

O/1076/23

TRADE MARKS ACT 1994

CONSOLIDATED PROCEEDINGS

IN THE MATTER OF APPLICATION NOS. UK00003695514 AND

UK00003695516

BY LG ELECTRONICS INC. TO REGISTER:

Washing Tower

AND

Washer Tower

AS TRADE MARKS IN CLASSES 7 & 11

AND

AND IN THE MATTER OF OPPOSITIONS THERETO UNDER NOS. 430939

AND 430940

BY WASHTOWER IP B.V. (formerly BFA VERBURG BV)

BACKGROUND AND PLEADINGS

1. These are consolidated proceedings between LG ELECTRONICS INC. (“the applicant”) and Washtower IP B.V. (“the opponent”)¹. I will first set out the background regarding the parties’ marks before setting out the basis of the proceedings.

2. On 15 September 2021, the applicant applied to register the trademark UK3695514 ‘Washing Tower’ (“the first mark”) and UK3695516 ‘Washer Tower’ (“the second mark”) in the UK. The applications were made pursuant to Article 59 of the Withdrawal Agreement between the United Kingdom and the European Union. Under the terms of that agreement, the applicant is entitled to rely on the earlier EU filing dates i.e., 16 April 2020. The application for the first mark was accepted and published in the Trade Marks Journal for opposition purposes on 12 November 2021 in respect of the goods in **Annex 1** to this decision. In respect of the second mark, the application was accepted and published for opposition purposes on 19 November 2021 in respect of the goods in **Annex 2** to this decision.

3. On 10 February 2022, the opponent filed notices of opposition against the applications on the basis of section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The oppositions are directed at both of the applicant’s marks in their entirety. The opponent relies on the following trade marks:

WASHTOWER

UK Registration no. UK00918193675

Filing date 7 February 2020; date of entry in register 17 July 2020

(“the opponent’s first earlier mark”)

Relying on all the goods below:

Class 20: *Furniture, namely cabinets for washing machines or clothes dryers; cupboards.*

¹ The oppositions were initially filed in the name of BFA Verburg BV. On 24 May 2023, the UKIPO was informed by Charles Russell Speechlys LLP that the opponent changed its name to Washtower IP B.V. This amendment was recorded against both of the registrations relied upon in these proceedings by the opponent.



UK Registration no. 918046865

Filing date 3 April 2019; date of entry in register 14 September 2019

("the opponent's second earlier mark")

Relying on all the goods below:

Class 20: *Furniture, namely cabinets for washing machines or tumble dryers.*

4. The opponent submits that there is a likelihood of confusion because the applicant's marks are similar to its own marks and the respective goods are identical or similar. The applicant filed defences and counterstatements denying the claims made.

5. The opponent is represented by Charles Russell Speechlys LLP. The applicant is represented by Page, White & Farrer Limited. Both parties filed evidence in chief. The opponent filed evidence in reply. No hearing was requested. Both parties filed submissions in lieu of a hearing. This decision is taken following a careful perusal of the papers.

RELEVANCE OF EU CASE LAW

6. 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.

EVIDENCE

7. The opponent's evidence in chief came in the form of the witness statement of Ms Charlotte Duly dated 15 July 2022 and was accompanied by 11 exhibits. Ms Duly is a Chartered Trade Mark Attorney at Charles Russell Speechlys LLP.

8. The applicant's evidence in chief came in the form of the witness statement of Ms Taryn Byrne dated 2 September 2022 and was accompanied by 12 exhibits. Ms Byrne is a Trade Mark Attorney at Page, White & Farrer Limited.

9. The opponent's evidence in reply came in the form of the second witness statement of Ms Charlotte Duly dated 31 October 2022 and was accompanied by 6 exhibits.

10. I do not intend to summarise the parties' evidence or submissions in full at this stage. However, I have taken them all into consideration in reaching my decision and will refer to them below, where necessary.

MY APPROACH

11. I note that the two earlier marks relied upon in the opposition are comparable marks, the EU marks from which they originate are subject to pending EUIPO proceedings. In relation to EU mark '018046865' from which the opponent's second earlier mark originates, the cancellation was filed on 21 September 2020. As the pending cancellation action was instituted but not finally determined before IP completion day, the outcome of the proceedings is also likely to apply to the UK comparable mark as per The Intellectual Property (Amendment etc) (EU Exit) Regulations 2020. If the cancellation action is successful, upon notification of the outcome the IPO will declare invalid a comparable mark to the same extent as the finally determined decision identified in the cancellation notice (subject to any successful derogation notice).

