated the UK as a territory in which it seeks to protect the IR under the terms of the Protocol of the Madrid Agreement. The IR is derived from the applicant’s German trade mark, being that numbered 30 2021 111 525, and enjoys a priority date of 1 July 2021. The IR was accepted and published in the Trade Marks Journal for opposition purposes on 25 November 2022 in respect of the goods and services shown in the **Annex** of this decision.
2. On 13 December 2022, the IR was partially opposed under the fast track procedure by ALFAGRES S.A. (“the opponent”). The opposition is based on section 5(2)(b) of the Trade Marks Act 1994 (“the Act”) and is aimed only at some goods, being the following:

Class 19: Bituminous products for building; roofing membranes; roofing fabrics; roofing underlayment; expanded plastics being building materials of plastics for use in construction; reinforcing materials, not of metal, for building; bitumen; bitumen based compositions for building purposes; bitumen substances for coatings; bituminous grouts for roofs; bituminous coverings for use in building construction; bitumen-based sealants for roofing; bituminous products in sheet form for waterproofing roof surfaces; bituminous products in the form of membranes for damp-proofing; fabrics for use in construction, not for insulation and sealing purposes; non-woven fabrics for use in construction, not for insulation and sealing purposes; expansion joint profiles, not of metal; mortar; mortar mix; coatings [building materials]; mouldings, not of metal, for building; spackling compound; asphalt patching compound; walls and doors, not of metal, for protection against dust; wood veneers; timber laminates; drainage pipes, not of metal; mortar for building; tree guards (non-

metallic -) [structures]; non-metallic supporting constructions for terraces; drainage channels, not of metal; lawn grid plates, not of metal; valves, not of metal or plastic, for water pipes; expansion joints of non-metallic materials for construction; rigid pipes of plastic for building.

Class 27: Wallpaper; wall and ceiling coverings.<sup>1</sup>

3. In bringing the present opposition, the opponent relies on the following trade mark:



UK registration no. 3174592

Filing date 14 July 2016; registration date 8 September 2017

Relying on some goods, namely:

Class 19: Non-metallic doors for construction purposes; non-metallic frames for construction purposes; wood; asphalt; tiles; non-metallic tiles for interior and exterior decoration purposes only; transportable rooms (Non-metallic -) incorporating showers and/or baths; ceramic articles and ceramic raw materials for construction purposes; ceramic paving and surfacing for interior and exterior decoration purposes only; non-metallic transportable constructions; counter frames, shutters; building cardboard; glass for building; window panes; pipes of ceramic; clay tiles for construction purposes; non-metallic strips; slate slabs; wood; prepared wood; laminated wood; panels for use in construction; flooring (parquet); exterior blinds; artificial stone not made of limestone for interior and exterior decoration purposes only; non-metallic soil bricks; non-metal rigid pipes; parquet flooring made of cork.

---

<sup>1</sup> The class 27 goods set out in the opponent's notice of opposition are listed as including "floor coverings and artificial ground coverings". As confirmed in the Tribunal's letter dated 14 February 2023, notification was received from WIPO that these goods were to be limited, thereby removing them the opposition.

Class 27: Wall coverings made of cork; floor coverings; artificial lawn; vinyl wallpaper and coverings; wallpaper.

("the opponent's mark")

4. The opponent's case is that due to the high degree of similarity between the marks as well as the identity and high similarity of the goods at issue, there is a risk of confusion which will ultimately cause a market share loss to the opponent's business. Further, the opponent argues that there is a high degree of indirect confusion on the basis that consumers would consider that the marks at issue are from connected undertakings, endorsed businesses or the IR is a restyling of the opponent's mark.
5. The applicant has filed a counterstatement wherein it responded to the specific claims made in the opponent's notice of opposition. While I note that some admissions were made (which I will address at the relevant points of my decision), the applicant, for the most part, denied the claims brought against it.
6. 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.”
7. The net effect of these changes is to require the parties to seek leave in order to file evidence in fast track oppositions. No leave was sought in respect of these proceedings.
8. The applicant is represented by J A Kemp LLP and the opponent is represented by Grant IP. 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. A hearing was neither requested nor considered necessary and I note that neither party filed written submissions in lieu. This decision is taken following a careful perusal of the papers.

9. 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. This is why this decision continues to make reference to the trade mark case-law of EU courts.

## **DECISION**

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

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

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

(a) ...

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

there exists a likelihood of confusion on the part of the public, which includes the likelihood or association with the earlier trade mark.”

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

“Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only.”

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

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

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

13. The opponent’s mark qualifies as an earlier trade mark under the above provisions. As the opponent’s mark had not completed its registration process more than five years before the designation date of the IR, it is not subject to proof of use pursuant to section 6A of the Act. Consequently, the opponent can rely upon all of the goods for which its mark is registered.

