

BL O/0929/23

TRADE MARKS ACT 1994

CONSOLIDATED PROCEEDINGS

IN THE MATTER OF APPLICATION NOS. UK00003686827 AND UK00003780218

BY SOLVAY SA

TO REGISTER THE TRADE MARKS:

PROGRESS BEYOND

IN CLASSES 1, 2, 3, 4, 5, 7, 9, 10, 11, 12, 17, 19, 22,
24, 25, 30, 31, 35, 36, 37, 39, 40 AND 42

AND



IN CLASSES 1, 17, 40 AND 42

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NOS. 430418 AND 435885

BY SWISS KRONO TEC AG

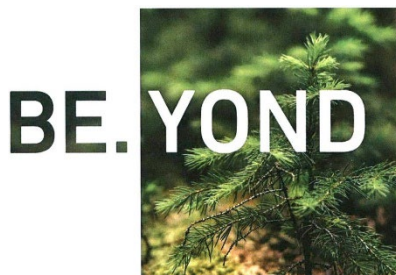
BACKGROUND AND PLEADINGS

1. On 26 August 2021, Solvay SA (“the applicant”) applied to register the **PROGRESS BEYOND** mark (“**827 Mark**”) shown on the cover page of this decision in the UK. The application was filed pursuant to Article 59 of the Withdrawal Agreement.¹ As a consequence, it is deemed to have the same filing date as the corresponding trade mark application filed in the EU. Since the EU trade mark application was an international registration designating the EU, which claimed priority from the applicant’s earlier Benelux registration (1408504), the application in turn also claims the same priority being 12 October 2020.

2. Registration is sought for the goods and services in classes 1, 2, 3, 4, 5, 7, 9, 10, 11, 12, 17, 19, 22, 24, 25, 30, 31, 35, 36, 37, 39, 40 and 42, set out in the Annex to this decision.

3. On 22 April 2022, the applicant also applied to register the **SOLVAY PROGRESS BEYOND** mark (“**218 Mark**”) shown on the cover page of this decision in the UK. The application was published for opposition purposes on the 27 May 2022. Registration is sought for the goods and services in classes 1, 17, 40 and 42 set out in the Annex to this decision.

4. The 827 Mark was partially opposed on 21 January 2022, and the 218 Mark was fully opposed on 30 August 2022, by SWISS KRONO Tec AG (“the opponent”). The opposition is based upon section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opponent relies on the following trade mark:



¹ ‘Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (2019/C 384 I/01)’, also known as the ‘Withdrawal Agreement’.

Comparable trade mark (IR) registration no. UK00801499454
Filing date 5 September 2019; Registration date 22 June 2020.
Priority date 28 June 2019.

5. The opponent relies upon some of its goods (in classes 17 and 19) opposing classes 17, 19, 35 and 37 of the 827 Mark, and it relies upon all of its goods to fully oppose the 218 Mark. These are all contained within the Annex to this decision.

6. As shown above, the opposition is based upon the opponent's comparable trade mark (IR),² claiming that there is a likelihood of confusion because the marks are similar to a high degree and the goods are identical, highly similar or similar.

7. The applicant filed a counterstatement in both proceedings denying the claims made.

8. On 8 December 2022, the Tribunal wrote to the parties informing them of the consolidation of the opposition action numbers 430418 and 435885. Only the opponent filed evidence in chief. A hearing took place before me on 12 July 2023. The opponent was represented by Nora Fowler of Kilburn & Strode LLP. The applicant was represented by Ms Stephanie Wickenden of Counsel, instructed by J A Kemp LLP.

RELEVANCE OF EU LAW

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.

² Following the end of the transition period of the UK's withdrawal from the EU, all international (EU) trade mark designations registered before 1 January 2021 were recorded as comparable trade marks in the UK trade mark register (and as a consequence, have the same legal status as if they had been applied for and registered under UK law). A 'comparable trade mark (IR)' retains the same designation date (filing date), priority date (if applicable) and registration date of the international (EU) trade mark designation.

EVIDENCE

10. The opponent's evidence consists of the witness statement of Nora Fowler dated 30 January 2023. Ms Fowler is a Trade Mark Attorney at Kilburn & Strode LLP, the representatives for the opponent. Ms Fowler's statement was accompanied by 3 exhibits (NXF1-NXF3).

11. Whilst I do not propose to summarise it here, I have taken all of the evidence and the parties' submissions into consideration in reaching my decision and will refer to them where necessary below.

DECISION

Section 5(2)(b)

12. Section 5(2)(b) 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.”

13. The earlier mark had not completed its registration process more than five years before the relevant date (the priority and filing date of the marks in issue). Accordingly, the use provisions at s.6A of the Act do not apply.

14. The opponent may rely on all of the goods and services it has identified without demonstrating that it has used the marks.

Section 5(2)(b) case law

15. 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 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 and services

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 CJEU in *Canon*, Case C-39/97, the court stated at paragraph 23 that:

“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.”

17. Guidance on this issue has 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

18. In *Gérard Meric v Office for Harmonisation in the Internal Market (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.”

19. For the purposes of considering the issue of similarity of goods and services, it is permissible to consider groups of terms collectively where they are sufficiently comparable to be assessed in essentially the same way and for the same reasons (see *Separode Trade Mark* (BL O/399/10) and *BVBA Management, Training en Consultancy v. BeneluxMerkenbureau* [2007] ETMR 35 at paragraphs 30 to 38).

20. In *YouView TV Ltd v Total Ltd*, [2012] EWHC 3158 (Ch), Floyd J. (as he then was) stated that:

“... Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless the principle should not be taken too far. Treat was decided the way it was because the ordinary and natural, or core, meaning of ‘dessert sauce’ did not include jam, or because the ordinary and natural description of jam was not ‘a dessert sauce’. Each involved a straining of the relevant language, which is incorrect. Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question.”

21. I bear in mind the following applicable principles of interpretation from *Sky v Skykick* [2020] EWHC 990 (Ch), paragraph 56 (wherein Lord Justice Arnold, in the course of his judgment, set out a summary of the correct approach to interpreting broad and/or vague terms):

“(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.”

22. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06, the 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.”