12. This is not the case in relation to the '018193675' EU mark from which the opponent's first earlier mark originates. The cancellation was filed on 10 March 2021,

after the end of the transition period. Therefore, the outcome of the EUIPO proceedings relating to this mark are not relevant to the current UK proceedings.

13. These proceedings were originally suspended pending the outcome of the EU proceedings. However, I was of the view that the opponent's first earlier mark presented the best case for the opponent on the basis that it was a word mark with a broader specification than the second earlier mark. Taking this into account, in an official letter dated 11 August 2023, I expressed to the parties that I was minded to restart the proceedings and draft the decision on the basis of the first earlier mark. In accordance with paragraph 10 of Tribunal Practice Notice 2/2011, both parties were invited to express any concerns to the approach within a 14 day time period. As no response was received within the allotted period, the preliminary view was automatically confirmed and the proceedings resumed. Consequently, I will be drafting the decision on the basis of 'UK00918193675' being the best case. As a result, where I refer to "the opponent's mark" below, I am referring to UK00918193675.

DECISION

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

14. 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."

15. Section 5A of the Act is as follows:

“5A 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.”

16. Given its filing date, the opponent’s mark qualifies as an earlier mark pursuant to section 6 of the Act. The opponent’s mark had not completed its registration process more than five years before the application date of the applications at issue. The conditions of use do not, therefore, apply to the mark and the opponent can rely on all the goods for which its mark is registered.

17. 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 impression created by the marks bearing

in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;

(f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

(g) a lesser degree of similarity between the goods or services may be offset by a greater degree of similarity between the marks, and vice versa;

(h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;

(i) mere association, in the strict sense that the later mark brings to mind the earlier mark, is not sufficient;

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

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

COMPARISON OF THE GOODS

18. The goods to be compared are as follows:

Applicant's goods	Opponent's goods
<p data-bbox="204 271 352 304"><u>First Mark</u></p> <p data-bbox="204 322 786 1182">Class 7: <i>automatic dishwashers; electric vacuum cleaners; hoses for electric vacuum cleaners; bags for electric vacuum cleaners; stick type vacuum cleaners; electric rotary blowers; robots (machines); compressed air pumps; electric rotary compressors; compressors for refrigerators; electric mixers for household purposes; robotic vacuum cleaners; electric food processors; steam cleaners for household purposes; hand-held vacuum cleaners; electric vacuum cleaners for bedding; housekeeping robots for household purpose; robots for personal use, namely, robots for cleaning.</i></p> <p data-bbox="204 1256 786 1951">Class 11: <i>air conditioners; hot air apparatus, namely, hot-air space heating apparatus; humidifiers; electric dehumidifier for household use; electric ranges; water purifiers for household purposes; water ionizers for household purposes; membrane apparatus in the nature of filters for purifying water; solar thermal collectors (heating); air purifiers; ventilation (air-conditioning) apparatus for heating; led lamps; gas ranges; electric kitchen ovens; apparatus or installations for cooking; electric</i></p>	<p data-bbox="810 271 1391 412">Class 20: Furniture, <i>namely cabinets for washing machines or clothes dryers; cupboards.</i></p>

refrigerators; ventilation hoods; ventilation hoods for oven.

Second Mark

Class 7: Automatic dishwashers; electric vacuum cleaners; hoses for electric vacuum cleaners; bags for electric vacuum cleaners; stick type vacuum cleaners; electric rotary blowers; robots (machines); compressed air pumps; electric rotary compressors; compressors for refrigerators; electric mixers for household purposes; robotic vacuum cleaners; electric food processors; steam cleaners for household purposes; hand-held vacuum cleaners; electric vacuum cleaners for bedding.