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

- (a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;
- (b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

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

## Comparison of goods

15. The competing goods are as follows:

The opponent's goods	The applicant's goods
<p><u>Class 19</u></p> <p>Non-metallic doors for construction purposes; non-metallic frames for construction purposes; wood; asphalt; tiles; non-metallic tiles for interior and exterior decoration purposes only; transportable rooms (Non-metallic -) incorporating showers and/or baths; ceramic articles and ceramic raw materials for construction purposes; ceramic paving and surfacing for interior and exterior decoration purposes only; non-metallic transportable constructions; counter frames, shutters; building cardboard; glass for building; window panes; pipes of ceramic; clay tiles for construction purposes; non-metallic strips; slate slabs; wood; prepared wood; laminated wood; panels for use in construction; flooring (parquet); exterior blinds; artificial stone not made of limestone for interior and exterior decoration purposes only; non-metallic soil bricks; non-metal rigid pipes; parquet flooring made of cork.</p>	<p><u>Class 19</u></p> <p>Bituminous products for building; roofing membranes; roofing fabrics; roofing underlayment; expanded plastics being building materials of plastics for use in construction; reinforcing materials, not of metal, for building; bitumen; bitumen based compositions for building purposes; bitumen substances for coatings; bituminous grouts for roofs; bituminous coverings for use in building construction; bitumen- based sealants for roofing; bituminous products in sheet form for waterproofing roof surfaces; bituminous products in the form of membranes for damp-proofing; fabrics for use in construction, not for insulation and sealing purposes; non-woven fabrics for use in construction, not for insulation and sealing purposes; expansion joint profiles, not of metal; mortar; mortar mix; coatings [building materials]; mouldings, not of metal, for building; spackling compound; asphalt patching compound; walls and doors, not of metal, for protection against dust; wood veneers; timber laminates;</p>

<p><u>Class 27</u> Wall coverings made of cork; floor coverings; artificial lawn; vinyl wallpaper and coverings; wallpaper.</p>	<p>drainage pipes, not of metal; mortar for building; tree guards (non-metallic -) [structures]; non-metallic supporting constructions for terraces; drainage channels, not of metal; lawn grid plates, not of metal; valves, not of metal or plastic, for water pipes; expansion joints of non-metallic materials for construction; rigid pipes of plastic for building.</p> <p><u>Class 27</u> Wallpaper; wall and ceiling coverings.</p>
---	---

16. When making the comparison, all relevant factors relating to the goods and services in the specifications should be taken into account. In the judgment of the Court of Justice of the European Union (“CJEU”) in *Canon*, Case C-39/97, the court stated at paragraph 23 that:

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

17. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, for assessing similarity were:

- (a) The respective uses of the respective goods or services;
- (b) The respective users of the respective goods or services;
- (c) The physical nature of the goods or acts of service;

- (d) The respective trade channels through which the goods or services reach the market;
- (e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be, found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;
- (f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

18. The General Court confirmed in *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T-133/05, that, even if goods are not worded identically, they can still be considered identical if the goods specified in the contested trade mark application are included in a more general category covered by a term under the earlier mark (or vice versa).

19. I have comments from both parties in respect of the goods comparison. In short, the opponent's notice of opposition sets out that most of the goods in class 19 are identical, either self evidently or in line with the principle outlined in *Merica*. As for the remaining class 19 goods that are not similar, they are highly identical. As for the class 27 goods, the opponent argues that these are identical. As mentioned above, the applicant has responded to these claims and, for the most part, has denied the same. While I will not address these here, I will refer to them where necessary below.

#### Class 19

*Drainage pipes, not of metal; rigid pipes of plastic for building.*

20. The above goods are all types of non-metal pipes. They can, therefore, be said to fall within the opponent's broader term, being "non-metal rigid pipes". As such, these goods are identical under the principle outlined in *Merica*.

*Asphalt patching compound.*

21. As far as I understand it, the above goods are a type of asphalt. While this term covers patching compounds, it is still an asphalt good and, therefore, can be said to fall within the broader term of “asphalt” in the opponent’s specification. Following the principle outlined in *Meric*, I find that these goods are identical.

*Doors, not of metal, for protection against dust.*

22. The above goods are, in my view, identical with the term “non-metallic doors for construction purposes” in the opponent’s specification. This is on the basis that the opponent’s goods are used during construction and can, therefore, be said to cover doors that have the same purpose as the applicant’s door, i.e. a door temporarily placed to protect one area from the dust created as a result of ongoing construction of an adjoining area. Therefore, I consider that the applicant’s goods fall within the opponent’s meaning that these goods are identical under the principle outlined in *Meric*.

*Walls [...], not of metal, for protection against dust.*

23. I am of the view that these goods are similar to “non-metallic doors for construction purposes” in the opponent’s specification. While they are not the same (as one covers doors and the other covers walls), I find that, following the same reasoning set out in the preceding paragraph, they can be used for the same purposes. Further, the goods are likely to overlap somewhat in nature and methods of use. I also consider that they will overlap in user and trade channels. Taking all of this into account, I am of the view that these goods are similar to a high degree.