23. 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. (as he then was) noted, as the Appointed Person, in *Sandra Amalia Mary Elliot v LRC Holdings Limited*, BL-O-255-13:

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

Whilst on the other hand:

“... it is neither necessary nor sufficient for a finding of similarity that the goods in question must be used together or that they are sold together.”

827 Mark

Class 17

Plastics in extruded form for use in manufacture; Flexible hoses, not of metal.

24. These terms all appear identically in both specifications.

Compounds and other semi-finished products of plastic, also in the form of fluids, foams, films, sheets, membranes, plates, tubes, rolls, filaments or powder.

25. I consider that the opponent’s “plastics in extruded form for use in manufacture” fall within the applicant’s above broader category. They are identical on the principle outlined in *Meric*.

Packing, stopping and insulating materials; Insulating resins; Insulating fluids; Electrical insulating fluids.

26. The applicant’s above goods fall within the broader categories of “insulating materials” and “packing materials”. They are identical on the principle outlined in *Meric*.

Plastic fibres and threads, not for use in textiles

27. Plastic that has been extruded means that it is forced or squeezed out of a small opening. It can therefore appear in the form of sheets or tubes. Consequently, I consider that the applicant’s above goods fall within the broader category of “plastics in extruded form for use in manufacture” in the opponent’s specification. They are identical on the principle outlined in *Meric*. However, if I am wrong in this finding, the goods will overlap in nature, user, method of use and purpose. Therefore the goods are similar to a high degree.

Filtering materials [semi-processed foams or films of plastic]; Adhesive films.

28. I consider that the best comparison for the applicant's above goods will be to the opponent's "plastics in extruded form for use in manufacture". As highlighted above, plastic that has been extruded means that it is forced or squeezed out of a small opening, and therefore could appear in the form of sheets. I note that films are very thin versions of sheets, and therefore the goods could, to some extent, overlap in nature. The goods may also overlap in user. However, there is no evidence before me to conclude that the applicant's goods are for use in manufacture and therefore they do not overlap in purpose with the opponent's goods. I also have no evidence before me to conclude that there is an overlap in trade channels. I consider that the applicant's "adhesive films" would be brought from general retail stores, or DIY stores, whereas the applicant's "filtering materials" and the opponent's extruded plastics seem more specialist in nature, and therefore would be sold from separate specialist undertakings. I do not consider that the goods will overlap in method of use, nor are they in competition nor complementary. Therefore, taking all of the above into account, I consider that the goods are dissimilar. However, if I am wrong in this finding, then they will only be similar to a low degree.

Rubber and gum; Connecting hose for vehicle radiators.

29. I consider that the applicant's above goods are dissimilar to the opponent's class 17 and 19 goods. The goods clearly differ in nature as the applicant's goods are made from rubber (and gum), and the opponent's goods are made from plastics and wood. I have no evidence nor submissions before me that the goods overlap in trade channels or method of use. The goods are neither in competition nor complementary. The goods may all be used for construction purposes; however, I do not consider that this is enough on its own to establish similarity. I consider that the goods are dissimilar.

Semi-worked cellulose acetate, in particular for the manufacture of cigarette filters.

30. I consider that the applicant's above goods are clearly dissimilar to the opponent's class 17 and 19 goods which are all used in construction and building whereas the applicant's goods are used in the manufacture of cigarette filters. They do not overlap

in nature, purpose, trade channels, method of use or user. They are neither in competition nor complementary. The goods are dissimilar.

Class 19

Building materials, not of metal.

31. The applicant's above goods are self-evidently identical to "building materials [not of metal]" in the opponent's specification.

Rigid plastic panels and panel assemblies for construction.

32. I consider that the applicant's goods fall within the broader category of "slabs, mouldings, poles and panels (non-metallic) for building" in the opponent's specification. They are identical on the principle outlined in *Meric*.

Rigid pipes, not of metal, for building.

33. I consider that the applicant's above goods fall within the broader category of "building materials [not of metal]" in the opponent's specification. They are identical on the principle outlined in *Meric*.

Window and door frames made of plastic.

34. I consider that the applicant's above goods are similar to the opponent's "building materials [not of metal]". All of the goods will be sold in DIY and hardware retail outlets; as well as in builders merchants and specialist suppliers. However, the goods may not all be located in the same aisle. I also consider that there would be an overlap in user, and that the goods overlap in nature (being non-metallic). However, the goods do not overlap in method of use or purpose, nor do I consider that they are complementary nor in competition. I consider that they are similar to between a low and medium degree.

Goods for road construction.

35. I consider that the opponent's class 17 and 19 goods are all used for construction and insulation of buildings, and therefore would not overlap in nature, method of use, purpose or trade channels with the applicant's above goods which are only used for road construction. The goods are neither in competition nor complementary. I consider that they are dissimilar.

Non-metallic transportable structures.

36. I consider that the applicant's above goods are dissimilar to the opponent's class 17 and 19 goods. I have no evidence before me that non-metallic transportable structures would be sold within the same outlets as the opponent's class 17 and 19 goods. Instead, I consider that these goods would more likely be sold by specialist undertakings. There is also no evidence before me to conclude that the applicant's goods are types of construction goods, or are used for construction purposes. I therefore do not consider that there would be an overlap in method of use and nature with the opponent's construction goods. The goods are neither in competition nor complementary. Therefore, taking all of the above into account, I consider that the goods are dissimilar.

Class 35

Business expertise, including business expertise in certification, including for companies active in the fields of recycling, distribution of energy and fluids, greenhouse gas emission credits and energy saving; Analysis, research and market studies, including for assessing the need for energy, fluids and greenhouse gas emission credits, and relating to energy saving.

37. At the hearing Ms Fowler argued that the above services, including "advisory, auditing and assessment services relating to energy, greenhouse emissions, recycling and energy saving go hand in hand with the insulation goods in class 17" and the "building goods in class 19, as insulation is a key factor in energy saving and distribution in construction and building". She therefore argued that the goods and services overlap in consumers, purpose and trade channels.

38. I consider that the link Ms Fowler is trying to establish between the above goods and services is tenuous at best. The class 17 and 19 goods are all in relation to construction and would be sold in DIY and hardware retail outlets, as well as in builders merchants and specialist suppliers. The applicant's above services are all in relation to business management and would be provided by advisory undertakings in the field of business. Therefore, the trade channels and purpose do not overlap. The goods and services also clearly do not overlap in nature and method of use.