Class 11: air conditioners; hot air apparatus, namely, hot-air space heating apparatus; humidifiers; electric dehumidifier for household use; electric ranges; water purifiers for household purposes; water ionizers for household purposes; membrane apparatus in the nature of filters for purifying water; solar thermal collectors (heating); air purifiers; ventilation (air-conditioning) apparatus for heating; led lamps; gas ranges; electric kitchen ovens; apparatus or installations for cooking; electric

<i>refrigerators; ventilation hoods;</i>	
<i>ventilation hoods for ovens.</i>	

19. When making the comparison, all relevant factors relating to the goods 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:

“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.”

20. 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.

21. In *Boston Scientific Ltd v OHIM*, Case T-325/06, the General Court (GC) stated that “complementary” means:

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

22. I note that the applicant’s specifications in both marks are identical, save for the addition of “*housekeeping robots for household purpose*” and “*robots for personal use, namely, robots for cleaning*” in the applicant’s first mark. Given the identity of the majority of the goods in the applicant’s specifications and taking into consideration that those goods listed above can fall within “*robots (machines)*”, which is present in both specifications, I will compare the goods in the applicant’s specifications collectively. Any reference to the ‘applicant’s specification’ is inclusive of both marks.

Class 7

23. It is permissible to group goods together for the purpose of comparison where they are “*sufficiently comparable for registration in essentially the same way for the same reasons*”.² I deem this to be the case with respect to the following goods in the applicant’s specification, which are all apparatus that are used for household purposes, for example, to do the dishes, prepare food or beverages and clean the house: “*electric vacuum cleaners*”, “*stick type vacuum cleaners*”, “*electric mixers for household purposes*”, “*robotic vacuum cleaners*”, “*electric food processors*”, “*steam cleaners for household purposes*”, “*hand-held vacuum cleaners*”, “*electric vacuum cleaners for bedding*”. The goods differ in nature and purpose to “*cupboards*” in the opponent’s specification. I note that the opponent submits in its witness statement that the opponent’s goods are complementary, sold by the same trade channels and have the same users. I note that Exhibits CD01-4 in the opponent’s evidence demonstrates

² *Separode* Trade Mark, BL O/399/10, paragraph 5

that retailers, such as department stores or businesses that sell kitchens would sell appliances and cupboards to integrate them. I agree that there is an overlap in trade channels and I agree with the opponent that there may be an overlap in users, in that a purchaser of household apparatus may also be interested in installing cupboards or other furniture. I am not of the view that the goods are in competition. In addition, contrary to the opponent's submissions I am not of the view that the goods are complementary. This is on the basis that I do not consider that the average consumers will be of the view that there is such a close connection between household apparatus and cupboards that they are important/indispensable for one another, nor that the responsibility for the goods will lie with the same undertaking. Taking this into account, I consider that the goods are similar to a low degree.

24. In relation to *“robots (machines)”, housekeeping robots for household purpose”* and *“robots for personal use, namely, robots for cleaning”* in the applicant's specification, I note that the opponent submits that the term 'robots (machines) is not specific or restricted in nature and as a result could cover washing machines. Whilst I am of the view, that the definition of a robot is wide, I agree with the applicant's submissions and I do not consider that washing machines can be included within the terms above. This is on the basis that in the interpretation of the terms, terms are to be given their ordinary and natural meaning and that language is not to be strained unnaturally.³ I do not consider that the average consumer would, in applying the ordinary and natural meaning of the words, include washing machines. However, I consider that they may be of the view that they cover goods such as robotic vacuum cleaners. Taking this into account, I compared this term with *“furniture, namely cabinets for washing machines or clothes dryers”* in the opponent's specification.

25. The opponent submits that the goods are similar on the basis that they are complementary, manufactured by the same parties, sold under the same marks, by the same trade channels and have the same end users. Whilst I agree with the opponent's submissions that the goods will share trade channels and overlap in end users; this is supported by the opponent's evidence in Exhibits CD1-4, I consider that retailers such as department stores or businesses that sell kitchen infrastructure such

³ *Youview Ltd v Total Ltd* [2012] EWHC 3158 (Ch) at [12] Floyd J

as cupboards or cabinets will also sell appliances. I am not of the view that the goods are manufactured by the same parties or are complementary. In relation to complementarity, the fact that the goods may be sold by the same retailers does not mean that the undertaking responsible for those goods is the same, consequently, I do not consider the goods to be complementary. It is not clear to me what the opponent means when they submitted that the goods are sold under the same marks as an indicator of similarity. If, the opponent is suggesting that this would mean that there is an overlap in trade channels, I note that even goods that are dissimilar may be sold under the same mark – this does not mean that the goods are similar. Further, I do not consider that there is competition between the goods. Taking all the above into account, I consider the goods to be similar to a low degree.