*Bituminous products for building; bitumen; bitumen based compositions for building purposes; bitumen substances for coatings; bituminous grouts for roofs; bituminous coverings for use in building construction; bitumen-based sealants for roofing; bituminous products in sheet form for waterproofing roof surfaces; bituminous products in the form of membranes for damp-proofing.*

24. In relation to the above goods (that I will refer to as ‘the bitumen goods’), the opponent’s position is that they are identical to “asphalt”, which appears in the opponent’s specification. This is on the basis that asphalt is defined as a mixture of dark bituminous pitch with sand or gravel, used for surfacing road. In direct response to this claim, the applicant sets out that bitumen and asphalt are not identical as asphalt is a black substance mixed with stones or sand that forms a hard surface that is commonly used in road surfaces. On the other hand, bitumen is a black substances akin to tar. On this point, the applicant does admit that bitumen is complementary to the asphalt.

25. While the above comments are noted, it is my understanding of ‘bitumen’ that it is a term that is used interchangeably to describe ‘asphalt’. As a result, I find that the bitumen goods of the applicant fall within the broader category of the opponent’s goods. Therefore, these goods are identical under the principle outlined in *Meric*. However, in the event that I am wrong to make such a finding, I note the applicant’s concession that the goods are complementary. Given that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods,<sup>2</sup> I am of the view that there is at least a low degree of similarity between the goods.<sup>3</sup>

*Mortar; mortar mix; mortar for building.*

26. The opponent’s position is that mortar is a mixture of asphalt for construction purposes and that it is defined as a mixture of cement or lime (or both) with sand and water. While no evidence is filed in support of such a claim, it is clear to me that these goods are not identical simply because mortar may contained asphalt in its mix.<sup>4</sup> That being said, I do consider that they are similar. It is my view that the user of these goods are likely to overlap and so too are the trade channels that provide them. In addition, I consider that there is some degree of general overlap

---

<sup>2</sup> *Kurt Hesse v OHIM*, Case C-50/15 P

<sup>3</sup> I say this because I have no submissions or evidence in respect of nature, methods of use, user or trade channels so if it can be said that these factors also overlap, the level of similarity may be at a level higher than low.

<sup>4</sup> See the case *Les Éditions Albert René v OHIM*, Case T-336/03, which set out that one good being a part or component of another is sufficient, in itself, to give rise to a level of similarity between them.

in their nature as they are both, as far as I understand it, wet mix substances that are used in construction that, once dried, turn into solid substances. As for the methods of use and purpose, it is my understanding that they differ (mortar is used in bricklaying whereas asphalt is used in road paving, for example). However, taking into account the overlap in nature (albeit general), user and trade channels into account, I am of the view that they are similar to between a low and medium degree.

*Expanded plastics being building materials of plastics for use in construction; fabrics for use in construction, not for insulation and sealing purposes; non-woven fabrics for use in construction, not for insulation and sealing purposes; non-metallic supporting constructions for terraces; expansion joints of non-metallic materials for construction; non-metallic supporting constructions for terraces; reinforcing materials, not of metal, for building; expansion joint profiles, not of metal; coatings [building materials]; mouldings, not of metal, for building; spackling compound; drainage channels, not of metal; valves, not of metal or plastic, for water pipes.*

27. The above goods of the applicant are all, put simply, goods that are used in construction/building. I also note that the opponent's specification consists of a range of goods that may also be used in construction/building. These include the following:

“Non-metallic doors for construction purposes; non-metallic frames for construction purposes; wood; ceramic articles and ceramic raw materials for construction purposes; panels for use in construction; flooring (parquet); non-metallic soil bricks; non-metallic strips; slate slabs; prepared wood; laminated wood; panels for use in construction.”

28. In considering all of the goods listed above, I appreciate that they may all have different natures and methods of use. However, I am of the view that they can all be said to share an overlap in user and trade channels. This is on the basis that the user of all of the above goods is likely to be members of the trade engaged in construction work. Further, the goods are also likely to be produced by the same undertakings and will commonly be available via the same distributors. Lastly, I

consider that there may be some overlap in purpose (albeit to a general degree) as all of these goods will be used for the purposes of construction and/or building. Overall, I consider that these goods are similar to between a low and medium degree.

*Wood veneers; timber laminates;*

29. The above goods are, as far as I understand them, types of flooring or wall coverings that are presented to imitate real wood. I am of the view that the term “surfacing for interior [...] decoration purposes only” in the opponent’s specification encompasses both of the applicant’s term. As a result, I find that these goods are identical under the principle outlined in *Meric*.

*Roofing membranes; roofing fabrics; roofing underlayment.*

30. The above goods are, in my view, similar to the term “non-metallic frames for construction purposes” in the opponent’s specification. This is on the basis that the opponent’s term is not limited so may, therefore, cover wooden frames for roofs. Therefore, I find that these goods not only overlap in user and trade channels, but are also complementary on the basis that the use of a wooden roof frame is, as far as I understand it, important and/or indispensable to the above goods. Further, the average consumer is likely to believe that only one undertaking is responsible for both parties’ goods.<sup>5</sup> As a result, I consider that these goods are similar to a medium degree.