39. Ms Fowler also submitted that the goods and services are "compatible". I note that this is not a factor which is considered when looking at similarity of goods and services, however, I assume that Ms Fowler is trying to establish a link via complementarity.

40. As highlighted by the case law above, there are two elements which are needed to establish complementarity. First, are the goods and services important or indispensable to one another? I do not consider that the first part of the test is satisfied because the applicant's business services are not facilitated using the opponent's goods. The parties goods and services can be used or performed without each other. The second element looks at whether the average consumer would believe that the goods and services originate from the same undertaking. I also do not consider that this part of the test is satisfied. The consumer would not believe that construction goods are also produced by the same undertaking which provides business and consultancy services, even if they are in the field of energy saving. Therefore, as the remaining *Treat* factors are not satisfied, the goods and services are dissimilar.

Business management and organisation consultancy, including assistance relating to the operation and development of industrial or commercial enterprises; Administrative audits relating to business organisation; Business inquiries; Compilation of statistics; Administration relating to the compilation, analysis and reporting of statistics; Drafting of business reports and plans; Price analysis services.

41. The same comparison applies in paragraphs 37 to 40 above, however, I note that there is no specific limitation or stipulation in relation to the applicants above services being only relation to energy saving etc. Regardless, the goods and services are dissimilar.

Class 37

Building construction, installation, maintenance and repair of industrial equipment; Building construction, installation, maintenance and repair of installations for the recycling and treatment of materials; Building construction, installation, maintenance and repair of installations for the treatment of water, soil, gas and air; Building construction, installation, maintenance and repair of cogeneration installations; Building construction, installation, maintenance and repair of installations for the production and distribution of electrical, thermal, heating and cooling energy; Maintenance of thermal equipment; Maintenance of equipment and installations in the field of climate engineering; Maintenance of equipment, including on the basis of technical surveys of installations, measurements and condition inspection reports; The aforesaid services, including on the basis of diagnostics or within the framework of visual or functional management of installations; Installation, repair and maintenance of technical equipment in the field of electrical, thermal, heating and cooling energy, including within the framework of the management of the aforesaid apparatus.

42. Ms Fowler stated that the applicant's above services are similar to the opponent's class 17 and 19 construction goods, as it is likely the same businesses will supply the goods and services. However, I disagree. The opponent's goods would be sold in DIY and hardware retail outlets as well as in builders merchants and specialist suppliers. The applicant's services would be provided by builders and construction companies. Furthermore, and for the sake of completeness, the average consumer would know that the goods and services originate from different undertakings, and therefore it fails the second element of establishing complementarity. I also note that the rest of the *Treat* factors are not satisfied. The goods and services clearly do not overlap in nature and method of use. There may be very minimal overlap in purpose to the extent that they are all used for construction, however, the opponent's goods all have specific purposes (such as to provide insulation, to build walls, etc.). I therefore consider that the goods and services are dissimilar.

218 Mark

Class 1

Chemicals used in industry, science, and in agriculture, horticulture and forestry, in particular solvents, barium, strontium, calcium chloride, caustic soda, chlorinated products, peroxides, polyglycerol, precipitated calcium carbonate, sodium carbonate and sodium bicarbonate, amines, sulphuric acid, surfactants for industrial purposes, diphenols and derivatives, fluorinated compounds, adipic acid, intermediate polyamides, phosphorus-containing derivatives, silica, rare earths, fine chemicals, aliphatic isocyanate, mixed oxides and alumina; Biological products used in industry and science; Synthetic resins, unprocessed; Unprocessed plastics and plastic components, in particular polymeric vinyls, speciality monomers and polyamide resins; Fire extinguishing compositions; Fertilizers; Tempering and soldering preparations; Chemicals for the treatment of water, air and soil; Adhesives for use in industry; Luminescent chemicals for industrial use; Chemicals for industrial use in the manufacture of luminophores; Chemicals for flame-retardant treatments; Polyamides; Catalysts; Surfactants for industrial purposes; Flocculants; Adhesives for use in bonding materials [industrial]; Adhesives for use in industry; Syntactic foams made from synthetic resins.

43. At the hearing Ms Fowler could not confirm what some of the above specialist goods are, for example, polyglycerol and flocculants. However, she stated that all of the above goods would be used in the construction industry and therefore would target the same users and would likely share the same trade channels. However, there is no evidence before me to support this submission. The applicant's above goods all appear to be types of chemicals which are used in the production of a finished product. Therefore the user of the opponent's goods may use a product containing the above chemicals, but they are unlikely to purchase the raw materials/chemicals themselves, especially as members of the general public are unlikely to know what the applicant's class 1 goods are because they are so specialist in nature.

44. I therefore do not consider that the goods overlap in trade channels, as chemical specialists would produce and provide the applicant's goods, whereas the opponent's goods would be found in DIY retail and hardware outlets as well as in builders merchants. There is no reason to assume that the consumers would believe that the goods originate from the same undertaking especially as the class 1 chemical goods are extremely specialist. Therefore they are not complementary, nor are they in

competition. I note that class 1 includes “chemicals for use in industry”, which could include construction. However, this would be the only overlap that these goods share. The goods are used in such different ways and for such different purposes that I do not consider that they overlap in user, purpose and method of use. Therefore, taking all of the above into account, I consider that the goods are dissimilar.

Chemical substances for preserving foodstuffs; Chemicals as additives for foodstuffs; Tanning substances; Agents for treating leather (not included in other classes).

45. The purpose of the applicant’s above goods are clearly indicated in the terms used in the specification. Therefore they clearly do not overlap in nature, purpose, method of use, user and trade channels with the opponent’s class 17 and 19 goods. They are neither in competition nor complementary. They are dissimilar.

Class 17

46. The 827 and 218 Marks specification for class 17 are identical. Therefore the same comparisons apply in paragraphs 24 to 30 above.