26. I consider that *“hoses for electric vacuum cleaners”, “bags for electric vacuum cleaners”, “electric rotary blowers”, “compressed air pumps”, “electric rotary compressors”* and *“compressors for refrigerators”* in the applicant’s specification are all parts or accessories for apparatus that are used for household purposes. I consider that my findings above in relation to household apparatus in paragraph 23 apply to these goods, I consider that the goods will overlap in trade channels and users. In light of this, I also find that these goods are similar to a low degree.

Class 11

27. As mentioned above, applying the principle outlined in *Separode*, it is permissible to group goods together. I deem this to be the case in respect of the following goods in the applicant’s specification that are apparatus or parts thereof for household purposes, for example, apparatus for cooking, heating the house or extracting moisture from the surroundings, refrigerating food or purifying water: *“air conditioners”, “hot air apparatus, namely, hot-air space heating apparatus”, “humidifiers”, “electric dehumidifier for household use”, “electric ranges”, “gas ranges”, “electric kitchen ovens”, “air purifiers”, “ventilation (air-conditioning) apparatus for heating”, “apparatus or installations for cooking”, “electric refrigerators”, “ventilation hoods”, “ventilation hoods for ovens”, “water purifiers for household purposes”, “water*

ionizers for household purposes”, “*membrane apparatus in the nature of filters for purifying water*” “*solar thermal collectors (heating)*” and “*LED lamps*”. I consider that the goods will overlap in trade channels and users with “*cupboards*” in the opponent’s specification. Applying the reasoning outlined in paragraph 23, I consider the goods to be similar to a low degree.

THE AVERAGE CONSUMER AND THE PURCHASING PROCESS

28. As the law above indicates, it is necessary for me to determine who the average consumer is for the 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 described the average consumer in these terms:

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

29. I note that the opponent submits that the purchasers of the goods are the ordinary average consumer who may purchase the goods online or in a bricks and mortar store. I am of the view that the purchasers of the goods at issue will be members of the general public, businesses and specialists such as electricians or carpenters.

30. I am of the view that the goods will, for the most part, be available via retailers, being both general retailers and more specialist ones (such as kitchen retailers), and their online or catalogue equivalents. At the retailer’s physical premises, the goods will

be displayed on shelves or showrooms and self-selected by the customer. A similar process will apply when the goods are selected online or via catalogues, in that a consumer will select them after seeing an image, be that on a webpage or in a catalogue. In my view, the visual component will dominate all methods of sale, although I do not discount an aural component playing a part in the form of word-of-mouth recommendations and advice from sales assistants.

31. Given the range of goods at issue, the price of the purchases will vary. For example, some goods may be inexpensive (such as a low quality food processor) but some may be considerably more expensive (such as a high quality automatic dishwasher). I consider that the goods will be purchased relatively infrequently, with more expensive goods being purchased more infrequently. I am of the view that when considering the goods, durability, price, warranty and suitability for the customer's needs will be considered. I also consider that the average consumer is likely to take into consideration if they are provided with 'after-care' services such as installation, advice and maintenance in relation to, for example, automatic dishwashers. Taking all the above into account, I consider that the level of attention paid during the purchasing process will vary between higher than medium (but not the highest) for goods such as household appliances, as they are goods that are likely to last for a long time or may be tradespeople purchasing goods for their customers. However, for goods such as bags for electric vacuum cleaners, I consider the degree of attention will be medium.

COMPARISON OF THE MARK

32. The respective marks are shown below:

Washing Tower	WASHTOWER
Washer Tower	
The applicant's marks	The opponent's mark

33. It is clear from *Sabel BV v Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural, and conceptual similarities of 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.”

34. 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.

35. The applicant's first mark consists of the text 'Washing Tower'. This is presented in a word only mark in title case. The applicant's second mark consists of the text 'Washer Tower'. This is presented in a word only mark in title case. There are no other elements that contribute to the overall impression of the marks which lies in the text itself. The opponent's mark consists of the text 'WASHTOWER'. The opponent's mark is a word only mark in upper case. There are no other elements that contribute to the overall impression of the mark which lies in the text itself.