*Lawn grid plates, not of metal.*

31. As far as I understand it, the above term is a covering that is placed on a lawn in order to protect that lawn. For example, the above goods can be placed on a user’s lawn so that they may park a car on the grass without damaging it. I appreciate that the opponent’s class 19 list of goods consists of external floor coverings but these are for decoration purposes so are not, in my view, similar to the above

---

<sup>5</sup> *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06

goods. Having said that, I note that the opponent's class 27 goods consist of "floor coverings" at large. As set out by Section 60A of the Act, goods are not to be considered dissimilar simply because they appear in different classes. I find that to be the case here, particularly given that "floor coverings" has no limitation to prevent it from being used on lawns and for the same purposes. As such, I am of the view that these goods can be said to be identical under the principle outlined in *Meric*. If I am wrong to find identity, then I find that the goods are similar to a high degree on the basis that they share an overlap in nature, method of use, user, purpose and trade channels.

*Tree guards (non-metallic -) [structures];*

32. It is my understanding that the above goods are those structures that are placed around the base or trunk of a newly planted tree in order to protect the tree from damage or certain pests. Having considered the opponent's specification, I do not consider that it consists of any goods that share any obvious degree of similarity with the above goods of the applicant. These goods are, therefore, dissimilar to any of the goods relied upon by the opponent.

Class 27

*Wallpaper; wall [...] coverings.*

33. "Wallpaper" appears in both marks' specifications so these goods are self-evidently identical. As for "wall [...] coverings", this is a term that can be said to encompass wallpaper on the basis that wallpaper is a type of wall covering. As such, these goods are identical under the principle outlined in *Meric*.

*Ceiling coverings.*

34. While the opponent's specification does not consist of a direct counterpart to the above goods of the applicant, it does include "wallpaper". This is, in my view, similar to the above goods to a high degree. I am of the view that these goods overlap to some degree in their natures, methods of use and purposes on the basis that both

goods are coverings that will be applied in the ordinary way for the same purpose (for decoration, for example) with the only difference in these factors coming from the fact that one is for a wall and the other is for a ceiling. Further, the goods overlap in user and trade channels as they will be sought by the same consumer and likely produced by the same undertakings and sold via the same distributors.

35. As some degree of similarity between goods is necessary to engage the test for likelihood of confusion, the opposition aimed against goods that I have found to be dissimilar will fail.<sup>6</sup> The only goods that I have found dissimilar are “tree guards (non-metallic -) [structures]” meaning that the opposition against the same must fail at this stage.

### **The average consumer and the nature of the purchasing act**

36. The case law, as set out earlier, requires that I determine who the average consumer is for the respective parties' goods. I must then decide the manner in which these goods are likely to be selected by the average consumer in the course of trade. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

“60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The words “average” denotes that the person is typical. The term “average” does not denote some form of numerical mean, mode or median.”

37. The opponent's position is that the average consumer base for the goods at issue will be made up of members of the trade (being professional constructors) and members of the general public (those with DIY interests). The applicant did not

---

<sup>6</sup> *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA

make any comment as to the identity of the average consumer save for simply 'not admitting' the opponent's position. This non-admission is noted but I am in agreement with the opponent's position. I find that all of the goods at issue will be sought by members of the trade. However, I appreciate that for a limited set of the goods at issue (such as floor coverings and wallpapers, for example), the average consumer will be a member of the general public with an interest in DIY.

38. Depending on what goods are being selected, they will be available via either specialist retailers or general DIY stores where the goods will be displayed on shelves, in aisles or on lists/in catalogues. I also appreciate that both outlets are also likely to include online sales via their websites. For sales made online, the goods will be selected after the consumer either views an image of the goods on the website or sees them on a list of goods available. In both scenarios, I consider that the visual component will dominate the selection process but, having said that, I do not discount the aural component playing a role by way of advice from sales assistants or word of mouth recommendations.

39. In considering the cost of the goods at issue, I am of the view that this is likely to vary considerably. Some goods (such as wallpaper, for example) are, for the most part, likely to be relatively low in cost. However, other goods used in the construction of buildings may be considerably more expensive. As for the frequency of purchase for the goods at issue, this is also likely to vary considerably. For example, members of the trade are likely to purchase goods on a relatively frequent basis whereas members of the general public are likely to purchase them significantly less frequently and they may even be one off purchases.

40. In terms of level of attention paid, I note that the opponent's position is that this will range from a medium to a high degree. As above, the applicant made no specific comment in relation to the same. In considering the goods at issue, I agree with the opponent that the level of attention will vary. I say this because some goods used in the purchase of construction are likely to have a far more involved selection process that will not only involve the ordinary consideration of factors such as materials used and ease of use, amongst other things, but may also require consideration of safety certifications and general construction regulations, for

example. For such goods, I consider that the level of attention paid will be relatively high (but not the highest). However, for goods such as wallpaper and floor coverings, for example, the average consumer is likely to consider the aforementioned ordinary considerations as well as aesthetics. As such, I consider that when selecting more ordinary DIY goods, the consumers are likely to be pay a medium degree of attention.

### **Distinctive character of the opponent's mark**

41. 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).”