Class 40

Recycling of materials; Material treatment, namely material treatment via vulcanisation, treatment of materials using chemicals; Treatment and processing of plastics; Processing of chemicals; Treatment [recycling] of chemicals; Treatment of water, soil, gas and air; Treatment of metal; Waste water treatment; Recycling and waste treatment; Processing of energy; Treatment of materials using chemicals; Treatment and processing of plastics; Processing of chemicals; Treatment [recycling] of chemicals; Treatment of water, soil, gas and air; Treatment of surfaces, namely glass pane surface colouring treatment; Window tinting treatment, being surface coating; Window tinting treatment, being surface coating; Treatment by grinding, plating and polishing of plastic, glass, wood and metal surfaces; Treatment of metal; Waste water treatment; Recycling and waste treatment; Processing of energy; Energy production; Providing material treatment information; Consultancy in the field of the aforesaid services; Joining of components using adhesives.

47. At the hearing Ms Fowler stated that these services share a purpose with the opponent's class 17 and 19 goods, because they "save energy", and therefore they will overlap in end users, and are "very likely to be offered and sold together". Again, I consider that this argument is tenuous at best. The primary purpose of the opponent's goods is that they prevent heat from escaping a space (buildings, pipes or similar structures), or to prevent sound from leaving/entering a space. The primary purpose of the applicant's services is the preparation of materials, their safe disposal, the process of energy and/or the recycling, reducing and treatment of waste. Therefore, the goods and services do not overlap in purpose. The goods and services clearly do not overlap in nature and method of use, and I do not consider that there would be an overlap in trade channels because the applicant's services are very specialist in nature. As established above, the opponent's goods are sold at general DIY and hardware retail stores, as well as at builders merchants. I have no evidence before me to establish that the goods and services are complementary. I also do not consider that they are in competition. The goods and services are therefore dissimilar.

Class 42

Scientific and technological services and research and design relating thereto; Surveying; Engineering services; Material testing services; Industrial testing; Analysis of materials; Industrial analysis services; industry research; Scientific research; Conducting technical project studies; Design and development of computer hardware and software.

48. At the hearing, Ms Fowler stated that surveying and engineering services and material testing are "all intrinsic and inseparable from the construction goods" in classes 17 and 19. In the opponent's skeleton argument it also states that "these types of services are often provided prior to (and in conjunction with) the supply of the correct and appropriate goods for construction and building. The goods and services will also share consumers and trade channels". Again, I consider that this argument is extremely tenuous.

49. The applicant's above services are clearly scientific and technical in nature, and therefore will be provided by specialist undertakings in science and technology. Thus,

I do not consider that the goods and services would overlap in trade channels with the opponent's class 17 and 19 construction goods, which would be provided by DIY and hardware retail outlets, as well as by builders merchants. The goods and services clearly do not overlap in nature, method of use and purpose. The goods and services are also not complementary, as they are neither important nor indispensable to one another, nor would the consumer assume that the goods and services would be provided by the same undertaking. I note that there may be an overlap in user, however, this is not enough on its own to establish similarity. The goods and services, are therefore, clearly dissimilar.

50. It is a prerequisite of section 5(2)(b) that the goods and services be identical or at least similar. The opposition will, therefore, fail in respect of the above goods and services that I have found to be dissimilar.³

The average consumer and the nature of the purchasing act

51. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties' goods. I must then determine the manner in which the goods 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 word “average” denotes that the person is typical. The term “average” does not denote some form of numerical mean, mode or median.”

³ *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA

52. As highlighted above, only some of the opponent's and applicant's class 17 and 19 goods are identical or similar. I consider that the average consumer for these goods will be professionals such as manufacturers, or those who work in the building or construction industry, as well as members of the general public. The cost of purchase is likely to vary, although it is unlikely to be particularly high. The frequency of the purchase is also likely to vary. However, the average consumer will take various factors into consideration such as the materials, cost, durability, quality and suitability for the user's needs. I consider that as the goods are all in relation to construction of buildings and homes, that both the general public and professionals will be paying between a medium and high degree of attention during the purchasing process.

53. The goods are likely to be obtained by self-selection from the shelves of a DIY retail outlet, wholesale outlet, or its online equivalent. Alternatively, the goods may be purchased following perusal of advertisements or inspection of a catalogue. Visual considerations are, therefore, likely to dominate the selection process. However, I do not discount that there may also be an aural component to the purchase through advice sought from sales assistants or word-of-mouth recommendations.

Comparison of the trade marks

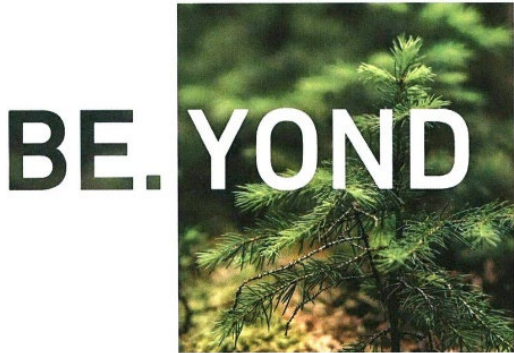

54. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the trade marks must be assessed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

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

impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

55. 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.

56. The respective trade marks are shown below:

Opponent’s trade mark	Applicant’s trade marks
	<p data-bbox="932 857 1265 976">PROGRESS BEYOND</p> <p data-bbox="995 1021 1201 1055">The 827 Mark</p>  <p data-bbox="978 1458 1235 1491">Progress beyond</p> <p data-bbox="995 1547 1201 1581">The 218 Mark</p>

Overall Impression

57. The opponent’s mark consists of the capitalised words “BE” and “YOND” which are separated by a full stop. After the full stop, the word “YOND” is presented on a square background device which depicts a plant/tree. The word “BE” and the full stop is presented in a black to green gradient, and the word “YOND” is presented in white.

For reasons I will come to discuss in the conceptual comparison, the word “YOND” is the distinctive and dominant element of the mark, to which the eye is naturally drawn to, especially because of the placement of the background device behind it. It therefore plays a greater role in the overall impression of the mark with the “BE.” element playing a lesser role.

58. The 827 Mark consists of the words “PROGRESS BEYOND”. The overall impression lies in the combination of these elements.

59. The 218 Mark consists of a blue 3D “S” device, presented above the word “SOLVAY”, which is encased in a circle which consists of multiple smaller dots. Underneath this element is the strapline “Progress beyond”. For reasons I will come to discuss in the conceptual comparison, the word “SOLVAY” is the distinctive and dominant element of the mark, and plays a greater role in the overall impression with the 3D S device, blue circle and the strapline “Progress beyond” each playing a lesser role.