36. Visually, I agree with the opponent's submission that the applicant's marks and the opponent's mark share the letters 'W-A-S-H' at the beginning of the mark and 'T-O-W-E-R' at the end of the marks. I consider that in relation to the applicant's first mark, the points of difference between the marks are the letters 'ing' that follow 'Wash' in the applicant's mark. In relation to the applicant's second mark, it will be the letters 'er' that follow 'Wash'. Further, the applicant's marks consists of two separate words

and the opponent's mark is a single span of text. I am not of the view that this will make a material difference between the marks, as I note in the case of *Usinor SA v OHIM*,⁴ even though marks will normally be perceived as a whole by the average consumers, they will normally break down the verbal elements if they suggest a meaning or resemble words that are known to them. Consequently, the average consumer would identify the mark 'WASHTOWER' as two dictionary words. The lack of separation between the words will not impact the comparison of the marks. I note that the applicant's marks are presented in title case and the opponent's in upper case. However, fair and notional use of the applicant's mark would include its use in an alternative case as a word mark protects the words themselves in whatever form, colour or typeface.⁵ I consider the marks to be highly similar.

37. Aurally, I note that the applicant submits that the opponent's mark will be pronounced as WOSH TOU-ER and the applicant's mark will be pronounced as WOSH-ING TOU-ER (applicant's first mark) and WOSH-ER TOU-ER (applicant's second mark). The applicant submits that the beginnings of the marks differ aurally. I consider that the words Wash, Washing, Washer and Tower will be given their ordinary dictionary pronunciation. Whilst I recognise and agree with the applicant's submissions that the marks differ in the pronunciation of 'ing' and 'er' following the word Wash in the applicant's mark, the marks do coincide in pronunciation of 'Wash' and 'Tower'. Taking the above into account, I consider the marks to be aurally similar to a high degree.

38. Conceptually, I consider that 'Washing Tower' (the applicant's first mark) will be viewed as two ordinary dictionary words and may be perceived by the average consumer as a 'Tower' that is used in the process of washing something. I consider that 'WASHER TOWER' (the applicant's second mark) will be viewed as two ordinary dictionary words and will also be perceived by the average consumer as a "Tower" that is used in the process of washing something. In relation to the opponent's mark, 'WASHTOWER', I consider that the consumers will break down the elements into

⁴ T-189/05

⁵ *LA Superquimica vEUIPO*, Case T-24/17, paragraph 39.

'WASH' and 'TOWER' as they resemble words known to them.⁶ The mark will also be perceived as a 'Tower' that is used to wash something. The concept of 'TOWER' will be the same across all of the marks. I agree with the applicant's submissions that the word 'TOWER' will be perceived as the standard English dictionary word for a tall, usually square or circular structure, sometimes part of a larger building and usually built for a specific purpose. In relation to the Washing/WASH/Washer elements of the marks, I note that the applicant submits that its marks share "the same root i.e. "wash". I agree with the applicant's submissions and consider that it extends to the opponent's mark. Taking all of the above into account, I consider the marks to be conceptually identical, however, if I am mistaken, I consider them to be at least similar to a high degree.

DISTINCTIVE CHARACTER OF THE EARLIER MARK

39. 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-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

⁶ In the case of *Usinor SA v OHIM*, Case T-189/05 the General Court stated that even though consumers normally perceive marks as a whole, they nevertheless will break down elements if they suggest a meaning or resemble words known to them.

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).”

40. 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 a high inherent distinctive character, such as invented words which have no allusive qualities.

41. The opponent has not pleaded that its mark has acquired enhanced distinctive character, nor has it filed any evidence to that effect. Therefore, I have only the inherent position of the earlier mark to consider.

42. I note that in the judgment of the CJEU in *Formula One Licensing BV v OHIM* Case C-196/11P indicates that a registered trade mark must be considered to have at least a minimum degree of distinctive character. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive to a characteristic of the goods/services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. I consider that WASHTOWER is allusive of its goods, on the basis that the goods are used to store goods involved in washing or that the good is large or tall. Therefore, I consider the degree of inherent distinctive character to be medium.