42. 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. The opponent has not pleaded that its mark has obtained an enhanced level of distinctiveness nor has it filed any evidence to that effect. Therefore, I have only the inherent position to consider.

43. The opponent's mark is a figurative mark that consists of a word and a device element. The word element is 'ALFA', presented in a bold standard typeface. Sitting in front of this is a device element which is a light grey square, within which sits a white lowercase presentation of the Greek letter, alpha. It is my view that 'ALFA' will dominate the distinctive character of the mark. 'ALFA' will, in my view, be seen (by at least a significant proportion of average consumers) as a play on the Greek letter 'alpha', particularly given the presence of the same within the device element. 'ALFA' is neither descriptive nor allusive to the goods at issue but, having said that, I do not consider that its use is particularly remarkable given the identifiable connection with the Greek letter, thereby giving it some meaning to the average consumer in the UK. Taking all of this into account, I am of the view that the opponent's mark enjoys an above medium (but not high) degree of distinctive character,

### **Comparison of the marks**

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



45. 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.”

46. 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.

47. The respective trade marks are shown below:

The opponent's mark	The IR
	

48. I have comments in respect of the comparison of the mark from both parties. While I do not intend to reproduce those here, I can confirm that I have taken them into account in making the following comparison.

49. The IR is a figurative word mark that consists solely of the word ‘Alfa’ in a standard black typeface. There are no other elements that contribute to the overall impression of the mark, which lies in the word itself. The opponent’s mark consists of two elements, the first being the word ‘ALFA’ in a bold standard typeface. Before it sits the second element, being a grey square, within which sits a lowercase representation of the Greek letter, alpha. Given that the average consumer is drawn to elements of marks that can be read, I am of the view that ‘ALFA’ dominates the overall impression of the mark with the device element playing a lesser role.

50. Visually, these marks share the presentation of the word ‘ALFA’, albeit presented slightly differently. The main point of difference is the presence of the device element at the beginning of the opponent’s mark which has no counterpart in the

IR. While average consumers generally focus on the beginnings of marks,<sup>7</sup> I remind myself that this is not always decisive.<sup>8</sup> In the present circumstances, I appreciate that the visual differences will contribute to the present comparison, however, I bear in mind that (1) the marks share identical words (albeit presented slightly differently) and (2) those words are either the dominant or sole elements of the marks at issue. Overall, I consider that these marks are visually similar to a high degree.

51. I do not consider that the device element in the IR will be pronounced meaning that both parties' marks will be pronounced as 'AL-FA'. They are plainly aurally identical.

52. Conceptually, I have mentioned above that the opponent's mark will be connected to the Greek letter 'alpha'. This is, in my view, strengthened by the fact that the device element at the beginning of that mark will be understood as a representation of the Greek letter by at least a significant proportion of average consumers. Even though that element is not present in the IR, I am of the view that at least a significant proportion of average consumers would grasp the same concept from that mark too. This is on the basis that the verbalisation of 'ALFA' is identical to the Greek letter. As such, I consider that the marks are conceptually identical.

### **Likelihood of confusion**

53. 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

---

<sup>7</sup> *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

<sup>8</sup> *CureVac GmbH v OHIM*, T-80/08

goods and services and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the earlier mark, the average consumer for the goods and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he/she has retained in his/her mind.

54. I have found that the goods at issue range from being identical to similar to a low degree. I have found the average consumer for the goods to be either members of the trade or members of the general public who will select the goods by primarily visual means, although I do not discount an aural component. I have concluded that, for some of the goods at issue, the average consumer will pay a medium degree of attention during the purchasing process. However, I have also found that, for some other goods, (being some of those goods selected by members of the trade in the course of construction), the average consumer will pay a relatively high (but not the highest) degree of attention. I have found the opponent's mark enjoys a higher than medium (but not high) degree of inherent distinctive character. I have found the marks to be visually similar to a high degree and aurally and conceptually identical.

55. Taking all of these factors into account together with the principle of imperfect recollection, I consider that the average consumer is likely to mistake the parties' marks for one another. This finding is, in my view, supported by the fact that the marks consist of an identical verbal element and while this is presented slightly differently across the marks, it is either the dominant or sole element of the marks and I consider that it is this word that the average consumer will pin their recollection on. Further, while I appreciate the presence of the device element in the opponent's mark (which has no counterpart in the IR), it is my view that this will be overlooked when factoring in imperfect recollection. Even if it is not, the average consumer will be unable to accurately recall or remember which mark consisted of the word 'ALFA' preceded by a device element and which did not, thereby directly confusing them. Consequently, I consider there to be a likelihood of direct confusion between the marks. I am of the view that this finding applies even in circumstances where the marks will be viewed on goods that are only similar to a

low degree. This is on the basis that, as per the interdependency principle, the level of similarity between the marks is sufficient to counteract the low degree of similarity between the goods. Lastly, due to the identical verbal element, I consider that this finding applies even where the average consumer pays a relatively high degree of attention when selecting the goods at issue.