Visual Comparison

The opponent’s mark and the 827 Mark

60. At the hearing, Ms Fowler submitted that the earlier mark consists of the term BEYOND “with some decorative elements behind it”, and that the word BEYOND is fully contained within both of the contested marks. She also states that “contrary to what has been submitted, the average consumer will not read BE and YOND” as they will “look to find a term that they recognise if it is possible to recognise a term”, and that albeit “BE” is a recognised term, “YOND” is not. This argument is supported by **exhibit NXF1** which is a Wiktionary extract that Ms Fowler states “shows that YOND is an obsolete term; it is not used anymore”.

61. Firstly, I note that Wiktionary is a platform that allows entries to be updated by the public and, therefore, I consider that the information from this exhibit should be approached with a certain degree of caution. However, regardless, I agree with Ms Fowler that the word “YOND” is not a recognised term. I consider that that average

consumer would understand it as an invented word with no meaning. However, I disagree with the submission that the opponent's mark consists of the word "BEYOND". This is on the basis that the full stop, the plant background device only behind the YOND element, and the use of different colours for the words BE and YOND are all clearly used to create a separation between the two words.

62. At the hearing, Ms Fowler submitted that the consumer is "generally used to seeing marks on different backgrounds" and that the use of the plant background in the 827 Mark "is essentially what this looks like". However, I disagree. As highlighted above, I consider that the separation of these words is reinforced by the plant background device, which is only present behind the YOND element, which consequently pulls the consumer's focus to what they are likely to see as an invented term.

63. Lastly, and as highlighted by the case law above, the average consumer views marks without analysis of their details. The opponent's argument that the consumer will look to find the word "BEYOND" in the opponent's mark contradicts this. I consider that when the average consumer is confronted with the opponent's mark, without significant analysis, their eye will be drawn to the invented term "YOND" presented on the plant square background.

64. For the sake of completeness, there may be a proportion of consumers who will see the word BEYOND in the opponent's mark. However, based on my analysis of the mark above, and the way in which the verbal elements of the mark are presented (with BE and YOND separated by the full stop, and the background device only being behind the YOND element and the difference in colour between the words BE and YOND), it leads me to conclude that this proportion would not be significant.

65. Therefore, taking all of the above into account, I consider that the marks coincide in the presence of the letters B, E, Y, O, N and D. This acts as a visual point of similarity. However, the "BE" and "YOND" elements in the opponent's mark are clearly separated using a full stop, the plant square background and the differentiation in typeface colour. The 827 Mark also begins with the word "PROGRESS". These all act as points of visual difference. I bear in mind that the average consumer tends to pay

more attention to the beginning of the marks.⁴ Consequently, I consider that the marks are visually similar to between a low and medium degree.

The opponent's mark and the 218 Mark

66. The same comparison applies in paragraph 65 above. However, the 218 Mark also consists of the word "SOLVAY", the 3D S device and the dot circle device at the beginning of the mark, and the strapline "Progress beyond" presented in a lower-case blue typeface at the bottom of the mark. The marks are, therefore, visually similar to a very low degree.

67. I note that Ms Fowler at the hearing submitted that the "Progress beyond" element of the 218 Mark is almost "presented as a separate mark" to the SOLVAY, 3D S device and the dot circle element, and therefore "the consumer will look at the two as almost separate elements". I note that this could be classed as dissection of the mark, which is contrary to the case law above.

68. However, I consider that she is most likely referring to the idea that a composite mark, as a whole, could consist of two (or more) signs, which have distinctive significance, which is independent of the significance of the whole, as the CJEU held in *Medion v Thompson*. However, I consider that the "Progress beyond" element within the 218 Mark will be seen as an advertising strapline, on the basis that it is presented at the bottom of the mark, and in a smaller typeface than the 3D S device and the word "SOLVAY". Furthermore, the word SOLVAY is an invented word, as is therefore the dominant and distinctive element of the mark. Consequently, as the "Progress beyond" element is seen as an advertising strapline rather than denoting the origin of the goods sold under the mark, I do not consider that *Medion* applies in these circumstances.

Aural Comparison

The opponent's mark and the 827 Mark

⁴ *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

69. The opponent's mark will likely be pronounced as it is written; BE – YOND. I note that the plant background will not be articulated, but there will be a distinct break between the words as highlighted above. The 827 Mark will be pronounced as PRO-GRESS BE-YOND. Consequently, the beginning of the marks differ aurally. However, as they overlap in the syllables "BE" and "YOND", I consider that they are aurally similar to no more than a medium degree.

The opponent's mark and the 218 Mark

70. The 3D S and dot circle devices will not be articulated in the 281 Mark. Therefore it is likely to be pronounced as SOL-VAY PRO-GRESS BE-YOND. Again, the beginning of the marks differ aurally. Consequently, the marks are aurally similar to a low degree.

Conceptual Comparison

The opponent's mark and the 827 Mark

71. In its skeleton argument, the opponent submits the "all of the marks share the conceptual meaning of BEYOND, meaning to the farther side or surpassing". However, in the applicant's skeleton argument, it states that the words "BE.YOND" in the opponent's mark will be understood as a command to "BE" or go "FURTHER".

72. As highlighted above, I consider that the opponent's mark consists of two words; BE and YOND. The word "BE" is an ordinary dictionary word with a recognisable meaning. The word "YOND" will be seen as an invented word with no conceptual meaning. Therefore the mark as a whole evokes "to be something called yond". I also note that the plant background in the opponent's mark will evoke a meaning of nature to the average consumer. This concept is neither allusive nor descriptive of its goods.

73. The applicant's 827 Mark consists of 2 ordinary dictionary words "PROGRESS BEYOND". I consider that as a whole the mark will evoke the meaning of "to go ahead of", and to "keep progressing beyond what is expected". On this basis, I consider that the marks are conceptually dissimilar.

The opponent's mark and the 218 Mark

74. The “Progress beyond” element within the 218 Mark will be seen as an advertising strapline. This is due to its placement at the bottom of the mark, and because it is written in a smaller typeface than the 3D S device and the word “SOLVAY”. I consider that the word “SOLVAY” is an invented term, which evokes no conceptual meaning, and is therefore the dominant and distinctive element of the 218 Mark. I do not consider that the 3D S device and the dot circle device will contribute conceptually. Consequently, the marks are conceptually dissimilar.