LIKELIHOOD OF CONFUSION

43. 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. The first is the interdependency principle, i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods or vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the opponent's trade mark, the average consumer of the goods and the nature of the purchasing process. In doing so, I must be mindful of 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.

44. I have found the marks to be visually similar to a high degree, aurally similar to a high degree and conceptually identical/similar to a high degree. I have found the degree of the inherent distinctive character of the earlier mark to be medium. I have found the average consumer to be members of the general public, businesses and specialists. I have found that the goods are likely to be selected visually, although I do not discount an aural component. I have concluded that the degree of attention paid during the purchasing process for the goods will vary between higher than medium and medium. . I have found the goods to have a low degree of similarity.

45. While I note that the parties' marks differ in the presence/absence of 'ing' and 'ER' and being presented as one or two words respectively, I consider that the differences between the applicant's marks and the opponent's marks are insufficient to avoid confusion. I consider this to be even more likely when factoring in the principle of imperfect recollection. I am of the view that the average consumer will overlook or misremember the differences between the marks. This is particularly the case given that the marks share the letters 'WASH' at the beginning of the marks and the suffix 'TOWER' – which creates the totality of the opponent's mark. Further, I have found the marks to be conceptually identical/highly similar, visually highly similar and aurally similar to a high degree. I consider that the level of similarity between the marks, especially the conceptual identity/high similarity, will offset the low degree of similarity between the goods. 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. I make this finding notwithstanding the fact that I have found the opponent's mark to be inherently distinctive to a medium degree and the degree of attention to vary from higher than medium (but not the highest) to medium). Consequently, I consider there to be a likelihood of direct confusion.

CONCLUSION

46. The oppositions are successful, and the applications are refused.

COSTS

47. The opponent 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 £1450 as a contribution towards the costs of the proceedings. I have made the costs award factoring in that the opponent filed two oppositions. The sum is calculated as follows:

Preparing notices of opposition and considering counterstatements (X2)	£550
Preparing/filing evidence and considering the applicant's evidence	£500
Preparing submissions in lieu and considering the applicant's submissions in lieu	£200
Official fees	£200
Total	£1450

48. I therefore order LG ELECTRONICS INC. to pay WASHTOWER IP B.V. the sum of £1450. 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 13th day of November 2023

A KLASS

For the Registrar

For the Comptroller-General

Annexes

Annex 1

Class 7: automatic dishwashers; electric vacuum cleaners; hoses for electric vacuum cleaners; bags for electric vacuum cleaners; stick type vacuum cleaners; electric rotary blowers; robots (machines); compressed air pumps; electric rotary compressors; compressors for refrigerators; electric mixers for household purposes; robotic vacuum cleaners; electric food processors; steam cleaners for household purposes; hand-held vacuum cleaners; electric vacuum cleaners for bedding; housekeeping robots for household purpose; robots for personal use, namely, robots for cleaning.

Class 11: air conditioners; hot air apparatus, namely, hot-air space heating apparatus; humidifiers; electric dehumidifier for household use; electric ranges; water purifiers for household purposes; water ionizers for household purposes; membrane apparatus in the nature of filters for purifying water; solar thermal collectors (heating); air purifiers; ventilation (air-conditioning) apparatus for heating; led lamps; gas ranges; electric kitchen ovens; apparatus or installations for cooking; electric refrigerators; ventilation hoods; ventilation hoods for oven.

Annex 2

Class 7: automatic dishwashers; electric vacuum cleaners; hoses for electric vacuum cleaners; bags for electric vacuum cleaners; stick type vacuum cleaners; electric rotary blowers; robots (machines); compressed air pumps; electric rotary compressors; compressors for refrigerators; electric mixers for household purposes; robotic vacuum cleaners; electric food processors; steam cleaners for household purposes; hand-held vacuum cleaners; electric vacuum cleaners for bedding.

Class 11: air conditioners; hot air apparatus, namely, hot-air space heating apparatus; humidifiers; electric dehumidifier for household use; electric ranges; water purifiers for household purposes; water ionizers for household purposes; membrane apparatus in

the nature of filters for purifying water; solar thermal collectors (heating); air purifiers; ventilation (air-conditioning) apparatus for heating; led lamps; gas ranges; electric kitchen ovens; apparatus or installations for cooking; electric refrigerators; ventilation hoods; ventilation hoods for ovens.