56. I turn now to consider a likelihood of indirect confusion. I am reminded of the case of *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, wherein Mr Iain Purvis Q.C., as the Appointed Person, explained that:

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

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

- (a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right (‘26 RED TESCO’ would no doubt be such a case).

(b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as 'LITE', 'EXPRESS', 'WORLDWIDE', 'MINI' etc.).

(c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension ('FAT FACE' to 'BRAT FACE' for example)".

57. In the event that the average consumer notices the differences between the marks and uses them to accurately recall which mark was which, I am of the view that they will consider them to originate from the same or economically linked undertakings. This is on the basis that the marks are dominated by the shared element of 'ALFA' and the differences in presentation of that word together with the presence of the device element will simply be viewed as logical indications of an alternative mark used by the same undertaking. For example, the average consumer may believe that the opponent's mark is one that is used on the packaging of the goods whereas the IR may simply be seen as the version of that mark that is used in promotional text. Consequently, I consider there to be a likelihood of indirect confusion between the marks. For the same reasons discussed when considering direct confusion above, I consider that this finding applies in circumstances where the marks are viewed on goods that are only similar to a low degree and where the average consumer pays a relatively high degree of attention.

## **CONCLUSION**

58. The opposition has partially succeeded and, subject to any appeal, the application to designate the UK as a territory for protection for the IR is refused for the following goods:

Class 19: Bituminous products for building; roofing membranes; roofing fabrics; roofing underlayment; expanded plastics being building materials of plastics for use in construction; reinforcing materials,

not of metal, for building; bitumen; bitumen based compositions for building purposes; bitumen substances for coatings; bituminous grouts for roofs; bituminous coverings for use in building construction; bitumen-based sealants for roofing; bituminous products in sheet form for waterproofing roof surfaces; bituminous products in the form of membranes for damp-proofing; fabrics for use in construction, not for insulation and sealing purposes; non-woven fabrics for use in construction, not for insulation and sealing purposes; expansion joint profiles, not of metal; mortar; mortar mix; coatings [building materials]; mouldings, not of metal, for building; spackling compound; asphalt patching compound; walls and doors, not of metal, for protection against dust; wood veneers; timber laminates; drainage pipes, not of metal; mortar for building; non-metallic supporting constructions for terraces; drainage channels, not of metal; lawn grid plates, not of metal; valves, not of metal or plastic, for water pipes; expansion joints of non-metallic materials for construction; rigid pipes of plastic for building.

Class 27: Wallpaper; wall and ceiling coverings.

59. As I have set out above, the opposition was not aimed at all goods and services in the IR's specification. Therefore, the unopposed goods, being those in classes 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 16, 17, 18, 20, 21, 22, 24, 25, 35, 37 and 39 (as set out in the **Annex** of this decision) may proceed to be granted protection in the UK. Further, subject to any appeal, the IR may proceed to be granted protection in the UK for those goods against which the opposition has failed, being:

Class 19: Tree guards (non-metallic -) [structures].

## **COSTS**

60. The opponent has clearly enjoyed the greater degree of success by succeeding against all but one of the terms opposed. The opponent is, therefore, entitled to a

contribution towards its costs, based upon the scale published in Tribunal Practice Notice 2/2015 which governs costs in Fast Track proceedings issued after 1 October 2015. I appreciate that it is ordinary for a costs award to be reduced to reflect an applicant's partial success in defending a claim against it. However, the applicant has only defended one term within the IR's specification and this is, in my view, a very limited degree of success. In the circumstances, I do not consider it is necessary to reduce the costs award by any amount in order to reflect this.

61. I hereby award the opponent the sum of **£300** as a contribution towards the costs of proceedings. The sum is calculated as follows:

Filing a notice of opposition and considering the holder's counterstatement:	£200
Official fee:	£100
<b>Total</b>	<b>£300</b>

62. I therefore order MACS HOLDING GmbH to pay ALFAGRES S.A. the sum of £300. This sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

**Dated this 7th day of September 2023**

**A COOPER**  
**For the Registrar**

## ANNEX

### Class 1

Silicones; adhesives for the building industry; adhesives for paperhanging; humus top dressing for lawns and for lawn seeds; fertilizing preparations; lawn fertilizers; grass fertilizers; garden feeds [fertilizers]; protective balm for injuries of trees in the nature of grafting wax for trees; woodworking adhesives for industrial use; water absorbers, namely water- absorbing plastics in the form of granules.

### Class 2

Coatings for use as primers; coatings in the nature of sprays [paints and varnishes]; anti-rust preparations; colorants, paints; lacquers [paints]; ground coatings [paints and varnishes]; oils for the treatment of wood; wood lacquers; oils for the preservation of wood; wood stains; wood mordants; water absorbers, namely water-absorbing coatings made from bitumen [paints].

### Class 3

Cleaning preparations and cleaning preparations with caring properties; abrasive paper; abrasive paste; abrasives; abrasive rolls; abrasive strips; cleaning preparations for cleansing drains.

### Class 4

Lubricants; adhesive lubricating grease; multifunctional lubricants; lubricating agents; lubricants for metal working; lubricating oil; synthetic oils; lubricating grease.