Distinctive character of the earlier trade mark

75. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 the CJEU stated that:

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-2779, paragraph 49).

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promotion of 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).”

76. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use that has been made of it.

77. As the opponent has not filed any evidence to show that the distinctiveness of its earlier mark has been enhanced through use, I only have the inherent position to consider.

78. The opponent's mark consists of the capitalised words "BE" and "YOND" which are separated by a full stop and a square plant background device behind the "YOND" element. The ordinary dictionary word "BE" and the full stop is presented in a black to green gradient. The word "YOND" is presented in white, and as highlighted above, is the distinctive and dominant element of the mark because it will be recognised by the average consumer, as an invented word with no conceptual meaning. I also consider that the eye is naturally drawn to this element because of the placement of the plant background device behind it. Therefore, taking the mark as a whole into account, I consider that it is inherently distinctive to a high degree.

Likelihood of confusion

79. 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 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. This includes 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 and vice versa. 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 has retained in his mind.

The 827 Mark

80. The following factors must be considered to determine if a likelihood of confusion can be established:

- I have found the marks to be visually similar to between a low and medium degree.
- I have found the marks to be aurally similar to no more than a medium degree.
- I have found the marks conceptually dissimilar.
- I have found the opponent's to be inherently distinctive to a high degree.
- I have identified the average consumer to be professionals such as manufacturers, or those who work in the building or construction industry, and members of the general public, who will select the goods primarily by visual means, although I do not discount an aural component.
- I have concluded that between a medium and high degree of attention will be paid during the purchasing process for the goods.
- I have found the parties' goods are identical, or similar to between a low and medium degree.

81. Taking all of the factors listed in paragraph 80 into account, particularly the visual, aural and conceptual differences between the marks, I am satisfied that there is no likelihood of direct confusion. Albeit both marks share the presence of the letters B, E, Y, O, N and D, they are presented in such different ways, that the marks are unlikely to be mistakenly recalled or misremembered as each other. The applicant's mark presents these letters altogether to create one ordinary dictionary word: BEYOND, and the opponent's mark presents the letters as two distinct elements; BE. and YOND. As highlighted above, the YOND element will be recognised as an invented word with no conceptual meaning and therefore is the dominant and distinctive element of the opponent's mark. This is also reinforced by the use of the plant square background behind it (which is neither allusive nor descriptive of the opponent's goods), which

naturally draws the consumers eye to the word “YOND”. Therefore the average consumer is unlikely to overlook the plant background device. Lastly, I do not consider that the average consumer would overlook the word “PROGRESS” at the beginning of the applicant’s mark because the beginning of marks tend to make more of an impact than the ends. Therefore, taking all of the above into account, I do not consider that there is a likelihood of direct confusion.

82. It now falls to me to consider the likelihood of indirect confusion. Indirect confusion was described in the following terms by Iain Purvis Q.C. (as he was then), sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10:

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

83. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ referred to the comments of James Mellor QC (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at [16] that “a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion”. Arnold LJ agreed, pointing out that there must be a “proper basis” for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

84. Having noticed that the competing trade marks are different, I see no reason why the average consumer would assume that they come from the same or economically

linked undertakings. I do not consider that the average consumer would think the opponent was connected with the applicant or vice versa. Although both marks use the letters B, E, Y, O, N and D, are they presented significantly differently to one another that the average consumer would not believe that the marks are natural variants or brand extensions of each other. Taking all of the above into account, I do not consider there to be a likelihood of indirect confusion.

The 218 Mark

- I have found the marks to be visually similar to a very low degree.
- I have found the marks to be aurally similar to a low degree.
- I have found the marks conceptually dissimilar.
- I have found the opponent's to be inherently distinctive to a high degree.
- I have identified the average consumer to be professionals such as manufacturers, or those who work in the building or construction industry, and members of the general public, who will select the goods primarily by visual means, although I do not discount an aural component.
- I have concluded that between a medium and high degree of attention will be paid during the purchasing process for the goods.
- I have found the parties' goods are identical, or similar to between a low and medium degree.

85. As highlighted above, I consider that the opponent's mark and applicant's 218 Mark are even more visually, aurally and conceptually different because of the use of the dominant and distinctive SOLVAY element in the applicant's mark, as well as the presence of the 3D "S" and dot circle device. It therefore follows that I also do not consider that the marks would be mistakenly recalled or misremembered as each other. The same reasoning also applies in paragraph 81 above. I do not consider there to be a likelihood of direct confusion.

86. I also consider that the same reasoning applies in paragraph 84 above. I do not consider there to be a likelihood of indirect confusion because the average consumer would not believe that the marks are natural variants/brand extensions of each other.

CONCLUSION

87. The opposition is unsuccessful, and the application may proceed to registration.

COSTS

88. The applicant has been successful and is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice 2/2016. In the circumstances, I award the applicant the sum of **£1,450** as a contribution towards the costs of the proceedings. The sum is calculated as follows:

Considering the Notices of oppositions and preparing Counterstatements	£400
Considering the opponent's evidence	£250 ⁵
Preparation for and attendance at hearing	£800
Total	£1,450

89. I therefore order SWISS KRONO Tec AG to pay Solvay SA the sum of £1,450. This sum is to 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 2nd day of October 2023

L FAYTER

For the Registrar

⁵ I award lower than the £500 set out in TPN 2/2016 on the basis that the applicant did not file any evidence themselves, and that the evidence filed by the opponent was very light.

ANNEX

The 827 Mark

Class 1

Chemicals used in industry, science, and in agriculture, horticulture and forestry, in particular solvents, barium, strontium, calcium chloride, caustic soda, chlorinated products, peroxides, polyglycerol, precipitated calcium carbonate, sodium carbonate and sodium bicarbonate, amines, sulphuric acid, surfactants for industrial purposes, diphenols and derivatives, fluorinated compounds, adipic acid, intermediate polyamides, phosphorus-containing derivatives, silica, rare earths, fine chemicals, aliphatic isocyanate, mixed oxides and alumina; Biological products used in industry and science; Synthetic resins, unprocessed; Unprocessed plastics and plastic components, in particular polymeric vinyls, speciality monomers and polyamide resins; Fire extinguishing compositions; Fertilizers; Tempering and soldering preparations; Chemical substances for preserving foodstuffs; Chemicals as additives for foodstuffs; Tanning substances; Agents for treating leather (not included in other classes); Chemicals for the treatment of water, air and soil; Adhesives for use in industry; Luminescent chemicals for industrial use; Chemicals for industrial use in the manufacture of luminophores; Chemicals for flame-retardant treatments; Polyamides; Catalysts; Surfactants for industrial purposes; Flocculants; Adhesives for use in bonding materials [industrial]; Adhesives for use in industry; Syntactic foams made from synthetic resins.

Class 2

Paints, varnishes, Lacquers, Coatings; Inks (not included in other classes); Preservatives against rust and deterioration of wood; Colorants; Mordants; Raw natural resins.

Class 3

Bleaching preparations and other substances for laundry use; Cleaning, polishing, scouring and abrasive preparations; Chemical cleaning preparations for household purposes; Soaps, perfumery, essential oils, cosmetics; Non-medicated bath salts; Hair lotions; Dentifrices; Leather preservatives [polishes].

Class 4

Industrial oils and greases; Lubricants; Dust controlling compositions; Non- chemical fuel additives; Lighting fuel.

Class 5

Pharmaceutical and veterinary preparations; Therapeutic products relating to genes and cells; Sanitary preparations for medical purposes; Dietetic substances adapted for medical use; Dietary supplements for humans and animals; Disinfectants.

Class 7

Machines not included in other classes, namely machines for the chemical industry, machines for processing plastics, composites and thermo-composites, machines for processing plastics, composites and thermo-composites, recycling machines; Machine tools; Parts of equipment for motors, mainly or wholly made of plastic; Parts for motors and engines and parts of machines, synthetic resins, namely, regulators, valves, valves, tools, gaskets, pumps, filters; Equipment and installations for recycling and for the treatment of materials and soil; Cogeneration equipment and installations; Motors, other than for land vehicles; Fuel injection devices for vehicle engines; Air intake systems and cooling systems for vehicle engines (parts of engines).

Class 9

Scientific, optical, measuring and checking (supervision) apparatus and instruments; Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; Apparatus for recording, transmission or reproduction of sound or images; Magnetic data carriers, recording discs; Apparatus and instruments for monitoring and automated regulation for tanks, tubing, valves, boxes, canisters, filters and pump modules as well as for installations for filling, storage and supply of fuel, gas and other fluids; Calculators; Data processing equipment; Computers; Software; Fire extinguishers; Clothing for protection against fire, heat, chemical reactions and/or radiation; Protection devices for personal use against accidents; Spectacles; Eyewear; Diagnostic apparatus, not for medical purposes; Smart cards, cards with microprocessors.

Class 10

Surgical, medical, dental and veterinary apparatus, equipment and instruments; Artificial implants; Orthopedic articles.

Class 11

Chemical processing equipment.

Class 12

Vehicles; Motorcycles; Bicycles; Apparatus for locomotion by land, air or water; Engines for land vehicles; Structural parts of vehicles, not included in other classes; Parts made of plastic for vehicles, namely all technical parts; Fuel tanks for vehicles and refuelling systems therefor (parts of vehicles); Bodies for vehicles; Bumper bars; Undercoatings and undersealings for vehicles; Aerodynamic deflectors; Dashboards; glove compartment organizers; Vehicles storage compartments; Vehicle interior headliners and side panels; Door panels and handles; Suspension shock absorbers; Chassis; Motorcycle kickstands; Brakes; Handlebars; Decorative hub caps; Pedals; Wheels, solid tyres for vehicle wheels.

Class 17

Rubber and gum; Plastics in extruded form for use in manufacture; Compounds and other semi-finished products of plastic, also in the form of fluids, foams, films, sheets, membranes, plates, tubes, rolls, filaments or powder; Plastic fibres and threads, not for use in textiles; Packing, stopping and insulating materials; Flexible hoses, not of metal; Insulating resins; Insulating fluids; Electrical insulating fluids; Semi-worked cellulose acetate, in particular for the manufacture of cigarette filters; Connecting hose for vehicle radiators; Filtering materials [semi-processed foams or films of plastic]; Adhesive films.

Class 19

Building materials, not of metal; Rigid plastic panels and panel assemblies for construction; Window and door frames made of plastic; Rigid pipes, not of metal, for building; Goods for road construction; Non-metallic transportable structures.

Class 22

String, cord and rope, Tarpaulins, nets, awnings, sails, Bags and sacks for packaging, storage and transport; Padding materials, not of rubber, plastics, paper or cardboard; Raw fibrous textile; Synthetic and/or artificial fibres (for textile use); Cables, not of metal; Packing [cushioning, stuffing] materials, not of rubber, plastics, paper or cardboard; Textile fibres; Bags (envelopes, pouches) of textile, for packaging; Glass fibres for textile use.

Class 23

Yarns for textile use; Elastic thread and yarn for textile use; Fibreglass thread for textile use; Spun wool; Spun silk.

Class 24

Textiles and textile goods, not included in other classes; Bed, table and household linen; Net curtains, curtains and wall hangings of textile; Upholstery fabrics; Textile filter materials.

Class 25

Clothing, footwear, headgear; Lingerie, underwear, foundation garments, Stockings and tights.

Class 30

Flour; Pastry and confectionery; Edible ices; Yeast, baking-powder; Salt; Condiments; Spices; Aromatic preparations for food; Vanillin.

Class 31

Animal foodstuffs.

Class 35

Business management and organisation consultancy, including assistance relating to the operation and development of industrial or commercial enterprises; Administrative audits relating to business organisation; Business expertise, including business expertise in certification, including for companies active in the fields of recycling, distribution of energy and fluids, greenhouse gas emission credits and energy saving; Business inquiries; Compilation of statistics; Administration relating to the compilation,

analysis and reporting of statistics; Drafting of business reports and plans; Analysis, research and market studies, including for assessing the need for energy, fluids and greenhouse gas emission credits, and relating to energy saving; Price analysis services.

Class 36

Financial and real estate management; Financial services rendered in the field of greenhouse gas emission credits; Investment management and financial consultancy in the field of greenhouse gas emission credits; Assistance and consultancy relating to capital investments; Intermediary services relating to financial investments, in particular capital investments; Financing and insurance relating to the field of greenhouse gas emission credits; Financial analysis of the markets and stock exchange quotations in the field of energy markets; Financial transactions in connection with trade in all energy and environmental commodities; Providing of information relating to finance and relating to capital investments in the field of energy and environmental commodities.