### Class 5

First-aid boxes, filled.

### Class 6

Poles of metal; aluminium foil; reinforcing materials of metal for building; reinforcement rods of metal; cable drums of metal; steps [ladders] of metal; walkways of metal; anchor bolts of metal; threaded bars of metal; mouldings of metal for building; wall plugs of metal; screws of metal; staples for construction use; metal dowels; metal hardware; metal oil cans [empty]; binding screws of metal for cables; collars of metal

for fastening pipes; pipes and tubes of metal; metal landscape edgings; drainage pipes of metal; door scrapers; drainage channels of metal; lawn grid plates; valves for pipes, tubes and hoses, of metal.

### Class 7

Power-operated sprayers; machines for making tools, with the exception of separators, centrifugal machines, decanters (horizontal separators for separating particles in liquids and gases), pumps (machines), heat exchangers (parts of machines); angle grinders [machines]; abrasive grinding wheels [machines]; cutting discs for use as parts of machines; drilling machines; drills [power tools]; screwdrivers, electric; tool bits for machines; agitators for circulating liquid media; hand saws (electrically operated -); blades for electrically operated hand saws; blades for circular saws; chisels, electric; mortising machines; compressors; grinders [machines]; combined skips and mixers for producing concrete; hot melt glue guns; sanding disks for use with machines; sprays [machines]; sprays [parts of machines]; power-operated nailing guns; machines for machining metals; woodworking machines; machine tools for woodworking machines; wood drilling machines; wood milling machines; wood grinding machines; jig saws; planing tools [machines]; flap discs for power-operated grinders; power saws; blades for power saws; screw taps [parts of machines]; metal sawing machines; wire brushes for use in machines; burrs [power tools]; welding machines; air spray guns; screwdrivers, pneumatic; compressed air machines; grease guns operated by compressed air; pneumatic nail guns; oil filters for motors and engines; socket spanners [machines]; crimping tools [machines or parts of machines]; boring tools [machine tools]; tube reamers [tools for machines]; bending machines for tubes; tilers' (tools for -) [machines]; power-operated plumbing snakes; horticultural machines; gardening tools (electric -); angle grinders; valves [parts of machines].

### Class 8

Tool holders; tool belts [holders]; tool pouches for attachment to tool belts; tool bags [filled]; ladles [hand tools]; screwdrivers, non-electric; knives [hand tools]; blades for knives; scissors; saws [hand tools]; blades for hand saws; hammers, mallets and sledgehammers; chalk line reels [hand tools]; chalk line [hand tools]; squares [hand tools]; rubber mallets [hand tools]; chisels [hand tools]; axes; tackers (hand operated -); wire cutters [hand tools]; tongs [hand tools]; pliers; hand-operated sanders;

abrasive wheels for use with hand tools; putty knives; spatulas [hand tools]; hand-operated sprayers; guns [hand tools]; caulking guns [hand tools]; hand-operated tools for metal processing; hand-operated tools for wood processing; wooden hammers; borers; caulking irons [hand tools]; files [tools]; planing tools [hand-operated]; saws, hand-operated; saw blades; clamps [hand tools]; bevels (hand-operated tools); mitre boxes [hand tools]; cutting pliers [lineman's pliers]; pliers for water pumps; taps [hand tools]; metal cutting saws; wire brushes [hand-operated tools]; deburring tools (hand-operated tools); box- end wrenches; open-end spanners and ring spanners; torque wrenches; socket wrenches [hand-operated tools]; tyre removers [hand-operated tools]; socket spanners; sets of socket spanners; crimping tools (hand operated -); precision screwdrivers (non-electric -); VDE screwdrivers; tube cutters [hand tools]; threaders [hand-operated tools]; hand-operated plumbing snakes; garden tools, hand-operated; locking pliers; cable cutters [hand-operated tools]; tool bits for hand-operated tools.

#### Class 9

Electrical power extension cords; shrink sleeves for electric cables; spirit levels; measuring tapes; protractors [measuring instruments]; rules [measuring instruments]; laser measuring systems; laser range finders; laser level measuring apparatus; respiratory protective masks, including those with air filter; gloves for protection against accidents; goggles; protective work clothing [for protection against accident or injury]; high-visibility safety clothing; knee-pads for workers; dust masks; batteries; smoke alarms; angle gauges; slide calipers; torque meters; cable connectors; electrical cabling; usb cables; wire connectors [electricity]; electric cables and wires; diagnostic apparatus for motor vehicles; voltage testers; valves [thermionic]; thermostatically controlled valves; solenoid valves [electromagnetic switches]; none of the aforementioned goods relating to cameras; none of the aforementioned goods being protective footwear against accidents, radiation and fire.

#### Class 10

Ear plugs [hearing protection devices]; hearing protection devices.

#### Class 11

Spotlights; luminaires; heat guns; electric air purifiers; air purifiers; hot air apparatus; sanitary apparatus and installations; stainless steel sanitary ware; waste pipes for sanitary installations; level controlling valves in tanks; valves being parts of heating installations or sanitary installations; irrigation sprinklers; irrigation spray nozzles; watering apparatus [automatic] for garden use; garden lighting; heating installations for open spaces.