Class 37

Building construction, installation, maintenance and repair of industrial equipment; Building construction, installation, maintenance and repair of installations for the recycling and treatment of materials; Building construction, installation, maintenance and repair of installations for the treatment of water, soil, gas and air; Building construction, installation, maintenance and repair of cogeneration installations; Building construction, installation, maintenance and repair of installations for the production and distribution of electrical, thermal, heating and cooling energy; Maintenance of thermal equipment; Maintenance of equipment and installations in the field of climate engineering; Maintenance of equipment, including on the basis of technical surveys of installations, measurements and condition inspection reports; The aforesaid services, including on the basis of diagnostics or within the framework of visual or functional management of installations; Installation, repair and maintenance of technical equipment in the field of electrical, thermal, heating and cooling energy, including within the framework of the management of the aforesaid apparatus.

Class 39

Transport; Packaging and storage of goods; Water distribution; Distribution of energy, in particular electricity, gas, oil, heat, cooling energy and air.

Class 40

Recycling of materials; Material treatment, namely material treatment via vulcanisation), treatment of materials using chemicals; Treatment and processing of plastics; Processing of chemicals; Treatment [recycling] of chemicals; Treatment of water, soil, gas and air; Treatment of metal; Waste water treatment; Recycling and waste treatment; Processing of energy; Treatment of materials using chemicals; Treatment and processing of plastics; Processing of chemicals; Treatment [recycling] of chemicals; Treatment of water, soil, gas and air; Treatment of surfaces, namely glass pane surface colouring treatment; Window tinting treatment, being surface coating; Window tinting treatment, being surface coating; Treatment by grinding, plating and polishing of plastic, glass, wood and metal surfaces; Treatment of metal; Waste water treatment; Recycling and waste treatment; Processing of energy; Energy production; Providing material treatment information; Consultancy in the field of the aforesaid services; Joining of components using adhesives.

Class 42

Scientific and technological services and research and design relating thereto; Surveying; Engineering services; Material testing services; Industrial testing; Analysis of materials; Industrial analysis services; industry research; Scientific research; Conducting technical project studies; Design and development of computer hardware and software.

The 218 Mark

Class 1

Chemicals used in industry, science, and in agriculture, horticulture and forestry, in particular solvents, barium, strontium, calcium chloride, caustic soda, chlorinated products, peroxides, polyglycerol, precipitated calcium carbonate, sodium carbonate and sodium bicarbonate, amines, sulphuric acid, surfactants for industrial purposes, diphenols and derivatives, fluorinated compounds, adipic acid, intermediate polyamides, phosphorus-containing derivatives, silica, rare earths, fine chemicals, aliphatic isocyanate, mixed oxides and alumina; Biological products used in industry

and science; Synthetic resins, unprocessed; Unprocessed plastics and plastic components, in particular polymeric vinyls, speciality monomers and polyamide resins; Fire extinguishing compositions; Fertilizers; Tempering and soldering preparations; Chemical substances for preserving foodstuffs; Chemicals as additives for foodstuffs; Tanning substances; Agents for treating leather (not included in other classes); Chemicals for the treatment of water, air and soil; Adhesives for use in industry; Luminescent chemicals for industrial use; Chemicals for industrial use in the manufacture of luminophores; Chemicals for flame-retardant treatments; Polyamides; Catalysts; Surfactants for industrial purposes; Flocculants; Adhesives for use in bonding materials [industrial]; Adhesives for use in industry; Syntactic foams made from synthetic resins.

Class 17

Rubber and gum; Plastics in extruded form for use in manufacture; Compounds and other semi-finished products of plastic, also in the form of fluids, foams, films, sheets, membranes, plates, tubes, rolls, filaments or powder; Plastic fibres and threads, not for use in textiles; Packing, stopping and insulating materials; Flexible hoses, not of metal; Insulating resins; Insulating fluids; Electrical insulating fluids; Semi-worked cellulose acetate, in particular for the manufacture of cigarette filters; Connecting hose for vehicle radiators; Filtering materials [semi-processed foams or films of plastic]; Adhesive films.

Class 40

Recycling of materials; Material treatment, namely material treatment via vulcanisation, treatment of materials using chemicals; Treatment and processing of plastics; Processing of chemicals; Treatment [recycling] of chemicals; Treatment of water, soil, gas and air; Treatment of metal; Waste water treatment; Recycling and waste treatment; Processing of energy; Treatment of materials using chemicals; Treatment and processing of plastics; Processing of chemicals; Treatment [recycling] of chemicals; Treatment of water, soil, gas and air; Treatment of surfaces, namely glass pane surface colouring treatment; Window tinting treatment, being surface coating; Window tinting treatment, being surface coating; Treatment by grinding, plating and polishing of plastic, glass, wood and metal surfaces; Treatment of metal; Waste water treatment; Recycling and waste treatment; Processing of energy; Energy

production; Providing material treatment information; Consultancy in the field of the aforesaid services; Joining of components using adhesives.

Class 42

Scientific and technological services and research and design relating thereto; Surveying; Engineering services; Material testing services; Industrial testing; Analysis of materials; Industrial analysis services; industry research; Scientific research; Conducting technical project studies; Design and development of computer hardware and software.

The opponent's mark

Class 17

Plastics in extruded form for use in manufacture; caulking materials; packing materials; insulating materials; flexible hoses [not of metal]; insulating materials; boards for insulating purposes; fiber boards for use as insulation; insulation sheets; blow-in insulation materials; materials made of polymer wood particles for insulating and insulation purposes; composite materials made of wood and plastics for insulating and insulation purposes; impact sound insulation materials.

Class 19

Building materials [not of metal]; slabs, mouldings, poles and panels (non-metallic) for building; wood, semi-worked; building materials of wood and wood-based materials, in particular glued hardboard, wholly or predominantly of wood, particleboard and boards made of wood particles; OSB boards (oriented strand board); panels made of wood-based materials with impact sound insulation.

Class 20

Furniture; mirrors; picture frames; containers, not of metal, for storage and transport purposes.