#### Class 12

Tool trolleys.

#### Class 16

Adhesive tapes for stationery or household purposes; self-adhesive tapes for stationery or household purposes; plastic sheets for packaging, wrapping and storage purposes; brushes for the application of paints; rulers; pencils; chinks for drawing; highlighter pens; painters' brushes; house painters' rollers; painters' materials included in this class; rubbish bags.

#### Class 17

Gaskets; waterproof packings; expansion joint fillers; non-metal gaskets; seals, sealants and fillers; adhesive tapes, other than for stationery or household purposes; self-adhesive tapes, other than for stationery or household purposes; weatherstripping compositions; insulating foils; insulating membranes for use under the roof; sarking membrane being insulating water proofing membranes; silicone sealants; general purpose silicone rubber sealant; packing material for forming seals; liquid sealing compounds; seals (nonmetallic -) for preventing leakage of fluids; adhesive tapes, strips, bands and films, other than stationery and not for medical or household purposes; rod seals; liquid foils for sealing being insulating water proofing membranes; sealing and insulating materials; foam insulation materials for use in building and construction; foam for use as heat insulation; foam insulation for use in building and construction; laminated vapor barrier; acoustical insulation for buildings; insulating tapes; caulking materials; draught excluder strips; duct tapes; sealants for buildings; joint sealants; joint filling compounds; sealant compounds for joints; rubber sealants for joints; dust proofing sealants; insulators for cables; jackets [insulating] for pipes; flexible pipes of plastic; pipe gaskets; pipe joint tape; pipe insulation; glands for pipes;

plastic plumbing hoses; gaskets made of rubber; hoses adapted for irrigation purposes; sealants for pavement joints; waterproof foils being waterproof sealants; plastic film, other than for wrapping, in particular foils for garden ponds; plastics in the form of foams for insulation and sealing purposes, in particular PU foam; valves of rubber or vulcanized fiber for flexible pipes, tubes or hoses; liquid plastics surface coatings being insulating coatings for protection against moisture; insulating fabrics for use in construction; non-woven insulating fabrics for use in construction; perimeter insulation strips, not of metal.

#### Class 18

Tool pouches, sold empty.

#### Class 19

Bituminous products for building; roofing membranes; roofing fabrics; roofing underlayment; expanded plastics being building materials of plastics for use in construction; reinforcing materials, not of metal, for building; bitumen; bitumen based compositions for building purposes; bitumen substances for coatings; bituminous grouts for roofs; bituminous coverings for use in building construction; bitumen-based sealants for roofing; bituminous products in sheet form for waterproofing roof surfaces; bituminous products in the form of membranes for damp-proofing; fabrics for use in construction, not for insulation and sealing purposes; non-woven fabrics for use in construction, not for insulation and sealing purposes; expansion joint profiles, not of metal; mortar; mortar mix; coatings [building materials]; mouldings, not of metal, for building; spackling compound; asphalt patching compound; walls and doors, not of metal, for protection against dust; plastic landscape edgings; drainage pipes, not of metal; mortar for building; tree guards (non-metallic -) [structures]; non-metallic supporting constructions for terraces; drainage channels, not of metal; lawn grid plates, not of metal; valves, not of metal or plastic, for water pipes; expansion joints of non-metallic materials for construction; rigid pipes of plastic for building.

#### Class 20

Cable drums, not of metal; containers, not of metal [storage, transport]; wood ribbon; dowels, not of metal; spring pins of plastic; work benches; clips made of plastics for cables; pipe clamps of plastics; hose clamps (non-metallic -); tree supports (non-

metallic -); valves, not of metal, other than parts of machines; pipe clamps of rubber; pipe clamps of rubber.

#### Class 21

Cloths for cleaning; sponges; hand brushes.

#### Class 22

Nets; tarpaulins; plastic sheet materials [tarpaulins]; sacks, in particular mineral wool sacks; wood wool; non-metal strapping or tie downs; zip ties, not of metal.

#### Class 24

Non-woven textile fabrics; non-woven fabrics; waterproof textile fabrics.

#### Class 25

Combinations [clothing]; coveralls; gloves [clothing]; work clothes; overshoes; socks; none of the aforementioned goods being outdoor and hiking shoes.

#### Class 27

Wallpaper; wall and ceiling coverings.

#### Class 35

Advertising; wholesale and retail services in relation to tools and metal goods, construction articles, craftsmen articles, electric goods and electronic goods, printed matter; online mail order services in relation to tools and metal goods, construction articles, craftsmen articles, hobby requisites, electric goods and electronic goods, printed matter; presentation of goods and services, including on the internet and in other media; assortment of goods for presentation purposes; assortment of goods for sales purposes in relation to tools and metal goods, construction articles, craftsmen articles and garden articles, hobby requisites, electric goods and electronic goods, printed matter.

#### Class 37

Resurfacing of roofs; roofing installation; building sealing.

Class 39

Transport; packaging and storage of goods; delivery of goods; logistics in the transport sector.